(21,065, 21,066, and 21,067.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 662.

EDWARD H. HARRIMAN, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION.

No. 663.

OTTO H. KAHN, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION.

No. 664.

THE INTERSTATE COMMERCE COMMISSION, APPELLANT,

vs.

EDWARD H. HARRIMAN.

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1 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION
v.
EDWARD H. HARRIMAN and OTTO H. KAHN.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Petition.

To the Honorable Judges of the Circuit Court of the United States for the Southern District of New York:

Now comes the Interstate Commerce Commission, represented by Henry L. Stimson, United States district attorney for the Southern District of New York, pursuant to the direction of the Honorable Charles J. Bonaparte, Attorney-General of the United States, and presents this, its petition:

That the Interstate Commerce Commission was duly created and organized under and by virtue of the act to regulate commerce, approved February 4, 1887, as amended by an act approved March 2, 1889, and by the act approved February 10, 1891, and by the act approved February 8, 1895, and by the act approved June 29,
2 1906, and by the joint resolution approved June 30, 1906; reference to which statutes is hereby made for greater certainty.

That under and by virtue of the provisions of said act to regulate commerce, the Interstate Commerce Commission has authority to inquire into the management and the business of all common carriers subject to the provisions of this act, to keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

That among other duties of said Commission, as prescribed by said act, as amended by the act approved June 29, 1906, is to require annual reports from all the common carriers subject to the provisions of said act, and from the owners of all railroads engaged in interstate commerce as defined by the said act, and to prescribe the manner in which such reports shall be made, and to require from such common carriers specific answers to all questions upon which the Commission may need information.

That such annual reports are required to show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same, the dividends paid, the surplus fund, if any, the number of stockholders, the funded and floating debt and

the interest paid thereon, the cost and value of the carrier's property, franchises, and equipments, the number of employees and the salaries paid to each class, the accidents to passengers, employees,
3 and other persons, and the causes thereof, the amounts expended for improvements each year, how expended, and the character of such improvements, the earnings and receipts from each branch of the business and from all sources, the operating and other expenses, the balances of profit and loss, and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet; also such information in relation to rates or regulations concerning fares or freights or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of the act, prescribe a period within which all common carriers subject to the provisions of the act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. It is the duty of said Commission to make a report on the 1st day of December of each year, containing such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

It is also made the duty of the said Commission, under and by virtue of the said act, to have general supervision over the question of rates, fares, and charges, and, upon an investigation as provided by said act, to prescribe just and reasonable rates to be observed as maximum charges.

That, for the purpose of enabling the Commission to perform its duties, it is authorized to investigate all of the said subjects—
4 the manner of conducting the business of a railway company, the amount of its capital issued, and the amounts paid therefor, and the manner of payment of the same, the dividends paid and the surplus fund, the funded and floating debt, and the cost and value of the carrier's property, franchises, and equipments; and that said Commission is authorized to inquire into all of the things required by said act to be made public by the said carrier, its officers, agents, and employees.

That pursuant to its said power the Commission did, on the 15th day of November, 1906, hold a regular session at its office in the city of Washington, D. C., and that there were present at said hearing the following-named Commissioners: Martin A. Knapp, Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, and James S. Harlan; and that at said time and place the said Commission duly passed a resolution and made an order as follows, to wit:

"Whereas the act to regulate commerce provides that the Commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and also requires the Commission 'to execute and enforce the provisions' of said act;

"And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practices, or methods result in violations of said act or tend to defeat its purposes;

"It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby, instituted, and that the same be set for hearing at United States court rooms in the city of New York, N. Y., on the 28th day of December, 1906, at 11 o'clock a. m., the further hearing to be continued at such times and places as may be required."

That pursuant to said order the said hearing was adjourned from the 28th day of December, 1906, at 11 o'clock a. m., till the 4th day of January, 1907, when said Commission met in the city — New York, in room 66, Federal Building, at 10 o'clock a. m., and that said Commission duly commenced the said inquiry and pursued the said inquiry during the 4th and 5th days of January in the said city of New York; during the 8th, 9th, and 10th days of January at the Federal Building in the city of Chicago, State of Illinois; during the 21st day of January at Seattle, in the State of Washington; the 24th and 25th days of January at Portland, in the State of Oregon; the 29th, 30th, and 31st days of January at San Francisco, in the State of California; the 7th and 8th days of February at Los Angeles, in the State of California; and that thereafter the said Commission duly adjourned the said hearing to and the same was continued in the city of New York, in room 70 of the Federal Building aforesaid, on the 25th, 26th, 27th, and 28th days of February, 1907.

6 That hereto attached and made a part of this petition to this honorable court is a printed copy of the testimony and exhibits, so far as your petitioner deems the same material to this proceeding, taken before said Interstate Commerce Commission at said various hearings, which said testimony and exhibits is contained in eight volumes, marked, respectively, as follows:

"Testimony taken in New York, January 4th and 5th."

"Testimony taken in Chicago, January 8th, 9th, and 10th."

"Testimony taken in Seattle, January 21st."

"Testimony taken in Portland, January 24th and 25th."

"Testimony taken in San Francisco, January 29th, 30th, and 31st."

"Testimony taken in Los Angeles, February 7th and 8th."

"Testimony taken in New York, February 25th, 26th, 27th, and 28th."

"Exhibits."

which said testimony and exhibits are hereby made a part of this petition as fully as though recited herein at length.

That it appeared by the testimony taken at said hearing that the Union Pacific Railroad Company was organized under the laws of the State of Utah, and since about July, 1897, has owned a line of railway from Council Bluffs, Iowa, to Ogden, Utah, including the line from Julesburg to Denver and from Denver to Cheyenne, and also the line of railway from Kansas City to Denver, commonly known as the Kansas Pacific; and also that since about said time it has owned substantially all the stock of the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation
7 Company, and controls said lines; that the lines are operated as one property with the lines of the Union Pacific Railroad Company; that the Oregon Short Line Railroad Company owns a line of railroad extending in a general way from Granger, Wyoming, westward to Huntington, Oregon, with a line from Salt Lake City, Utah, to Silver Bow, Montana; that the Oregon Railroad and Navigation Company's lines extend from Huntington, Oregon, to Portland, Oregon, with a line to Spokane, Washington, and into northern Idaho; all of which lines constitute and did constitute a through line of railway prior to the acquisition of the stock of the Southern Pacific Company as hereinafter alleged.

That the Southern Pacific Company was created under the laws of Kentucky by special charter in about the year 1884; that said company owns the stock of and controls a system of railroad extending from Ogden, Utah, to San Francisco, California, from San Francisco, California, to Portland, Oregon, and from San Francisco, California, through California, Arizona, New Mexico, Texas, and Louisiana, to New Orleans, Louisiana, and a steamship line from New Orleans to New York, Habana, and other places. Of some of these lines the Southern Pacific Company has a lease; other lines it controls by stock ownership.

That said Southern Pacific Company also owns and controls a line of steamships from Galveston, Texas, and New Orleans, Louisiana, to New York and Habana and a controlling interest in a line of steamships known as the Pacific Mail Steamship Line running from San Francisco to Honolulu and Oriental ports.

8 That the said Oregon Railroad and Navigation Company also owns a line of steamships extending from Portland to San Francisco and to Oriental ports.

That it appears by the said testimony that shortly after the reorganization of the Union Pacific Railroad Company, Mr. Edward H. Harriman and Mr. Otto H. Kahn, the defendants herein, became connected with said Union Pacific Railroad Company, as directors, and that Mr. Harriman has been a director of said company from the said time until the present time; that for many years last past the said Harriman has been the president of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad and Navigation Company.

That in or about the year 1901 the said Union Pacific Railroad Company purchased about 45 48/100 per cent. of the capital stock of the Southern Pacific Company; that the stock of said Southern Pacific Company was thereafter increased, and that the Union

Pacific Company acquired its proportion of said capital stock thereafter issued, so that at all times the said Union Pacific Company has maintained its ownership of stock of the Southern Pacific Company at said percentage.

That, since about the year 1901, the said Union Pacific Company has, through the said ownership of stock, dominated and controlled the management of the Southern Pacific Company and all its allied lines, including the said steamship lines.

That said ownership of stock of the Southern Pacific Company has been at times in the Union Pacific Railroad Company and at other times in the Oregon Short Line Railroad Company, controlled by the Union Pacific Railroad Company.

9 That the said Union Pacific Railroad Company has elected the board of directors of the Southern Pacific Company, appointed its officers, agents, and servants.

That Edward H. Harriman has been the president of the Southern Pacific Company substantially all the time since about the year 1902.

That said companies have common traffic officials, the majority of their boards of directors are common, and the said companies are principally dominated by the said Edward H. Harriman.

That it appeared at said hearing that the said Union Pacific Railroad Company, either in the name of the said Union Pacific Railroad Company or through the Oregon Short Line Railroad Company, had purchased at various times large amounts of stock in other railway companies, and had at times sold some of said stocks; that schedules of said purchases of stock so made, and sales of stock so made, appear in the volume of exhibits hereto attached marked "Harriman Exhibit No. 2," and "Harriman Exhibit No. 3," on pages 143 to 151 of said volume of exhibits hereto attached.

That the list in said exhibits states the prices paid for said stock, the dates of purchase, the prices for which any of said stocks were sold, and the dates of sale thereof.

That it appeared also by the said testimony of said Edward H. Harriman and other witnesses that the Union Pacific Railroad Company had issued, for the purchase and acquisition of stocks in other railways, $100,000,000 of convertible bonds of the Union Pacific Railroad Company, which had been converted into common stock of the said Union Pacific Railroad Company.

10 That the said Union Pacific Railroad Company had caused the Oregon Short Line Railroad Company to issue $100,000,000 of participating bonds, which were afterwards retired by $100,000,000 of refunding bonds of the said Oregon Short Line Railroad Company, secured by a mortgage on all the property of the said Oregon Short Line Railroad Company; of which said refunding bonds $45,000,000 are outstanding and were used for the purchase and acquisition of stocks, and the remaining $55,000,000 are owned by the Union Pacific Railroad Company.

That the Union Pacific Railroad Company also has outstanding notes for the purchase of capital stock of the Baltimore and Ohio Railroad Company amounting to $36,393,432, making a total of

$181,393,432 of obligations of the Union Pacific Railroad Company and Oregon Short Line Railroad Company outstanding in the hands of the public, used by said companies for the purchase of railroad stocks.

That it also appeared by said testimony of said Edward H. Harriman that the said Union Pacific Railroad Company and its subcompanies have expended in the purchase of stocks, in addition to all sums received from the sale of stocks, $182,588,648.98.

That in and pursuant to its power, said Commission was investigating the said purchase and sale of stocks by the Union Pacific Railroad Company and Oregon Short Line Railroad Company, the prices paid therefor, the parties from whom the said stocks
11 were purchased, the value thereof, and the use which had been made of said stocks in the control of other lines of railway.

That on February 25, 1907, when said Harriman was under examination before said petitioner Interstate Commerce Commission (Commissioners Knapp, Clements, Prouty, Harlan, and Lane being present), the said witness stated that the Union Pacific Railroad Company purchased 103,431 shares of stock of the Chicago and Alton Railway Company, and, in connection with said purchase, was further interrogated and testified as follows (p. 23 *et seq.*, testimony, N. Y., Feb. 25):

"Mr. KELLOGG: That stock seems to have been bought about October and November, 1904; is that correct?

"Mr. HARRIMAN: I think that is so.

"Mr. KELLOGG: Who sold that stock to the Union Pacific Company?

"Mr. HARRIMAN: Kuhn, Loeb & Co.

"Mr. KELLOGG: Was there a circular sent out asking for a deposit of stock of the Chicago & Alton Railroad Company for the purpose of selling it?

"Mr. HARRIMAN: My recollection is that Kuhn, Loeb & Co. issued a circular asking for a deposit of Chicago & Alton preferred, to be left in their hands to be sold under the control—I believe it was under the control or under conference with a committee.

"Mr. KELLOGG: Who was the committee?

"Mr. HARRIMAN: Myself—I beg pardon for putting myself first—I should have said Mr. Stewart.

"Mr. KELLOGG: We do it.

"Mr. HARRIMAN: And Mr.—you have it there—I think it was Mr. Mitchell and myself—John A. Stewart, John J. Mitchell, and myself, was it not?

"Mr. KELLOGG: Yes, sir.

12 "Mr. KELLOGG: I offer in evidence an agreement dated December 23, 1903, for the deposit of Chicago & Alton stock."

(Received in evidence, and marked "Exhibit 5 to Mr. Harriman's testimony.")

"Mr. KELLOGG: Under this agreement the preferred-stock owners of the Chicago & Alton Railway Company, I believe in a general

way, are assumed to deposit their stock with the bankers, Kuhn, Loeb & Co., subject to sale?

"Mr. HARRIMAN: That is right.

"Mr. KELLOGG: The price to be fixed by John A. Stewart, Edward H. Harriman, and John J. Mitchell?

"Mr. HARRIMAN: That is right.

"Mr. KELLOGG: Did you fix the price at which that stock was sold to the Union Pacific Company?

"Mr. HARRIMAN: I joined in it.

"Mr. KELLOGG: You joined in it?

"Mr. HARRIMAN: Yes, sir.

"Mr. KELLOGG: What was the price fixed—86½, was it?

"Mr. HARRIMAN: That is right.

"Mr. KELLOGG: 2½ per cent. commission?

"Mr. HARRIMAN: Well, we didn't pay 2½ per cent. commission.

"Mr. KELLOGG: Well, taken out of that; 86½ was the gross sum paid?

"Mr. HARRIMAN: Net price to the Union Pacific.

"Mr. KELLOGG: Net price to the Union Pacific; yes, sir. How much did the owners of the stock get?

"Mr. HARRIMAN: Eighty-four.

"Mr. KELLOGG: Have you the list of stockholders who deposited their stock with Kuhn, Loeb & Co.?

"Mr. HARRIMAN: I have not.

"Mr. KELLOGG: Do you know any of them?

"Mr. HARRIMAN: In a general way.

Mr. KELLOGG: Can you give the names of them?

13 "Mr. HARRIMAN: I don't think I could from recollection; there are a great many.

"Mr. KELLOGG: Who has the list?

"Mr. HARRIMAN: There are a great many; there may have been 100.

"Mr. KELLOGG: Who has the list?

"Mr. HARRIMAN: That I don't know; that I had nothing to do with.

"Mr. KELLOGG: You fixed the price?

"Mr. HARRIMAN: I didn't fix the price.

"Mr. KELLOGG: I mean you and the committee?

"Mr. HARRIMAN: The committee fixed the price."

That the Exhibit 5 offered in evidence in connection with the testimony of said Harriman is the deposit agreement under which owners of preferred stock of the Chicago & Alton Railway Company deposited with Kuhn, Loeb & Co. their shares; and the said stock deposited under said agreement was the stock which was so sold to the Union Pacific Railroad Company by said Kuhn, Loeb & Co., the price of which was fixed by John A. Stewart, Edward H. Harriman, and John J. Mitchell, as stated by said Harriman.

That at the time of the purchase of said Chicago & Alton stock by said Union Pacific Railroad Company in the manner described in the testimony of said Harriman, he, the said Harriman, was a

director, the president, and the chairman of the executive committee of said Union Pacific Railroad Company.

That after giving the testimony concerning said purchase hereinbefore recited, said Harriman was asked by counsel for your petitioner the following question:

"Did you own any that was so deposited?"

14 which said question referred to the stock concerning which the witness had been interrogated and had testified. Thereupon objection was made by Mr. Milburn, one of the counsel for the Union Pacific Railroad Company, and who was in attendance upon said hearing as such, and the propriety of requiring an answer to the said question from the witness was argued by counsel and between counsel and the Commission in the language following, to wit (p. 25 *et seq.*, testimony, N. Y., Feb. 25):

"Mr. MILBURN: Now, if your honor please, that raises a question which I desire to present to the Commission. It is one which may arise in various forms, and I may as well present the matter, which I shall do very briefly now, so that the Commission can have before it exactly what is in our minds on the subject.

"We appreciate the range of this investigation. It is defined in the order which underlies it.

"Looking at the matter from our point of view, we have from the beginning endeavored to guide ourselves by a policy of providing for the use of counsel all the information within our possession bearing on the subject. We have extended every facility that was within our power, every document, paper, entry, or minute bearing on any transaction of the Union Pacific and its allied lines.

"We have appreciated that this was an inquiry to ascertain what interest it had acquired in other companies, what interest it held in other companies, what relations it held and bore through these acquisitions to other railroad companies, with a view to determining the effect of such ownership or control upon interstate commerce—upon rates, upon facilities, but, fundamentally, upon interstate commerce, which is the great subject that is confided to the jurisdiction and care of this Commission. And, therefore, I repeat, all

15 the information bearing on the stocks which have been acquired, the various reasons for the acquisition, some for the control of properties like the Southern Pacific, to become a permanent part of the system; some as investment of funds, as Mr. Harriman has explained. We say those have all been presented here—the price that was paid, the parties with whom the purchase was made by the company. There might be a question as to whether we haven't gone beyond really the scope of the investigation—gone into some matters that do not and can not bear at all upon interstate commerce, which is the polestar of this and every investigation. But for these reasons, which the Commission will appreciate, our attitude has been one of—if I may say it—the most liberal view, and not of a contracted view; because it has been the desire, from the beginning, of Mr. Harriman, as the highest official of these railroads, to lay—to have the transactions of the railroads, their operations in acquiring these properties, known to the public as they

were, and that thereby the vast mass of scandal and gossip might be buried forever.

"Now we come into another range, and that is not the price that was paid for these stocks by the company, not who was the vendor, who sold these stocks to the company—that is, the party from whom it was acquired—but what individuals had sold to the vendor.

"Mr. SEVERANCE: That is the real question now.

"Mr. MILBURN: We will see when I get to that point. Now, may it please the Commission, it is right there that I want to ask the Commission whether any matter is raised which bears upon the function of this Commission, on the scope of this investigation, or upon the question of interstate commerce? I can not see that it does—I can not see that it does, from whom the stock was acquired.

The fact that stock has been acquired, is held, and is owned,
16 may be regarded as taking the view of this investigation, the liberal view which I have expressed, as a pertinent matter, because it shows that the Union Pacific system owns these stocks, and such power as that ownership gives.

"On the question whether the price that was paid for it would come within the scope of the investigation, because that is not a matter of interstate commerce, that is not a transaction of this company, what it pays for property is not a transaction which is involved in any way in interstate commerce, or constitutes interstate commerce, that I can see. Who the individuals were who sold to the company is not, that I can see, a pertinent matter with reference to interstate commerce, for the scope of this investigation, the scope of this inquiry, that this Commission is conducting. In other words, I say that there is a line; on the one side of that are matters which are related to part of what transactions of interstate commerce that are within the jurisdiction of this Commission. I say on the other side of this line are the private affairs of individuals. Now, I say, for instance, if any matter—if I individually have sold to a railroad corporation, directly or indirectly, that is not a transaction of interstate commerce in any sense whatever. That is a matter of my private business, no matter what my relations in life may be, and that is not a power which has been or could be conferred upon this Commission. It has a power to go into those transactions which are spoken of as the private transactions of individuals when they are not transactions of interstate commerce.

"Now, I avail myself of this opportunity to raise this question for the consideration of the Commission. I need not say that I know the Commission is desirous of confining itself to the investigations within the powers and limits of the Commission; I know that is its desire, and that is why this question is raised. I need not say

to the Commission that there are a lot of matters pertaining
17 to railroad affairs, pertaining to railroad matters, pertaining to railroad transactions, the transactions of railroad companies, that are not interstate commerce, and that the Commission has work enough on its hands in dealing with interstate commerce matters not to deal with those matters that are not in any sense and can not be interstate commerce or interstate-commerce transactions.

"Therefore, I say here, in regard to this particular matter, the only pertinent proposition, the only pertinent fact, is that the Union Pacific Railroad acquired so many shares—preferred shares—of the Alton Railroad, at a certain price, and there is the only transaction that can remotely bear upon interstate commerce. But, as I say, that question I am willing—I don't argue. We will pass it. We will assume that it did. But not more than that can bear upon interstate commerce. Bearing upon interstate commerce, that may be an interstate-commerce transaction, that the Union Pacific did acquire those shares of stock, and it has them. Now, then, the thing is, what is the bearing of that on interstate commerce—that it bought those shares of stock, that it holds those shares of stock, and that it paid for them? Whom it bought them from, whether from A, B, C, D, or E, whether from one man or another, whether from one man to another, is not a matter within the domain of interstate commerce, and I respectfully ask the Commission to consider this question and to limit this investigation to matters of interstate commerce, and not to extend them into matters irrelevant to interstate commerce and that are really private affairs of individuals.

"The CHAIRMAN: Your suggestion, Mr. Milburn, seems to have drawn the distinction between corporate transactions of Union Pacific in this case and what you choose to call the transactions of private individuals. But can it be said that these are the
18 transactions of private individuals? May the executive officers of the railroad company purchase this stock of another railroad company and then sell that stock to the company through the executive officers and preclude inquiry into the transaction because they are private individuals?

"Mr. MILBURN: Just take the very question put by the chairman. May an executive officer of a corporation acquire stock and sell it to the corporation? That is the question which the chairman puts. Well, I say that is not interstate commerce. That is not interstate commerce from any conceivable point of view. I say that under the law of the land he can, and can legally, do it, under certain circumstances. I say, under the law of the land, that whether he can or not depends upon the facts of the particular transactions, as they may be raised by a party entitled to do it. The books are full of transactions between officers of corporations and corporations.

"The CHAIRMAN: It is not a question of the legality of the transaction, but of his right to conceal it.

"Mr. MILBURN: To conceal it?

"The CHAIRMAN: Yes; to refuse to disclose its terms.

"Mr. MILBURN: Let me put that in another way. I am called before this body, and I am asked some questions about my affairs which I deem to be my private affairs. I raise the objection. You would not express that I was seeking to conceal anything. The question is not whether I am making an argument of concealment, but whether that is a subject about which this Commission, within its legal powers, will inquire. There is a vast mass of subjects—I must be right in that position—connected with railroads, and connected with a railroad of State creation and State regulation, and of State

powers, as to what it can do, that can not possibly come within the domain of this Commission.

"The CHAIRMAN: The Chairman did not intend to use the
19 term in any offensive sense or as implying any criticism, but only to suggest whether a transaction of that kind is one of which disclosure may be properly refused.

"Mr. MILBURN: I think the test of that is this, is it a Federal question? A matter of interstate commerce? Is there any remedy?

"Commissioner PROUTY: Before this Commission can fix a reasonable rate on the Union Pacific Railroad, it must know how much money it earns and what it does with it, must it not?

"Mr. MILBURN: Well, that is one of the factors.

"Commissioner PROUTY: That is one of the things it should know. Can not it ascertain whether that money has been spent in a legitimate way or whether it has been given to the executive officers of the company?

"Mr. MILBURN: Not that I see, sir, that that is a matter that has anything to do with transportation with a view of fixing a rate. If you were fixing a rate, can we come in and show that we have hundreds of millions of securities out?

"Commissioner PROUTY: That is what you always do; it is what every railroad does.

"Mr. MILBURN: But would you take it into account, I mean, if it does not represent value? Of course, it can be shown.

"Commissioner PROUTY: That is what we are trying to find out, whether it represents value or not.

"Mr. MILBURN: Well, you know what you have got.

"Commissioner PROUTY: If the money of the company has been given away to its president and its officers, the securities do not represent value. That is why it is a proper question to ask.

"Mr. MILBURN: I think that is determined. You know what you have got. You know you have got those shares of Alton stock. Whether or not they were worth what was paid for them does not depend at all upon whether A, B, or C sold it to the Union
20 Pacific. If the Union Pacific makes a purchase, there is the market price of the article. Did it pay more or did it pay less? Now, it is utterly immaterial as bearing upon that proposition whether I sold it to the Union Pacific or anybody else sold it to the Union Pacific. If the transaction is within your jurisdiction, you have got it. Now, if this Commission has the jurisdiction to inquire into every transaction of every railroad in the United States, that is another proposition.

"Commissioner PROUTY: That depends a little bit on who fixes the market price. If you can manipulate this market and fix the market price in that way, and then the man who fixes the market price sells his own stock for that price, that is one transaction.

"Mr. MILBURN: I think, may it please the Commission, that perhaps there is a good deal of thought about manipulating price which does not exist.

"Commissioner PROUTY: And there is a good deal of thought about it that does exist.

"Mr. MILBURN: That may be suspected or may be charged. There is a whole world of rumor and accusations, and a whole world of statements very far from the real state of facts. God help us from being judged by what is represented here as being the things that are done.

"The CHAIRMAN: If I understand it, Mr. Harriman, he stated that he or his associates of the committee fixed the price at which the stocks should be purchased, and you say that we may not inquire as to whether he was one of the persons who were selling that stock.

"Mr. MILBURN: I say so, sir, because if the chairman will bear my distinction in mind, you are going to hold that you have a right to inquire into every transaction of every railroad. That is one thing. If you are limited to interstate commerce, if your investigations concern interstate commerce, that is another thing.

21 Now, there is where I draw my line. I do not see—I submit that no one can intelligently, after reflection and considering the matter, put such matters as that within the domain of interstate commerce. Now, if you were here exercising a visitorial power, and then if you had the power to call upon individuals in such a matter, it would be different; but I beg to draw the deep and fundamental distinction between that relation to transactions and the subject which is confided to the care of this Commission. I say this inquiry is not an inquiry pertaining to interstate commerce, and I would like the Commission not to decide this—it is a serious question—not to decide it without consideration.

"Commissioner HARLAN: On whose behalf do you make this objection? On behalf of the persons who sold the stock, or on behalf of the company who bought the stock?

"Mr. MILBURN: Well, I don't know that I have quite analyzed—my retainer here is for the Union Pacific Railway and its allied lines. If it were necessary to say that I appear for Mr. Harriman in this matter, I will appear for him, you know. I had not considered myself as appearing here personally for Mr. Harriman. I take it that I appear here for the Union Pacific railroads. Now, then, in that appearance I draw the attention of the Commission to the fact that the question put is one which does not concern interstate commerce and should not be put. That is a question that I raise. It is a very important one.

"Commissioner CLEMENTS: If the individual, by reason of his official connection with the railroad company, is able to sell stocks for more than their market value—and that is reflected in the capitalization of any road in the shape of stocks or bonds which must be made good, if good at all, by earnings—does not that come directly into bearing with the interstate question, with the rights of shippers?

22 "Mr. MILBURN: Does it make any difference who the individual is who sells at an overvaluation?

"Commissioner CLEMENTS: If the individual's relations were such to the railroads that he was enabled by his official relations to effect a higher capitalization than that which would be represented by

actual value, then is it not a material matter as to whether it was done by an individual who was also an official and whose official position enabled him to do the thing which he could not or might not be able to do otherwise?

"Mr. MILBURN: I think that is a very proper and material matter, if you are investigating into this corporation, under the exercise of a visitorial power, or under the exercise of the power of the creator or the corporation. But it makes no odds, so far as interstate commerce is concerned, whether it was an officer who sold, if you assume such a condition as that, or another individual. We are not here investigating the practices of railroad management separate and distinct from interstate commerce. That is the point of my objection.

"Commissioner CLEMENTS: One of the express purposes of the law included in its authority to the Commission to investigate and keep itself informed in regard to all these matters, with reference not only to existing laws and existing remedies, but additional laws for the better direction and remedying of bad practices. Now, might that not make it material and within the scope of the Commission's authority?

"Mr. MILBURN: Every practice of anything bearing on interstate commerce. There is the ineradicable line. Now, if this was to investigate with reference to enacting some law with reference to the corporation of the State of its creation, we might have another question.

"Commissioner CLEMENTS: Does not the capitalization of roads engaged in interstate commerce have a direct bearing on interstate questions of a reasonable rate?

23 "Mr. MILBURN: I suppose it does, to some extent. That is another question from the one we are discussing, of capitalization. I suppose it has some bearing. I imagine very much less than a great many people think.

"Commissioner CLEMENTS: Do not all these transactions bear upon capitalizations?

"Mr. MILBURN: I do not see so, not the one I am discussing. I am not objecting here to the ascertainment by the Commission of the fact that the Union Pacific has acquired so much Chicago & Alton stock, and that it paid for it so much money. Now, I have not objected to that. There is the fact. If that is overcapitalization, why, then, it speaks for itself. It is here. If the market value of Alton stock is known, if that was more than it was worth, then I suppose there may be some what you would call overcapitalization, to the extent of that margin, although the facts that you have there, if it bears on interstate commerce, you have those facts. But when you come to go behind that fact, to ascertain whether A, B, C, D, or E sold that stock, whether A, B, C, D, or E was an officer, then, I say, you are entering a domain which is not the domain of interstate commerce.

"Commissioner CLEMENTS: If it was conceded to be an evil overcapitalization and it was brought about by methods like this, and you were going to suggest a method to cure it and prevent it, would you not be better able to do it if you knew all about it, whether it was done through officials or individuals?

"Mr. MILBURN: I can not trace any connection, even a remote one; any logical connection between those facts. If you are going to legislate about overcapitalization, why, we had years ago all and vastly more than the information needed for legislating on that subject. If you are going to legislate on the relations of officers to corporations, still the limits of the Federal Constitution taken,
24 and there could be nothing there—no legislation that would be outside of this power to regulate commerce. I am aware how extensive the power to regulate commerce has become; but still I think we have to pause now and then to determine whether there are not some limits to interstate commerce, and that interstate commerce does not as yet comprehend the whole domain of human conduct. I want the Commission—it is a question of principle that I am raising here; I am raising it after careful thought, raising it after serious consideration, and raising it with a full belief and full conviction, so far as I am concerned, that I am absolutely right about it; of course, I would not raise it here—my personal opinion I am not tendering to the Commission as having any more weight than that of a lawyer practicing before you, but I state these things for the reason that I believe you have a very grave question before you, and one that has got to be determined.

"The CHAIRMAN: Do you make any difference, Mr. Milburn, between the question addressed to Mr. Harriman, the president of the Union Pacific, and a member of the committee which fixed the price at which the Alton stock was purchased, and a similar question addressed to John Doe, who had no other interest in the transaction than to accept the offer which might be made for his stock?

"Mr. MILBURN: I draw no distinction; first, in principle, if your honor please, and next in regard to the main question which I raised. Now, corporations have to deal with their officers. There is no legal prohibition on any such matter as that, but the legal propositions involved in a transaction of that kind are not propositions of interstate commerce. That is what I want to bring home to the Commission. Why, such transactions are going on, and such transactions have been before our courts and sustained over and over again, as your honors know. In dealings corporations often enough have to deal with their officers. The State of creation might com-
25 plain, and stockholders might raise a question, but that is not a question that makes the transaction a question of interstate commerce.

"The CHAIRMAN: It is not the question of the legality of such a transaction—of the right of such gentlemen to sell their own stock to a corporation of which they are executive officers—but whether they shall be excused from stating the facts in this inquiry. That is the question.

"Mr. MILBURN: The point that I raise is whether they have any power to go into it. Supposing you—as I say, I can conceive conditions, I can conceive a court or a body in cases in which in a multitude of actions that is a proper inquiry; but this is an administrative body. It is a body of the most extraordinary powers of any body, I believe, existing in this or any other country. You can reach out

your arm and bring anybody before you. You can go into anybody's office and take hold of his papers. Not outside the Orient do such extraordinary powers exist. Now, then, you bring this man, and that man, and the other man before you, and go right into his affairs, and you can go into his papers, and your officers can go into his office and open his books and demand to see everything that is most private. I say, exercising such extraordinary powers, this Commission will be careful in laying down the lines of this inquiry, those which are on the right side of its powers and which are not. Now, you have all those powers with respect to interstate commerce, but I submit you have not those powers with respect to matters and transactions which are not interstate commerce, and I submit that the question which is asked here is not a matter of interstate commerce.

"The CHAIRMAN: Mr. Kellogg, what have you or Mr. Severance to say to the objections raised by Mr. Milburn?

"Mr. KELLOGG: As to the last statement of the counsel, that such powers as this honorable Commission exercises are not known
26 to any country outside of the Orient, I disagree with him. The Commission are exercising no greater powers than are exercised by the English commission, and not as great. The Commission are exercising powers of inquiry not exceeding the powers of any court to send for papers and individuals. They are exercising no powers beyond the strict limits of the Constitution.

"Mr. MILBURN: I did not say they were.

"Mr. KELLOGG: You stated they were exercising powers not known to any country outside of the Orient.

"Mr. MILBURN: Extraordinary powers.

"Mr. KELLOGG: The powers they are exercising are powers known to every civilized country.

"Mr. MILBURN: I have not heard of them.

"Mr. KELLOGG: Well, I am not to blame because you have not heard of them.

"That is mere talk. The question is whether the Commission, under its power of inquiry, under the interstate commerce act, into the management, as he says, of interstate railways, or railways engaged in interstate commerce, and over interstate commerce, has a right to inquire into capitalization, or watered stock, as it is commonly known, excessive bond issues, prices paid, reasons governing those prices, speculation in stocks,—as Mr. Harriman called it; I did not,—purchase and sale of stocks, anything bearing upon the general management of interstate railroads for two purposes: First, the control over rates of such railroads, arriving at a reasonable rate, what the railroad ought to earn, involving its issue of stocks, bonds, securities of all kinds, and its management, whether that management has been frugal, proper or improper, for the purpose not only of fixing rates, and regulating rates, protecting the stockholders as well as the public; but that you may be informed, and that Congress may be informed, and that you may report, and for corrective legislation, and for other purposes.

27 "Those seem to me to be the plain, simple powers of the Commission, as fixed by the law, and as construed by the Supreme Court of the United States.

"Now then take the question at issue. It can not be possible that the power of the Commission in inquiry is confined to the fact as to whether the Union Pacific paid the market price in Wall Street of Alton stock, whether it used its surplus for that purpose, or whether it did not. We intend to show that the Alton road was inflated beyond all reason, a most conspicuous example of the days of inflation, and we believe its stock is not worth a dollar. We wish to know under what circumstances the stock was bought by the Union Pacific in this most remarkable transaction of the purchase of $130,000,000 or $140,000,000 of stock. That is what this inquiry is for.

"It seems to us we are not going into the private affairs of private individuals. It seems to us when a committee is given the absolute power to fix the price of stock, ten millions of par value which the Union Pacific is about to purchase, and its president is one of those persons—absolutely fix the price as appears by this contract—that whether he was interested also as a seller as well as a purchaser, becomes material as bearing upon the reasonableness of the price paid by the Union Pacific Company, so that your honors may be informed as to the management of that road, and it bears upon interstate commerce as much as State commerce.

"Why, the position of counsel would be this: Congress has a right, and only the right, to correct abuses of interstate commerce. Its jurisdiction is exclusive of the power of the States. The States can not legislate upon the subject at all. What is a reasonable rate for interstate commerce, what is a reasonable earning upon the capitalization of roads in interstate commerce is exclusively in the
28 power of Congress, and not of the States. If the position of the gentleman is correct, the States are limited to this inquiry as to the management of their railroads so far only as it affects State commerce. And there is no power under heaven that can inquire whether interstate railroads have a reasonable capitalization, acquired and put out in a reasonable and proper manner, as one of the elements for fixing rates. Why, Congress may limit the rate a railroad may earn. Congress may prohibit an interstate railroad from acquiring stock in the Chicago & Alton road, or in any other road; from acquiring a parallel or competing road, or any interest therein. These are things Congress may do. And you wish to know, I take it, what the Union Pacific has been doing—the most gigantic system of stock purchases ever known in American railroads.

"Mr. MILBURN: May I, before the Commission reaches a decision, mention one fact which I did not perhaps dwell upon or did not state as it might have been stated? That is in regard to the question of the rates. The value of the properties, everything that enters into transportation, of course, is a great factor in determining what are rates; but if a State which creates a railroad corporation sees fit, within such powers as are left to the States, to authorize one of its own railroad corporations to acquire stock in other corporations, and the railroad corporation does acquire stocks in other railroad corporatins, the rise and fall of values of the investments, or in the action of that power, is not a matter that would enter into rate making whatsoever. If the State creating the Union Pacific saw fit to authorize

it to hold stocks in vessels on the Atlantic and on the Pacific, the rates on the Union Pacific Railroad would not be affected by anything connected with the stocks in those steamship companies. The rates of the Union Pacific can not possibly be affected one way or the other. The fixing of rates by this Commission would not be
29 affected by what happens to the investments in New York Central or Baltimore and Ohio. Those are stocks acquired under a power granted by the State to acquire stocks in other railroad corporations. They are a branch of this business, or a branch, you might say, of those operations by themselves. The fortunes of those stocks do not enter into what is a rate for the transportation of freight on the Union Pacific Railroad by the employment of the property of that railroad and the facilities which constitute the rate.

"The CHAIRMAN: How about the rates on the Chicago & Alton?

"Mr. MILBURN: It is precisely the same way with the Chicago & Alton. The rates on the Chicago & Alton are dependent, so far as this factor is concerned, upon the physical properties, facilities, and everything entering into the appliance or machine which does the work for which the rate is remuneration. I do not see how the ratemaking power can be involved in the slightest degree.

"Now, only one more observation. I appeal to a matter that is more known to your honors than to me. My knowledge of it is such experience as I have had before you, and also what I have read of your proceedings and deliberations, and I know of no line of inquiry like this ever having been engaged in by this Commission in its existence.

"Mr. SEVERANCE: May I say a word, Mr. Chairman, in view of your invitation?

"The CHAIRMAN: Yes.

"Mr. SEVERANCE: I do not think we should be concluded from any investigation, by reason of the suggestion just made by my friend, Mr. Milburn, that the Commission has not heretofore gone into such a field. I do not think such a situation has been heretofore presented. Until this investigation began, it has been the conception, I think, of the lawmakers of this country and of the
30 country generally that railroad corporations were organized to run railroads and not for general financial purposes.

"Now, the Union Pacific, having seen fit to depart from the ordinary line of business, if I may use that expression, for which railroad corporations are organized, we have here presented this situation: Upon the credit of the Union Pacific Railroad, which credit is given to it by its line of road and the earnings of that line, they have been able to float $100,000,000 of common stock, which is outstanding in the hands of the public, upon which, presumably, dividends will have to be paid; and $45,000,000 of bonds of the Oregon Short Line. Those are outstanding, and have been used, or perhaps it would be more accurate to say, the proceeds or an equal amount of money have been used in the acquisition of stocks of various kinds, including these stocks.

"These roads have but one treasury, into which all funds go, and out of which all dividends come. All classes of business they trans-

act are necessarily interlaced, one class with the other. In the reports which you require to be made to the Commission, you require a list of stocks owned, prices paid, dividends received, stocks sold, and everything of that sort; and the Union Pacific has complied with the provisions of the law and with the rules of your honors, and has made such reports.

"Now, is it not a fact that any transaction in which this road engages through its officers—and it can only act through its officers—which weakens or lessens its capacity for future usefulness as a railroad corporation, its ability to float additional securities, if necessary, to double track its road, and all that sort of thing, is a proper subject of investigation?

"In the case of *Smyth v. Ames*, your honors will recall that the Supreme Court laid down the rule as to what things should be taken into account in fixing rates. Capitalization was one of the
31 things, and bonds outstanding. Is it not proper, and is it not essential, that you should trace the purposes for which these stocks and bonds were used, and see whether they represent the proper securities, or whether they represent wind, or nothing? Of course I do not make the suggestion that this has been done in this case, but suppose, for instance, Mr. Harriman had deliberately looted the treasury of a lot of money, and taken it out without putting anything in place of it; is it possible that, when this road is bankrupted by such proceedings as that, and when the question of rates comes up, this Commission can not go into all the transactions of the road, into the condition of the treasury, into what occasioned that condition, in order to fix——

"Commissioner PROUTY: Would it make any difference whether Mr. Harriman did it, or whether anybody else did it? In other words, if you show the fact, is not that all you are entitled to show?

"Mr. SEVERANCE: I think it makes a little difference, because, if it is related to the property, he is acting for the property in doing it.

"Mr. MILBURN: I desire to say just one word. Mr. Severance took the extreme case that Mr. Harriman had looted the treasury. Could you find an indictment in a Federal court on that showing? Would any Federal court have the power to try him for that offense? It is not a Federal question.

"Mr. SEVERANCE: Oh, no.

"Mr. MILBURN: That is just the question that is here.

"The CHAIRMAN: We appreciate the importance of the question raised, and we desire to confer among ourselves with reference to it. The decision of the Commission will be postponed until after recess."

That thereafter, on the same day, at said hearing, the said Harriman was fully examined with reference to the character of said preferred stock in the Chicago & Alton Railway Company, so
32 purchased by the Union Pacific Railroad Company, and testified that there were bond issues, collateral trust notes, and joint equipment notes of said Chicago & Alton Railway Company which were incumbrances upon its property ahead of and underlying said preferred stock, amounting to $68,280,756, and, in addition thereto, $2,354,000 of current liabilities ahead of said preferred

stock. Thereupon the following questions, answers, objections, statements, and rulings took place, to wit (p. 112 *et seq.*, testimony, N. Y., Feb. 25):

"Mr. KELLOGG: * * * Now it is that preferred stock which is behind all of those obligations which the Union Pacific Railroad Company bought for eighty-six and a half, is it not?

"Mr. HARRIMAN: Yes; and some other people bought it.

"Mr. KELLOGG: Then, if that stock is worth eighty-six and a half, limited to four per cent., what would you consider the bonds worth ahead of that—the first-mortgage bonds?

"Mr. HARRIMAN: The three per cent. first-mortgage bonds?

"Mr. KELLOGG: Yes, sir.

"Mr. HARRIMAN: Whatever they would bring in the market.

"Mr. KELLOGG: All right. I guess that is a pretty good answer. Now, that stock which was sold to the Union Pacific Company, that preferred stock, is the stock which was deposited with Kuhn, Loeb & Company pursuant to this agreement, Exhibit No. 5, to be valued by Mr. Stewart, Mr. Harriman, and Mr. Mitchell, is it not?

"Mr. HARRIMAN: Not on the same ownership. It may have changed ownership fifty times or a hundred times from the time it was issued.

"Mr. KELLOGG: It is the same stock?

"Mr. HARRIMAN: It is the same stock, undoubtedly.

33 "Mr. KELLOGG: I now renew the question, if you owned any of that stock which was so deposited and sold to the Union Pacific?

"Mr. MILBURN: I renew my objection.

"The CHAIRMAN: Mr. Harriman, just a preliminary question. About what is the mileage of the railroad?

"Mr. HARRIMAN: I think altogether about 1,200 miles, between 1,150 and 1,200 miles—that is, counting the second track.

"The CHAIRMAN: I mean the length of line.

"Mr. HARRIMAN: It is about 900 miles.

"The CHAIRMAN: Do you recall about what its gross earnings were during the last fiscal year?

"Mr. HARRIMAN: About eleven million and a half.

"The CHAIRMAN: Do you remember its net earnings?

"Mr. HARRIMAN: About $3,700,000.

"Mr. SEVERANCE: Mr. Chairman, I can give you these figures if you want them.

"Mr. HARRIMAN: I can give them to him. You need not check me up.

"Mr. KELLOGG: You have not given them correctly, that is all.

"Mr. SEVERANCE: We have the annual report.

"Mr. HARRIMAN: I have it in my mind just as good as that.

"The CHAIRMAN: It would seem that a property which earned net—how much?

"Mr. HARRIMAN: $3,700,000.

"The CHAIRMAN: Or less than $4,000,000 last year, is charged with obligations amounting to about $68,000,000, which are ahead of the rights of the preferred stockholders?

"Mr. HARRIMAN: Yes; but those obligations are at a low rate of interest.

"The CHAIRMAN: I understand.

"Mr. HARRIMAN: Those obligations are what they would bring in the market really.

34 "The CHAIRMAN: Without pretending to make a ruling which goes beyond the facts developed in this proceeding, we are of the opinion that, upon the facts appearing, we are entitled to know whether Mr. Harriman himself sold any of this stock; and if so, how much.

"Mr. MILBURN: May it please the Commission, appreciating what has been held as to the function of the Commission, and as counsel have serious, real conviction as to the testimony being proper, the court being accessible to determine the question, and fully conscious that the Commission has given its conviction that the testimony is admissible, still we feel that we must advise Mr. Harriman to decline to answer that question, on the ground that it is an inquiry into the private affairs of the witness, in no way connected with the interstate commerce, and therefore beyond the power and jurisdiction of the Commission; because it is not within the scope of this investigation, as defined by the order under which it is proceeding; and because such an inquiry is an invasion of the right of the witness under the Federal Constitution. I request it to be noted that that question Mr. Harriman declines to answer.

"The CHAIRMAN: It is perhaps hardly worth while to state our reasons for the ruling already made; but fundamentally it should be noted that we take the position that a railroad company, subject to the provisions of the Federal statute, is not entitled to have any secrets, and that the officers of such companies may, under such circumstances as are here already disclosed, be required to make known their transaction in respect of the operations of such companies, financial or otherwise.

"Mr. MILBURN: I would not have the Commission think for one moment that we are withholding any information that the company has.

"The CHAIRMAN: We quite understand that.

"Mr. MILBURN: I would not for a moment contend that
35 we have not to furnish you all the information that the company has. Where I am drawing the line is the private transactions of an individual.

"The CHAIRMAN: Upon the facts appearing here, which are thoroughly understood, Mr. Harriman, who was the president of the Union Pacific at the time, who was a member of the committee which determined at what price this stock would be paid for; and, under the circumstances that appear, is asked whether he owned any of that stock which the Union Pacific thus purchased. He declines to answer; objection being made, although it does not appear yet that the objection is made in his own interest. The Commission overrules that objection and directs him to answer. He takes the responsibility of declining to do so.

"Mr. MILBURN: It may be entered, then, that the witness declines

to answer on the grounds assigned by counsel, to avoid repetition. I suppose the question will come up in various forms, and we would be very glad at any time to present the matter in the way that the statute provides. We do not wish to delay, and if we are wrong, Mr. Harriman can answer these questions. If we are right, then we feel that we should stand for that principle.

"Mr. KELLOGG: We will go on with the inquiry. You decline, Mr. Harriman, to answer for that reason, do you?

"Mr. HARRIMAN: As requested by counsel, yes."

That after the said witness, Harriman, had declined to answer the question so put, he was upon said day at said hearing asked by counsel for the Commission, said counsel still referring to the said preferred stock of the Chicago & Alton Railway Company, this question (p. 117, testimony N. Y. Feb. 25):

"How much, if any, of the preferred stock which was sold to the Union Pacific Company and valued by your judgment did you own?"

36 To which question counsel for the Union Pacific Railroad Company, Mr. Milburn, interposed the same objection as to the preceding question, and the said objection was overruled by said Commission; the witness was directed to answer, but declined to answer for the reasons stated by his counsel with reference to the preceding question.

That thereafter during said hearing and investigation, and on the 26th day of February, 1907, while said Harriman was still on the witness stand and under examination by the counsel for the Commission, and after the said Harriman had testified that Mr. Henry C. Frick, Mr. H. H. Rogers, and himself had acquired large interests in the stock of the Atchison, Topeka & Santa Fe Railroad Company prior to the year 1906, the following questions were asked, and the same were answered by the said Harriman, as follows (p. 164, *et seq.*, testimony, N. Y., Feb. 26):

"Mr. KELLOGG: Well, had these parties acquired from $25,000,000 to $30,000,000?

"Mr. HARRIMAN: I don't know that you can inquire into that."

"Mr. KELLOGG: Since that time, and until June 10, 1906, the Union Pacific itself as a company, or the Short Line (meaning the Oregon Short Line Railroad Company) has acquired $10,000,000 of this stock?

"Mr. HARRIMAN: That was an investment pure and simple in the preferred stock.

"Mr. KELLOGG: Was that a part of the stock which had been previously acquired by you, Mr. Rogers, and Mr. Frick?

"Mr. HARRIMAN: I think not——

"Mr. MILBURN: No——

"Mr. KELLOGG: Well, do you know it was not?

"Mr. HARRIMAN: Well, I received a shock; I don't think I can answer.

"Mr. KELLOGG: I suggest you gentlemen let Mr. Harriman go ahead and he will clean this whole thing up. Do you know that it was not, Mr. Harriman?"

37 Thereupon Mr. Milburn, counsel for the Union Pacific Railroad Company and said Harriman, stated:

"Mr. MILBURN: Mr. Harriman, I am going to draw, as far as you will allow me, the lines I drew yesterday. I think this question is within the objections I made at that time, and I would like the same proceedings taken in reference to this question as were taken to the other.

"Mr. SEVERANCE: Do you want to withdraw the answer?

"Mr. MILBURN: We will let stay what is in, but I do not think it is proper to pursue it further.

"Mr. KELLOGG: Of whom did the Union Pacific buy that $10,000,000 of stock?

"Mr. HARRIMAN: Of Kuhn, Loeb & Co.

"Mr. KELLOGG: Was it, or any part of it, at that time owned by any of you three gentlemen

"Mr. MILBURN: That I object to.

"The CHAIRMAN: You object to his answering the question on the same grounds as stated in the similar question asked yesterday?

"Mr. MILBURN: Yes; and could we have the record contain the same proceedings without going over it?"

The Commission then overruled the objection and directed the witness to answer the question.

Mr. Milburn, counsel for the Union Pacific Railroad Company and the witness, then stated:

"Yes, and the witness declines to answer on the grounds assigned to a similar question, yesterday, as repeating what is on the record.

"The CHAIRMAN: Precisely.

"Mr. MILBURN: That is understood."

Thereupon counsel for the Commission asked the witness the following question:

"Is that your position, Mr. Harriman?"

38 And said Harriman thereupon responded:

"Absolutely."

It appeared by the testimony that at the time said stock was acquired Mr. Rogers and Mr. Frick were also directors of the Union Pacific Railroad Company (p. 167).

That it was further disclosed by the testimony of said Harriman and other evidence that on the 19th of July, 1906, the Union Pacific Railroad purchased an aggregate of 90,000 shares of stock of the Illinois Central Railroad Company from Henry H. Rogers, James Stillman, and the witness, Edward H. Harriman—30,000 shares from each; and that said Rogers, Stillman, and Harriman were at that time directors of the said Union Pacific Railroad Company. Thereupon counsel for the Commission asked the said Harriman the following question with reference to the said 90,000 shares of stock (p. 193, testimony, N. Y. Feb. 26):

"Mr. Harriman, was that stock acquired by a pool of you three gentlemen?"

Thereupon Mr. Milburn, the counsel for the Union Pacific Railroad Company and said Harriman, objected to the question on the same ground as to the questions hereinbefore mentioned. Thereupon the said petitioner, through its chairman, ruled that said wit-

ness should answer the said question. Thereupon the following proceedings were had (pp. 194–195):

Mr. Milburn stated:

"The record will take the same course."

Your petitioner, through its chairman, stated:

"It appears your objections were renewed without repeating
39 them. They are overruled, and the Commission directs the witness to answer. He refuses to do so for the reasons stated."

Mr. Harriman stated:

"I take the same position."

Then, after refusing to answer the said question when directed so to do by the Commission, the following was asked of said witness Harriman with reference to the said stock:

"Was it acquired with a view of selling it to the Union Pacific?"

Thereupon the said Harriman declined to answer the said question. The Commission thereupon directed Mr. Harriman to answer, and he again declined to make reply, on the same grounds upon which he had refused to answer previous questions.

After the said Harriman had declined to answer said last question so put to him he was asked the following question by the counsel for the Commission:

"Was that stock purchased by you, or any part of it, at a much lower price than $175 a share, with the intention of turning it over to the Union Pacific?"

Objection was made by the counsel for the said Harriman, and your petitioner, the Commission, through its chairman, again directed him to answer, and he again refused.

That it had previously appeared by the testimony taken upon said hearing that the firm of Kuhn, Loeb & Co., who were the fiscal agents of the said Union Pacific Railroad Company, had on
40 the same date, July 19, 1906, sold to the Union Pacific Railroad Company 105,000 shares of the stock of the Illinois Central Railroad Company; and the said Harriman was asked the following question:

"Did you have any interest in the 105,000 shares (referring to said Illinois Central stock) which were sold at the same time by Kuhn, Loeb & Co. to the Union Pacific?"

And thereupon the said Harriman declined to answer the said question; and he was again directed to answer the same, and thereupon refused.

That immediately after the refusal to answer the said question last quoted, the following question was put to the said Harriman by the counsel of the Commission:

"Was that (referring to the said 105,000 shares of stock) acquired by a syndicate or pool for the purpose of selling it to the Union Pacific?"

Thereupon the witness declined to answer, and the said Commission through its chairman directed him to answer the said question, and the witness again refused.

It having been brought out in the testimony that on the 15th day of August, 1906, the board of directors of the Union Pacific Railroad Company voted to increase the dividend upon said stock from

6 per cent. per annum, the rate that said stock had borne for sometime, to 10 per cent. per annum, and, instead of publishing a notice of the fact the succeeding morning after the voting of said increased dividend, as had been customary in the case of other dividends theretofore voted, had referred the announcement of said divi-
41 dend to the executive committee of which said Harriman was chairman, and that said committee had met the afternoon of the day following the vote of said dividend by the board of directors of said company and decided to announce the same immediately before the opening of the stock exchange on the following morning, which was two days after the same had been voted;

And the testimony having further shown that on the same day that said dividend of the Union Pacific Railroad Company was increased to 10 per cent. per annum a dividend at the rate of 5 per ceunt. per annum was voted upon the stock of the Southern Pacific Company, at a meeting of the board of directors of said Southern Pacific Company held on the same day, at which meeting said Harriman was present and presided, and that a similar resolution had been passed providing for the announcement of said dividend at such time as might be determined by the executive committee of said Southern Pacific Company, of which said Harriman was then the chairman, which said committee had met on the day following the voting of said dividend, and had directed the announcement of said dividend to be made immediately before the opening of the stock exchange upon the day following such meeting of the executive committee, and the said Harriman had been present and presided at the meeting of the executive committee authorizing such announcement; the following proceedings took place (pp. 248, 249, 250, testimony, N. Y., Feb. 26):

"Commissioner LANE: Do you remember that the stock appreciated very rapidly after that?

"Mr. HARRIMAN: After July?

42 "Commissioner LANE: After August 17th.

"Mr. HARRIMAN: After August 17th it appreciated because of the payment of this dividend and the publication of the statement.

"Commissioner LANE: Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the 17th of August that appreciated?

"Mr. HARRIMAN: We——

"Mr. MILBURN: Just a moment, please. I do not know enough about the fact, but I think, to be consistent in my position, that that is obviously an improper question.

"Commissioner LANE: It certainly is not obviously improper under our ruling.

"Mr. MILBURN: I do not mean under your ruling but from my position—that is what I mean.

"Commissioner LANE: Yes. I do not understand that he declines at all to answer this line of question.

* * * * * * *

"Commissioner LANE: And you decline to answer that on the direction of counsel?

"Mr. HARRIMAN: Yes."

The following question was asked of said Harriman at said hearing, by counsel for the Commission (p. 252):

"Did you or any director buy any Union and Southern Pacific stock in anticipation of that dividend?"

Said Harriman thereupon replied:

"Mr. Kellogg, I bought Union Pacific stock in 1898 at $25 a share, in anticipation of that dividend, and I kept it up. When I bought that stock for $25, one of my associates dubbed me as a desperate speculator who had more nerve than any man he knew. That was in anticipation of this dividend. I bought it in
43 the panic that was produced by the Northern Pacific corner, and I bought it after the San Francisco fire, and it was bought in anticipation of that dividend."

Thereupon Commissioner Clements stated:

"Now, having told what you did in that year——"

Whereupon he was interrupted by the said witness Harriman, who stated:

"I could not tell you when I bought it. There is no use of cross-questioning me. I am not going to answer anything I am advised by counsel not to."

Whereupon Commissioner Clements said (p. 253):

"I want to ask you, having told what occurred in that year at that time——"

When he was again interrupted by the said Harriman, who said:

"This was in 1906."

Thereupon Commissioner Clements asked the following question:

"Let me ask you a question: What is your own personal objection to telling what you bought and what you paid for it during this intervening time?"

Thereupon the witness answered:

"A matter of principle that is involved.

"Commissioner CLEMENTS: A matter of what?

"The WITNESS: A matter of principle absolutely.

Commissioner CLEMENTS: What is the question of principle involved by which you personally refuse to disclose these facts?

"The WITNESS: I am going to refer to Mr. Milburn to express just what he has before."

Thereupon Mr. Milburn said:

"I have stated it."

44 Commissioner Clements then said:

"I want him to give his personal reason why he objects to answering the question."

Mr. Milburn then stated:

"He has adopted my reasons."

And the witness Harriman further stated:

"I have no reason whatever."

And after certain discussion between the witness, his counsel, and the members of the Commission, the said Commission, through its chairman, directed the witness to answer the questions, and he refused to make answer.

That on February 27, 1907, while said hearing and examination was still in progress, and after it had been made to appear that said Union Pacific Railroad Company had purchased stock of the St. Joseph & Grand Island Railroad Company since July, 1906, from said Harriman (about $2,242,540), the said Harriman was asked by counsel for the Commission (page 275):

"When did you acquire those stocks?"

Objection was thereupon made by counsel for the Union Pacific Railroad Company and for said Harriman to the said question, and the witness declined to answer the same. He was thereupon directed to answer the said question by the Commission through its chairman, and still refused and declined to answer.

He was thereupon asked the following question, referring to the said stocks of the St. Joseph & Grand Island Railroad Company (p. 276):

"What did you pay for those stocks?"

45 And although directed to answer the said question by the Commission through its chairman, declined to answer the same.

And on the same day during the said hearing and examination, and after it had been shown that the Union Pacific Railroad Company had since July, 1906, purchased a large amount of stock of the New York Central Railroad Company, said Harriman was asked by the counsel for the Commission the following question with reference to the same (p. 277):

"Were any of the directors of the Union Pacific interested directly or indirectly in the New York Central stocks at the time they were sold?"

Which said question was objected to by the attorney for the Union Pacific Railroad Company and said Harriman, the objection was overruled, the witness directed to answer, and he declined to reply to the said question.

That at the said hearing and investigation on February 27, 1907, Otto H. Kahn was duly called and sworn as a witness and testified that he was a member of the firm of Kuhn, Loeb & Co., which was at that time composed of Jacob H. Schiff, Felix M. Warburg, Paul M. Warburg, Mortimer Schiff, Louis A. Heinsheimer, and said Kahn; that at the time of the reorganization of the Union Pacific Railroad Company the said firm was composed of the said Jacob H. Schiff, Abraham Wolf, Felix M. Warburg, Louis A. Heinsheimer, and said Kahn; and that at the time of the said reorganization said firm was quite largely interested in the Union Pacific Railroad Company; that said Jacob H. Schiff was a member of the committee of reorganization; that said Kuhn, Loeb & Co. were the bankers

46 to the committee; that after the said reorganization and up to the year 1906 the said Jacob H. Schiff and the said Kahn were members of the board of directors of said Union Pacific Railroad Company, and the said Kahn was a member of the executive committee of said company; that said firm of Kuhn, Loeb & Co. were at all times and up to the date of the said hearing the fiscal agents of said Union Pacific Railroad Company; that ordinarily and usually when said Union Pacific Railroad Company had securities

to sell they were sold through said banking firm, and when said Union Pacific Railroad Company desired to purchase securities they were purchased through the said firm.

And the testimony also disclosed that at the request and instance of said Harriman, the firm of Kuhn, Loeb & Co. had invited a deposit of the preferred stock of the Chicago & Alton Railway Company, hereinbefore referred to, and that an amount in excess of $10,000,000 par value of said stock had been deposited with Kuhn, Loeb & Co. under an agreement, hereinbefore mentioned; and the said witness Kahn testified that he had in his possession a list of the stockholders of the said Chicago & Alton Railway Company who so deposited their stock with said Kuhn, Loeb & Company, which stock was sold to the Union Pacific Railroad Company by said Kuhn, Loeb & Co. as hereinbefore set forth. The said Kahn was thereupon asked the following question by counsel for the Commission (p. 342, testimony, N. Y., Feb. 27):

"Now, will you state whether the directors of the Union
47 Pacific Railroad Company were the real owners of the shares so deposited with you and sold to the Union Pacific Railroad Company?"

To which question an objection was made by Mr. Cravath, who appeared at said hearing as the attorney for said Kuhn, Loeb & Co. and the witness Kahn; the objection was overruled by the said Commission through its chairman, and the witness was directed to answer; but the said Kahn thereupon declined to obey the directions of the Commission and refused to answer the question.

Thereupon the witness was interrogated as follows (p. 343):

"Commissioner LANE: You were also a director in the Union Pacific at that time?

"Mr. KAHN: I was also a director in the Union Pacific at that time.

"Commissioner LANE: The question I asked you was whether any of your fellow directors were owners of any of that stock (referring to the stock of the Chicago & Alton Railway Company so sold to the Union Pacific Railroad Company)?"

Thereupon Mr. Cravath, counsel for said witness, stated:

"The Commission will understand that the same objection applies."

Thereupon the objection was overruled, the witness was directed to answer, and he declined to reply to the question of Commissioner Lane.

That it had been shown upon said hearing that on the 9th of August, 1906, the firm of Kuhn, Loeb & Co. sold to the Union Pacific Railroad Company 105,000 shares of stock of the Illinois Central Railroad Company; and during the said hearing and investigation,
after the said fact had been disclosed, counsel for the Com-
48 mission asked the said Kuhn the following question (p. 358):

"Then I will ask you the direct question, Mr. Kahn: Of the 105,000 shares of stock which you sold—of Illinois Central stock which you sold on the 9th of August, 1906, to the Union Pacific Rail

road Company, and for which you were paid $175 a share—will you please state how much, if any, of that stock was held by you in the interest of or for the benefit of any or all of the directors of the Union Pacific Railroad Company?"

Thereupon the witness replied:

"I do not believe I ought to answer that question also. I would be perfectly willing to answer if it were not that it involved relationship as to which I ought not to be asked."

Thereupon Mr. Cravath, the counsel for said witness, interposed the following objection:

"May it please the Commission, I should like the same objections entered on the record as to similar questions. In this connection I want to point out that at that time Kuhn, Loeb & Company—Mr Schiff and Mr. Kahn had both retired from the Union Pacific board. They had no official connection of any kind with the Union Pacific board; and we very respectfully submit that they not only had the right to make that transaction, but it is entirely immaterial what clients of their office might or might not have been associated with them in that transaction; and Mr. Kahn pursued his policy of declining to give information regarding the business of their clients. The clients will answer that question."

The chairman of the Commission then stated:

"You observe Mr. Kahn is not now asked who the persons were, but the fact that they did own it all or any part of it."

49 The following proceedings then took place (pp. 358-360):

"Mr. SEVERANCE: The question I have asked now, Mr. Chairman, is as to whether any of that stock, or all of that stock, they offered was held by them for, or for the benefit of, any or all of the directors of the Union Pacific Railroad Company, the buyers. That is my question.

"Mr. CRAVATH: And my proposition is, first, whether they owned all of that stock or not is their own business concern. And, secondly, if they did not own all that stock, that is a fair business secret of those gentlemen as to who did share with them the ownership of that stock, and they ought not to be compelled by this interstate commerce investigation to disclose their own purely private affairs and the private business affairs of their clients.

"Commissioner HARLAN: Does your objection cover the preceding question which the witness declined to answer?

"Mr. CRAVATH: It covers that series of questions, Mr. Commissioner.

"Commissioner HARLAN: The last two questions?

"Mr. CRAVATH: Yes.

"Mr. SEVERANCE: May I call the attention of the Commission to one fact: This question does not involve the disclosure of confidential relations between Mr. Kahn and his numerous clients, except as to the question whether or not Kuhn, Loeb & Company were merely the agents of the directors of the Union Pacific buying stock for themselves. I do not care how many other people they represented. That has nothing to do with it. My question is confined solely to the inquiry as to whether in whole or in part in this

transaction they represented all or any of the directors of the Union Pacific. I do not want any misunderstanding about it."

50 "The CHAIRMAN: In order that the record may show distinctly, a preliminary question occurs to me to ask Mr. Kahn whether he objects to stating whether all that stock was owned by his firm, or whether part of it was owned by other parties?

"Mr. SEVERANCE: He has already declined to answer that.

"Mr. CRAVATH: The objection may apply to that question and all questions of that character. The witness refuses to answer all questions of that character.

"Mr. KAHN: We will gladly disclose our transactions in every detail.

"Mr. SEVERANCE: You decline, I understand?

"Mr. KAHN: I decline to answer as to the transactions of my clients."

The witness thereupon testified as follows in answer to questions by counsel for the Commission (p. 360):

"Mr. SEVERANCE: You decline to state in whose interest you held that stock, or who owned the stock which you offered to sell?

"Mr. KAHN: I decline to answer any questions bearing on our relations with our clients.

"Mr. SEVERANCE: And you decline to state whether that 105,000 shares of stock, or any part of that stock which you sold to the Union Pacific for $175 a share, really equitably belonged to or was held by you for any person or any number of persons who were at that time directors of the Union Pacific Railroad Company?

"Mr. KAHN: As a matter of principle I decline to answer."

Thereupon the witness was directed by the Commission, through its chairman, to answer the said question, and he declined so to do.

Thereafter, at the said hearing, the said Kahn testified that he had commenced buying the block of 105,000 shares of Illinois

51 Central stock, so sold to the Union Pacific Railroad Company, about a year before the date of said sale. He was thereupon asked by counsel for the Commission the following question (p. 369):

"Did you also buy at the same time for Messrs. Harriman, Rogers, and Stillman the stocks they sold at the same time you sold yours?"

He declined to answer the said question, and was directed to answer by the Commission, through its chairman, and persisted in refusing to reply to the same.

He was thereupon asked the following question by the counsel for the Commission (p. 369):

"Was this 105,000 shares of Illinois Central stock and the 90,000 shares turned in by Stillman, Rogers, and Harriman all of it bought through your instrumentality for a pool of which these gentlemen and yourself were members, who were operating in Illinois Central stocks during the period of several months at least prior to July 1, 1906?"

He refused to answer the said question, was directed by the Commission through its Chairman to make answer to the same, and persisted in his refusal.

Your petitioner, the Interstate Commerce Commission, further represents and avers that at the time each and every of the questions hereinbefore set forth were asked of the said Harriman and the said Kahn, the hearing then being carried on by your petitioner was to investigate the earnings of the said Union Pacific Railroad Company and the Southern Pacific Company, the reasonableness of the rates and tariffs in force upon said roads, the capitalization of said respective lines, the property of all kinds that had been
52 acquired by the said companies, the prices paid for such property, the dividends that had been declared upon the stock of said corporations, and the question as to whether said dividends were justified or not by the earnings of the said companies. They were also investigating into the financial condition and business of the said corporations, for the purpose of determining the state thereof, including an examination into the securities issued, the purposes for which the same had been issued and were sold, and the propriety or impropriety of the investment of the proceeds thereof.

That certain securities that had been issued by the Union Pacific Railroad Co[illegible]ny and the Oregon Short Line Railroad Company (which, as hereinbefore stated, is owned by the said Union Pacific Railroad C[illegible]mpany) consisted of bonds secured by the mortgage upon the proper[illegible]es and line of railway of the said Oregon Short Line Railroad Comp[illegible]y, which said mortgage was in the case of default subject to foreclosure; that such foreclosure would seriously interfere with the performance of the duties of said Oregon Short Line Railroad Company and the transportation of interstate commerce; that, it having been made to appear that large sums of money, as hereinbefore set forth, had been raised upon the securities of both the said Union Pacific Railroad Company and Oregon Short Line Railroad Company and invested in stocks of different corporations, it was the duty of your petitioner to inquire into said investments, the nature and character of the same, the amount paid, or which
53 should have been paid, if such investments were made for the stocks so purchased.

That in the pursuance of its duty under the law it was incumbent upon your petitioner, to enable it to perform the functions for which it was created, to procure the information sought by each and every of the questions so put to said Witness Harriman and said witness Kahn, and which said parties so declined to answer.

Your petitioner is of the opinion that the said questions and each of them are not only relevant and material to the matter under investigation, but answers thereto are necessary in order to enable your petitioner to discharge its duty and execute and enforce the provisions of said act to regulate commerce, and to inform your petitioner as to the manner and method in which the business of the said common carriers is conducted, and to enable your petitioner to obtain full and complete information necessary to enable your petitioner to perform the duties and carry out the objects for which it was created.

That subsequent to said proceedings, and prior to the verification

of this petition, the Attorney-General of the United States, at the request of your petitioner, instructed the United States district attorney for the southern district of New York, as your petitioner is informed and believes, to present this petition and institute before the proper court and to prosecute all necessary proceedings for the enforcement of the provisions of the act to regulate commerce as amended, and to invoke the aid of the court in requiring the attendance and testimony of said recalcitrant witnesses and the
54 answers to each and every of the questions hereinbefore detailed which said witnesses declined to answer, pursuant to the provisions of said act to regulate commerce as amended.

Wherefore your petitioner prays that an order or orders be made requiring the attendance and testimony before your petitioner of each of the aforesaid witnesses and the making by each of said witnesses of a full answer to each of the questions respectively refused to be answered by said witnesses; and for such other and further relief as may be just and proper in the premises.

And your petitioner will ever pray.

THE INTERSTATE COMMERCE COMMISSION,
By EDW. A. MOSELEY,
The Secretary Thereof, Thereunto Duly Authorized.
HENRY L. STIMSON,
United States District Attorney,
Southern District of New York.

FRANK B. KELLOGG,
C. A. SEVERANCE,
JOHN H. MARBLE,
Attorneys for the Interstate Commerce Commission, of Counsel.

54*a* At a stated term of the United States Circuit Court held in and for the Southern District of New York, in the United States Court and Post Office Building, Borough of Manhattan, City of New York, on the 10th day of August, 1907.

Present: Hon. Charles M. Hough, U. S. Judge.

INTERSTATE COMMERCE COMMISSION
against
EDWARD H. HARRIMAN and OTTO H. KAHN.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Upon the annexed petition of the Interstate Commerce Commission, sufficient reason appearing therefor,

On Motion of Henry L. Stimson, United States Attorney for the Southern District of New York, it is

Ordered, that Edward H. Harriman and Otto H. Kahn be and each of them is hereby commanded to appear before the Circuit Court of the United States for the Southern District of New York, at a session of the said Court to be held before me or any other Judge holding a Stated Term of this Court, in Room No. 100 of the Post Office Building in the Borough of Manhattan, City of New York, on the 21st day of October, 1907, at 11 o'clock in the forenoon, and to show cause, if any there be, why said petition
54*b* of the Interstate Commerce Commission should not be in all respects granted, and why an order or orders should not be made requiring each of said persons to appear before said Commission and make full answer to each of the questions respectively refused to be answered by said persons as in said petition set forth.

Dated New York, August 10th, 1907.

C. M. HOUGH,
U. S. Judge.

Endorsed: Form No. 336. U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission *versus* Edward H. Harriman and Otto H. Kahn. Order to show cause. Henry L. Stimson, United States Attorney, Attorney for Commission. Form No. 302. I hereby certify That on the 12th day of August, 1907, at the City of New York, in my district, I served the within order to show cause upon the within named Edward H. Harriman, by exhibiting to R. S. Lovett at 120 Broadway, New York City, the within original, at the same time leaving with him a copy thereof for Edward H. Harriman, and at the same left a copy of petition in this suit. Form No. 302. I hereby certify, That on the 12th day of August, 1907, at the City of New York, in my district, I served the within order to show cause upon the within named Otto H. Kahn, by exhibiting to Russell Cornell Leffingwell, a member of the firm of Cravath, Henderson & de Gersdorff at 52 William St. N. Y. City, the within original, and at the same time leaving with him a copy thereof for Otto H. Kahn, and at the same time left a copy of petition in this suit. William Henkle, United States Marshal,
54*c* Southern District of New York. Dated N. Y. Aug. 12th, 1907. U. S. Circuit Court, Southern District of N. Y. Filed Aug. 12, 1907. John A. Shields, Clerk.

55 Circuit Court of the United States, Southern District of New York.

No. —.

INTERSTATE COMMERCE COMMISSION
vs.
EDWARD H. HARRIMAN and OTTO H. KAHN.

The Separate Answer of Edward H. Harriman to the Petition of the Interstate Commerce Commission Herein.

The respondent, Edward H. Harriman, answering the petition of the Interstate Commerce Commission herein, says:

He admits that the Interstate Commerce Commission was created and organized as alleged in said petition.

He does not admit that the said Commission has the powers or authority, or is subject to the duties, enumerated and alleged in said petition, and refers to the Act to Regulate Commerce, approved February 4th, 1887, and the Acts amendatory thereof and supplementary thereto, as the only source of its authority, powers and duties.

He admits that on or about the fifteenth day of November, 1906, the said Commission made the order set forth in said petition; but he avers that it was never served upon, nor was notice of it
56 ever given to, him, or any of the corporations mentioned in said petition, of which he is, or has been, a director or an officer; and he further avers that it was adopted by the said Commission at its own instance, and without any application therefor, or complaint made, on behalf of any person, firm, corporation, association, society, body politic, municipal organization, Railroad Commissioner or Railroad Commission of any State or Territory, and without any petition, complaint or statement of charges being made or filed, or served upon this respondent or the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, the Oregon Railroad and Navigation Company, the Southern Pacific Company, or any other person or corporation.

He admits that, assuming to act under said order, the said Commission summoned and examined under oath many witnesses and took other testimony in the cities of New York, Chicago, Seattle, Portland, San Francisco and Los Angeles upon the dates alleged in said petition; and he admits that the eight printed volumes filed with the said petition, marked as therein alleged, contain a correct report and transcript of all the testimony so taken, except that the volume marked "Exhibits" does not contain copies of all the documentary evidence received by said Commission and marked as exhibits at said hearings.

He does not admit that the petition correctly sets forth the purport and effect of said testimony and exhibits as to all the matters with respect to which their purport and effect are therein alleged.

He admits that the Union Pacific Railroad Company and Oregon

Short Line Railroad Company were incorporated under the general laws of the State of Utah. A copy of the Articles of Incorporation of the Union Pacific Railroad Company and of the several amendments thereof is filed herewith, marked "Exhibit A" and made a part hereof; and a copy of the articles of incorporation of the Oregon Short Line Railroad Company and of the several amendments thereof is filed herewith, marked "Exhibit B" and made a part hereof.

57 He avers that, in addition to the rights, powers and privileges set forth in said Articles of Incorporation, the said Union Pacific Railroad Company and said Oregon Short Line Railroad Company each possesses, and is entitled to exercise and enjoy, all the rights, powers and privileges granted to and conferred upon railroad corporations incorporated under the general laws of the State of Utah by the general laws of that State, and particularly by the following Acts of the Legislature of that State, viz.:

An Act entitled

"An Act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances; authorizing the issue of bonds, making deeds of trust and mortgages and defining the rights and powers of such corporations,"

approved January 22, 1897, and published as Chapter 1 of the Laws of the State of Utah, passed at the Second Regular Session of the Legislature in 1897.

The Revised Statutes of Utah, as revised, annotated and published by authority of the Legislature in 1898 and particularly Title XI., Chapters 1 and 7.

An Act entitled

"An Act to amend Section 433, Chapter 7, Title XI., of the Revised Statutes of Utah, 1898, providing for the formation and powers of railroad corporations,"

approved January 17, 1899, and published as Chapter 1 of the Laws of the State of Utah, passed at the Third Regular Session of the Legislature in 1899.

An act entitled

"An Act to codify and revise certain laws of this state providing for the formation of corporations for the purpose of purchasing, constructing, acquiring, owning, maintaining, operating or extending railroad lines, franchises, properties, and appurtenances, authorizing the issue by such corporations of stocks and bonds and other securities, and the making of deeds of trust, mortgages, and

58 defining certain rights and powers of such corporations; and to repeal the following named acts and parts of acts, namely: Chapter 1, Laws of Utah, 1899; chapter 17, Laws of Utah, 1899; Chapter 2, Laws of Utah, 1901; Chapter 3, Laws of Utah, 1901; sections 431, 432, 433 and 442 of the Revised Statutes of Utah, 1898,"

approved March 7, 1901, and published as Chapter 26 of the Laws of the State of Utah, passed at the Fourth Regular Session of the Legislature in 1901.

An Act entitled:

"An Act to amend section 433, chapter 7, title 11, of Revised Statutes of Utah of 1898, as amended by an act approved January 17, 1899, Chapter 1 of the Laws of the State of Utah, passed at the third regular session of the Legislature, 1899; and sections 435 and 442 of said chapter 7, title 11 of the Revised Statutes of Utah of 1898, providing for formation and powers of railroad corporations,"

approved January 18, 1901, published as Chapter 2 of the Laws of the State of Utah, passed at the Fourth Regular Session of the Legislature in 1901.

An act entitled:

"An Act to amend An Act entitled 'An Act to provide for the formation of railroad corporations for the purpose of purchasing, owning, maintaining, operating and extending railroad lines, franchises, properties and appurtenances; authorizing the issue of bonds, making deeds of trust and mortgages, and defining the rights and powers of such corporations,' approved January 22nd, 1897, to re-enact the same as so amended, and to confirm all acts and things done and performed as under said act,"

approved February 4, 1901, published as Chapter 3 of the Laws of the State of Utah, passed at the Fourth Regular Session of the Legislature in 1901.

An Act entitled

"An Act to amend sections 322, 324, 327, 330, 338, 339 and 368 of the Revised Statutes of Utah, 1898, relating to corpora-
59 tions, their powers, power of board of directors and their place of meeting, the removal of officers thereof, the transfer of stock, amendments to the articles of incorporation and evidence thereof, effect of sale of stock to the corporation for delinquent assessment, and providing for the disposition of stock so purchased as well as all other stock held by the corporation,"

approved March 12, 1903, and published as Chapter 94 of the Laws of the State of Utah, passed at the Fifth Regular Session of the Legislature in 1903.

An Act entitled

"An Act to amend section 443 Revised Statutes of Utah, 1898, relating to the creation of preferred and special stock and income certificates,"

approved March 3, 1905, and published as Chapter 29 of the Laws of the State of Utah, passed at the Sixth Regular Session of the Legislature in 1905.

An Act entitled

"An Act to amend section 338 Revised Statutes of Utah, 1898, as amended by Chapter 94 Laws of Utah, 1893, relating to the manner of making amendments to articles of incorporation,"

approved March 3, 1905, and published as Chapter 30 of the Laws of the State of Utah, passed at the Sixth Regular Session of the Legislature in 1905.

An act entitled

"An Act to amend section 322 Revised Statutes of Utah, 1898, and section 338, Revised Statutes of Utah, 1898, as amended by

chapter 94, laws of Utah, 1903, and as amended by an act approved March 3, 1905, and sections 340 and 444, Revised Statutes of Utah, 1898, relating to the powers of corporations, the manner of making amendments to articles of incorporations; the manner of forming consolidated corporations; authorizing railroad companies to issue bonds and secure the same by execution of trust deeds or mortgages; and defining what shall be deemed railroad companies; and approving and validating amendments made to articles of in-
60 corporations and the organization of consolidated corporations, as well as acts done thereunder,"
approved March 17, 1905, published as Chapter 131 of the Laws of the State of Utah, passed at the Sixth Regular Session of the Legislature in 1905.

An Act entitled

"An Act to codify and revise certain laws of this State providing for the formation and power of railroad corporations and defining certain rights and powers of such corporations, including the power to acquire, hold, guarantee and dispose of corporate stock, bonds and other securities as herein authorized, and to acquire lands, water and water rights, as herein authorized, and to operate steamships, sailing-vessels and boats of every description. And to repeal the following named acts and parts of acts, namely: Chapter 26, Laws of Utah, 1901, and Section 436 of th Revised Statute of Utah, 1898, as amended by Chapter 108, Laws of Utah, 1903; Section 443 of the Revised Statutes of Utah, 1898, as amended by Chapter 29, Laws of Utah, 1905; and Section 444 of the Revised Statutes of Utah, 1898, as amended by Chapter 131, Laws of Utah, 1905,"
approved March 14, 1907, and published as Chapter 93 of the Laws of the State of Utah, passed at the Seventh Regular Session of the Legislature in 1907.

He begs leave to refer to these various Acts as if fully set forth herein.

He admits that the Southern Pacific Company was incorporated under the laws of the State of Kentucky, having been incorporated by An Act of the Legislature of the State of Kentucky, entitled

"An Act to incorporate the Southern Pacific Company" approved March 17, 1884, which Act was amended by an act entitled

"An Act to amend an act to incorporate the Southern Pacific Company, approved March 17, 1884,"
which was approved March 21, 1888. Copies of said Acts are filed herewith, marked "Exhibit C" and "Exhibit D" respectively, and made a part hereof.

61 He admits that the Oregon Railroad and Navigation Company was incorporated under the general laws of the State of Oregon. A copy of its Articles of Incorporation and of the several amendments thereof is filed herewith, marked "Exhibit E," and is made a part hereof.

He admits that the Union Pacific Railroad Company, the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company each owns lines of railroad, as alleged in said petition; that the Union Pacific Railroad Company owns substantially

all the stock of the Oregon Short Line Railroad Company; and that the Oregon Short Line Railroad Company owns substantially all the stock of The Oregon Railroad and Navigation Company.

He admits that the Southern Pacific Company owns substantially all of the stock of corporations of the States of California, Utah, Louisiana and Texas and of the Territories of Arizona and New Mexico, which separately own lines of railroad together forming continuous lines from Ogden, Utah, to San Francisco, California; from San Francisco to Portland, Oregon; and from San Francisco, through California, Arizona, New Mexico, Texas and Louisiana, to New Orleans; and that said lines are operated harmoniously, and so far as rates of transportation and service to the traveling and shipping public are concerned constitute practically one system of railroads.

He admits that the Southern Pacific Company owns, controls and operates lines of steamships plying between New York and New Orleans, New York and Galveston, and New Orleans and Havana, Cuba; that the Southern Pacific Company owns $10,010,000 par value of the $20,000,000 par value of the capital stock of the Pacific Mail Steamship Company issued and outstanding; and that the last named company operates steamships between San Francisco and Honolulu and various ports in Japan and China.

He denies that The Oregon Railroad and Navigation Company owns a line of steamships operating from Portland to San Francisco and to Asiatic ports, but avers that certain steamships
62 operating between Portland and San Francisco are owned by the San Francisco and Portland Steamship Company, all, or practically all, of the stock of which is owned by The Oregon Railroad and Navigation Company; and that the Portland and Asiatic Steamship Company, a corporation of the State of Oregon the capital stock of which is owned by The Oregon Railroad and Navigation Company, sometimes operates freight steamships between Portland and Asiatic ports under charter; but he avers that neither said Portland and Asiatic Steamship Company nor The Oregon Railroad and Navigation Company owns or has ever owned any steamships that operate between American and Asiatic ports.

He admits that he became a director of the Union Pacific Railroad Company on the 6th day of December, 1897, and has been a director of said company since that date; and that he became President of the Union Pacific Railroad Company on the 7th day of January, 1904, and has been since that date and still is such President; that he became a director of the Oregon Short Line Railroad Company on the 12th day of October, 1898, and has been such director of said company since that date; and that he became President of the Oregon Short Line Railroad Company on the 15th day of November, 1899, and has been since that date and still is such President; that he became a director of The Oregon Railroad and Navigation Company on the 1st day of September, 1898, and has been such director of said company since that date; and that he became President of The Oregon Railroad and Navigation Company on the 13th day of

October, 1904, and has been since that date and still is such President.

He admits that during the year 1901, the Union Pacific Railroad Company acquired 900,000 shares of the common capital stock of the Southern Pacific Company, out of a total of 1,978,399 shares issued and outstanding, and soon thereafter during the year 1901 sold and transferred the same to the Oregon Short Line Railroad Company, which has ever since owned the same; and that
63 upon an increase of the capital stock of said Southern Pacific Company by an issue of preferred stock the said Oregon Short Line Railroad Company, then owning 900,000 shares of said common capital stock, subscribed for and now owns its *pro rata* share of such increased capital stock.

He denies that either said Union Pacific Railroad Company or said Oregon Short Line Railroad Company, has, through said ownership of stock, dominated and controlled the management of the Southern Pacific Company and its allied lines since the year 1901; but avers that the said Oregon Short Line Railroad Company and various other firms, corporations and individuals owning stock of said Southern Pacific Company have elected without any opposition the directors of said Southern Pacific Company at each election of directors held since 1901, and the directors so elected have managed and controlled the properties of the Southern Pacific Company and appointed its officers, and appointed, or authorized subordinate officers to appoint, the agents and servants engaged in the operation of said properties.

He admits that he became a director of the Southern Pacific Company on the 3rd day of April, 1901, and since that date has been and still is such director, and that he became President of that company on the 26th day of September, 1901, and ever since that date has been and still is such President. He admits that several of the directors of the Southern Pacific Company are also directors of the Union Pacific Railroad Company, and that many of the traffic officers or agents and other officers and agents of one of said companies hold similar offices or positions with the other.

He admits that the Union Pacific Railroad Company and the Oregon Short Line Railroad Company have from time to time purchased large amounts of stock of other railroad companies, but denies that they have sold any such stocks, except stock of the Great Northern Railway Company and Northern Pacific Railway Company. He admits the accuracy of "Harriman Exhibit No. 2" and
64 "Harriman Exhibit No. 3" set forth in the book of Exhibits filed with the petition herein. He admits that in 1901 the Union Pacific Railroad Company created an issue of its convertible bonds for the principal sum of $100,000,000, but denies that it was for the purchase and acquisition of stocks in other railways, or that it so appears by the testimony taken by the Commission as aforesaid, although he believes most of the proceeds of such issue were used to pay for such stocks, or to discharge debts incurred in connection with the purchase thereof. He admits that the Oregon Short Line Railroad Company created in 1902 an issue of $100,000,000 of Four

Per Cent. and Participating Twenty-five Year Gold Bonds which were redeemed and retired in the year 1905; and that on or about December 1st, 1904, said Oregon Short Line Railroad Company created an issue of $100,000,000 of its Twenty Year Four Per Cent. Refunding Gold Bonds, of which $45,000,000 par value are now outstanding and $55,000,000 par value are owned by the Union Pacific Railroad Company; but he denies that said Refunding Bonds or their proceeds were used for the purchase and acquisition of stocks or that any such fact appears by the testimony taken by the Commission as aforesaid. He denies that the Union Pacific Railroad Company has outstanding notes for the purchase of the capital stock of the Baltimore and Ohio Railroad Company, amounting to $36,393,432, making a total of $181,393,432 of obligations used for the purchase of railroad stocks; but avers that the Oregon Short Line Railroad Company executed its note for $36,393,432 to purchase, or for money used to purchase, stock of the Baltimore and Ohio Railroad Company, which note has been paid and discharged. He denies that it appeared by his testimony that the Union Pacific Railroad Company and its so-called "subcompanies" have expended in the purchase of stocks, in addition to all sums received from the sale of stocks, $182,588,648.98 as alleged in said petition.

65 He admits that on February 25, 1907, when he was under examination as a witness before the petitioner he stated that the Union Pacific Railroad Company has purchased 103,431 shares of the preferred stock of the Chicago and Alton Railway Company, and that he was asked the questions and made the answers in regard thereto set forth in the petition herein. He admits that at the time of the purchase of such stock by the Union Pacific Railroad Company he was a director, the President, and Chairman of the Executive Committee of said Union Pacific Railroad Company. He admits that he refused to answer the following question, viz.: "Did you own any that was so deposited?" and that said question referred to stock concerning which he had been interrogated and had testified as set forth in said petition; and that on said occasion the same question was repeated by counsel for the Commission and this respondent again refused to answer the same, as alleged in said petition. But this respondent avers that the purchase of said 103,431 shares of the preferred stock of the Chicago and Alton Railway Company by the Union Pacific Railroad Company and the price paid therefor by the said Union Pacific Railroad Company had been shown and established by the evidence of the books of said Union Pacific Railroad Company as well as by the testimony of this respondent and other witnesses, and then fully appeared.

He admits that during said hearing and inquiry on the 26th day of February, 1907, while he was still under examination as a witness by counsel for the Commission he was asked the questions and made the answers set forth in said petition with reference to preferred stock of the Atchison, Topeka and Santa Fe Railway Company, and that he refused to answer the following question, put him by counsel for the Commission, viz: "Was it, or any part of it, at that time owned by any of you three gentlemen?" which question re-

ferred to stock of the Atchison, Topeka and Santa Fe Railway Company theretofore acquired and then owned by the Oregon Short Line Railroad Company. He avers that the purchase of such stock
66 of the Atchison, Topeka and Santa Fe Railway Company by the Oregon Short Line Railroad Company and the price paid therefor by it had been shown and established by the books of the Oregon Short Line Railroad Company as well as by the testimony of this respondent and other witnesses, and then fully appeared.

He admits that about July, 1906, the Union Pacific Railroad Company purchased 30,000 shares of the Illinois Central Railroad Company from Henry H. Rogers, 30,000 shares from James Stillman and 30,000 shares from this respondent; and that the said Rogers, Stillman and this respondent were at that time directors of the said Union Pacific Railroad Company. He admits that counsel for the Commission, while this respondent was under examination as a witness as aforesaid, asked him the following question, with reference to said 90,000 shares, viz.: "Mr. Harriman, was that stock acquired by a pool of you three gentlemen," and that this respondent refused to answer said question; that thereupon counsel for the Commission asked this respondent the following question, viz.: "Was it acquired with a view of selling it to the Union Pacific," which he refused to answer, and that thereupon counsel for the Commission asked this respondent the following question, viz.: "Was that stock purchased by you, or any part of it, at a much lower price than $175 a share, with the intention of turning it over to the Union Pacific" which he also refused to answer; that he was thereupon asked the following question by counsel for the Commission, viz.: "Did you have any interest in the 105,000 shares (referring to said Illinois Central stock) which were sold at the same time by Kuhn, Loeb & Co. to the Union Pacific," which he also refused to answer; and that he was thereupon asked the following question by counsel for the Commission, viz.: "Was that (referring to the said 105,000 shares of stock) acquired by a syndicate or pool for the purpose of selling it to the Union Pacific," which he also refused to answer.

But he avers that the purchase of such stock of the Illinois
67 Central Railroad Company by the Union Pacific Railroad Company, including said 90,000 shares bought from said Rogers, Stillman and this respondent, and said 105,000 shares bought from Kuhn, Loeb & Co., and the price paid therefor by it had been shown and established by the books of the Union Pacific Railroad Company as well as by the testimony of this respondent and other witnesses, and then fully appeared.

He admits that on August 15th, 1906, the Board of Directors of the Union Pacific Railroad Company voted to increase the dividend upon the common stock of said company from 6 per cent. per annum to the rate of 10 per cent. per annum, and that the Board of Directors of the Southern Pacific Company, on the same day, declared a semi-annual dividend at the rate of 5 per cent. per annum upon the common stock of said company; that this respondent was present at such meetings of the Board of Directors of each of said Companies and was at the time the Chairman of the Executive Committee of each

of said companies, and that public notice of the declaration of said dividends was not given for the reasons stated by him in his testimony before the petitioner herein (book of testimony taken in New York February 26, 1907, filed as exhibit to the petition, page 239 *et seq.*) until the morning of August 17, 1906, when notice was sent to the Secretary of the New York Stock Exchange before 10 o'clock A. M. He admits that he was asked the questions by Commissioner Lane with respect to that subject and made the answers thereto as set forth in said petition. He admits that he refused to answer the following question asked by Commissioner Lane, viz: "Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the 17th of August that appreciated?"; that he was asked by counsel for the Commission the following question, viz: "Did you or any director buy any Union and Southern Pacific stock in anticipation of that dividend?" and made the answer to said question set forth in said petition; and that he was asked
68 the question by Commissioner Clements and made the answers thereto as set forth in said petition.

He admits that with reference to stock of the St. Joseph and Grand Island Railroad Company acquired by the Union Pacific Railroad Company he was asked by counsel for the Commission the following question, viz: "When did you acquire those stocks?" and the following question, viz.: "What did you pay for those stocks?", which questions he declined to answer.

He admits that he was asked the following question by counsel for the Commission, viz.: "Were any of the directors of the Union Pacific interested directly or indirectly in the New York Central stocks at the time they were sold?", which question referred to stock of the New York Central and Hudson River Railroad Company bought by the Oregon Short Line Railroad Company, and which question this respondent also refused to answer.

He avers, however, that it fully appeared by the testimony and evidence at the time said questions were asked with respect to purchases of stock of the Union Pacific Railroad Company and the Southern Pacific Company in July and August, 1906, that the said dividend of each company had been declared by the action of its Board of Directors out of the profits of the Company then on hand, and public notice thereof given in accordance with its directions; and that it fully appeared by the testimony and evidence when said questions were asked with respect to the purchases of the stock of the St. Joseph and Grand Island Railroad Company and of the New York Central and Hudson River Railroad Company when the same were purchased by the Union Pacific Railroad Company and the price paid therefor.

This respondent has no knowledge or information of the purpose and scope of the hearing being carried on by the Commission when said questions were asked of him other than the order set forth in the petition made by the Commission on the 15th day of November, 1906, as there was no petition, complaint, or statement of charges filed or pending before the Commission with respect thereto
69 or the subject-matter of such hearing or investigation; but he avers that the questions asked of him which he refused

to answer as aforesaid were not material or pertinent with respect to the matters set forth in said order, or any of them, or with respect to any matter which the Commission was authorized or empowered to inquire into under the said Act to Regulate Commerce or the Acts amendatory thereof or supplementary thereto.

He further avers that the Union Pacific Railroad Company, the Southern Pacific Company, the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company had at all times prior to the institution of the hearing or inquiry referred to in said petition made and filed the annual reports required by Section 20 of said Act to Regulate Commerce, and the Acts amendatory thereof, and had at all times made, and were at all times ready to make, in compliance therewith, specific answers to any and all questions upon which the Commission needed, or might need, information.

He denies that any bonds issued by the Oregon Short Line Railroad Company for the purpose of buying securities of other companies were secured by mortgage upon the railroad of said Oregon Short Line Railroad Company. He admits that a portion of the proceeds of the First Lien Convertible Bonds of the Union Pacific Railroad Company were used for the purchase of securities of other companies and that such bonds were secured by a mortgage upon a portion of the railroads of said Union Pacific Railroad Company, but he avers that said bonds had been prior to said hearing before the Commission either converted into common stock of said company or redeemed, and he denies that the issue of such bonds or of any other securities of the Union Pacific Railroad Company and the Oregon Short Line Railroad Company interfered with the performance of the duty of either of said companies in the transportation of interstate commerce. He avers that the petitioner
70 is without any power or jurisdiction to inquire into, regulate, or in any manner whatever interfere with the powers to purchase and invest in the stocks and bonds of other corporations conferred upon the Union Pacific Railroad Company and the Oregon Short Line Railroad Company by the States which created them, or the purchases of stocks and bonds of other corporations made by said Companies in the exercise of such powers.

He denies that to enable it to perform the duties or functions for which it was created it was incumbent upon the petitioner as alleged in said petition to procure the information sought by the questions put to this respondent which he declined to answer as aforesaid; and he denies that the said questions were necessary to enable the petitioner to discharge any duty imposed upon it by law, or to execute and enforce the provisions of the said Act to Regulate Commerce, or to inform it as to the manner and method in which the business of the common carriers mentioned in the petition is conducted, or to obtain full and complete information to enable it to perform the duties and carry out the objects for which it was created.

This respondent avers that he was and is justified in refusing to answer said questions which he declined to answer, and submits

that no order should be made compelling him to answer them, or any of them, for the following reasons:

First. Said questions did not relate to commerce with foreign nations or among the several states or with the Indian tribes, or to any transactions in such commerce; nor, however answered, would they tend to show any violation of the provisions of the said Act to Regulate Commerce or any other law of the United States, or any law which Congress could constitutionally enact and make operative upon any corporation created by and deriving its franchises and powers from a state; but said questions did relate to the business and affairs of this respondent having no relation to such commerce, and were designed to compel a disclosure by this respondent to a purely administrative body of transactions for which, had they
71 taken place, neither the said Commission nor the Congress of the United States could afford a constitutional remedy.

Second. If the Act entitled "An Act to Regulate Commerce," approved February 24th, 1887, or any Act amendatory thereof or supplementary thereto, be construed to authorize or empower the Interstate Commerce Commission to inquire into the business and affairs of this respondent having no relation to commerce with foreign nations or among the several states or with the Indian tribes or to compel a disclosure by this respondent to a purely administrative body of such transactions, such Act is to that extent unauthorized by, and in violation of, the Constitution of the United States, and void.

Third. The subject matter of said questions is judicial in its nature and the interrogation under oath of this respondent in respect thereof, save in a case brought by a proper party in a court of competent jurisdiction and conducted according to the forms of law, would deprive this respondent of liberty without due process of law contrary to Article Five of the amendments of the Constitution of the United States.

Fourth. The said questions were not pertinent or relevant to any inquiry or investigation that the said Commission was authorized and empowered to institute and conduct under the said Act to Regulate Commerce and the Acts amendatory thereof or supplementary thereto, in the absence of any petition, complaint or statement of charges presented, made, filed, or served upon any corporation or person, for the reason that they did not relate to the business of the Union Pacific Railroad Company, the Southern Pacific Company, the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company, or any of them, as common carriers, or to the interstate carriage or transportation of goods or persons by said companies as such common carriers, or any of them.

Fifth. The said inquiry or hearing was not based upon any complaint made by any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any
72 body politic or municipal organization, of anything done or omitted to be done by the Union Pacific Railroad Company, the Southern Pacific Company, the Oregon Short Line Railroad Company and the Oregon Railroad and Navigation Company, or

any of them, in contravention of the provisions of said Act to Regulate Commerce and the Acts amendatory thereof and supplementary thereto, or upon any petition of any such person or body setting forth any such complaint, or upon any statement of charges contained in any such petition or complaint forwarded by the said Commission to such Companies, or any of them, with any request to satisfy the complaint or answer the same in writing within a reasonable time or otherwise, or upon any complaint forwarded to the said Commission by the Railroad Commissioner or Railroad Commission of any State or Territory with the request that the same should be investigated, or upon any complaint or statement of charges served upon said Companies, or any of them, by the said Commission on its own motion, and was not, therefore, authorized by section 13 of the said Act to Regulate Commerce or an investigation thereunder, or an exercise of the powers thereby conferred, or an exercise of the powers conferred upon the said Commission by said Act and the Acts amendatory thereof and supplementary thereto with respect to investigations authorized by said section 13.

Sixth. If the said Act to Regulate Commerce or any Act amendatory thereof or supplementary thereto be construed as authorizing and empowering the said Commission in the conduct of an inquiry or investigation, without any complaint having been made to it, or any statement of charges contained in any such complaint having been presented to or served upon, any such common carrier or this respondent, to put the said questions to this respondent and require him to answer the same, such Act is to that extent in violation of the provision of Article Five of the amendments of the Constitution of the United States which provides that no person shall be deprived of life, liberty or property without due process of law.

73 Seventh. The said order made by the said Commission on the 15th day of November, 1906, is so general, vague and indefinite in its terms as to fail to define any matter as being under investigation either with respect to the Union Pacific Railroad Company or any other person or corporation, and the said questions were not pertinent or relevant to any inquiry alleged or claimed to have been authorized thereby.

Wherefore this respondent, having fully answered the said petition, prays that the same be dismissed.

EDWARD H. HARRIMAN,
Respondent.

R. S. LOVETT,
Attorney and of Counsel for
Respondent Edward H. Harriman.

STATE OF NEW YORK,
Southern District of New York, County of New York, ss:

Edward H. Harriman, being duly sworn, deposes and says, that he is one of the respondents above named and that the foregoing answer is true in point of fact to the best of his knowledge, information and belief.

Subscribed and sworn to before me this 4th day of November, 1907.

[SEAL.]

J. B. MAXWELL,
Notary Public No. 60, N. Y. Co.

74 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION
v.
EDWARD H. HARRIMAN and OTTO H. KAHN.

The Separate Response of Otto H. Kahn to the Petition of the Interstate Commerce Commission, and to the Rule to Show Cause Herein.

The respondent, Otto H. Kahn, responding to the petition of the Interstate Commerce Commission herein, and to the order of this Honorable Court to show cause why said petition should not be granted, says:

He admits that the Interstate Commerce Commission was created and organized, as alleged in said petition.

He does not admit that said Commission has the powers or is subject to the duties enumerated and alleged in said petition, and refers to the act to regulate commerce approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, as the only sources of said Commission's authority, powers and duties.

He admits that the Commission on or about the 15th day of November, 1906, made the order set forth in the petition; but he avers that neither said order nor any notice thereof was served upon any of the corporations mentioned in the petition; and he further avers that said order was adopted by the said Commission at its own instance, and without any application therefor, or complaint made, on behalf of any person, firm, corporation, association, so-
75 ciety, body politic, municipal organization, railroad commissioner or railroad commission of any state or territory, and without any petition, complaint or statement of charges being made or filed or served upon this respondent, or the Union Pacific Railroad Company, or any other person or corporation.

He admits that the Commission, assuming to act under said order, conducted a hearing in the City of New York upon the 4th day of January, 1907, and other hearings at the times and places set forth in the petition, and that the eight printed volumes filed with the said petition marked as therein alleged contain a correct transcript of all the testimony taken at said hearings, and that the volume thereof marked "Exhibits" contains a correct transcript of a portion of the documentary evidence received by said Commission and marked as "Exhibits" at said hearings. He does not admit that the petition correctly sets forth what appeared by the testimony taken at said hearings, but instead, he refers to said volumes for the ascertainment of the purport and effect of said testimony and exhibits.

Respondent is and for many years has been a member of the firm or copartnership of Kuhn, Loeb & Co., and for many years last past said firm has been actively engaged in the private banking business in the City of New York, and as part of its business has executed for numerous clients or customers purchases and sales of stocks of railroad companies and other corporations, and also as a part of such business has bought and sold on its own account stocks of railroad companies and other corporations.

Prior to February 25, 1907, there was served upon this respondent a subpœna reading as follows:

Interstate Commerce Commission.

To Otto H. Kahn, New York City:

You are hereby required to appear before the Interstate
76 Commerce Commission as a witness in the proceeding entitled, In the Matter of Consolidations and Combinations of Carriers, Relations Between such Carriers and Community of Interests therein, Their rates, facilities and practices, at United States Court Rooms 66, Post-office Building, New York, N. Y., on the 25th day of February, 1907, at 10 o'clock in the forenoon of that day.

Dated January 10, 1907.

JUDSON C. CLEMENTS,
[L. S.] *Commissioner.*

FRANK B. KELLOGG,
C. A. SEVERANCE,
Attorneys for the Commission.

The so-called proceeding referred to in said subpœna was sought to be inaugurated by the Commission by means of the order set forth in the petition, and here again set forth for convenience, as follows:

"Whereas the act to regulate commerce provides that the Commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and also requires the Commission 'to execute and enforce the provisions' of this act;

"And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practices or methods result in viola-
77 tions of said act or tend to defeat its purposes;

"It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby instituted, and that the same be set for hearing at United

States Court rooms in the city of New York, N. Y., on the 28th day of December, 1906, at 11 o'clock A. M., the further hearing to be continued at such times and places as may be required."

In compliance with said subpœna, respondent appeared before the Commission, and, among other things, testified that he was a director and a member of the Executive Committee of the Board of Directors of the Union Pacific Railroad Company up to 1906. Respondent says that he ceased to be a director of said Company and a member of said Executive Committee on the tenth day of April, 1906.

Respondent further testified that both before and after he ceased to be director of said Company, Kuhn, Loeb & Co. were the bankers or fiscal agents of the Union Pacific Railroad Company, in the sense that said Company bought and sold securities through Kuhn, Loeb & Co., provided they offered satisfactory terms, and that a large percentage of the securities bought and sold by said Company were bought and sold through Kuhn, Loeb & Co. and that this was in accordance with the usual practice in the case of a large railroad company to have its principal dealings with one particular banker. Respondent says, however, that the firm of Kuhn, Loeb & Co. never sustained any official relationship as bankers or fiscal agents to the Union Pacific Railroad Company, but that each transaction wherein said firm acted as such banker or fiscal agent was the result of a separate and independent arrangement for that occasion only.

Respondent further testified that while he was a director of said Company he always disclosed any personal interest which he
78 or his firm might have, as private banker or otherwise, in any transactions passed upon by the Board of Directors or Executive Committee of said Company, and refused to vote thereon.

In answer to questions by the members of the Commission and questions by their counsel, and without regard to the legality of any such questions, respondent answered fully as to transactions of Kuhn, Loeb & Co. with the Union Pacific Railroad Company, so far as the personal interest of Kuhn, Loeb & Co. or of its members therein was concerned, and offered to give any further information which the Commission might wish regarding the interest of Kuhn, Loeb & Co., or its members, in any such transactions.

Respondent further testified that in December, 1903, the firm of Kuhn, Loeb & Co., by public advertisement, invited deposits of the preferred stock of the Chicago and Alton Railway Company under a written agreement whereby the depositors of such stock authorized said Kuhn, Loeb & Co. to sell said stock to any person or corporation, and at such price and upon such terms as should be approved by a committee consisting of John A. Stewart, Edward H. Harriman and John J. Mitchell, and that, under said agreement, Kuhn, Loeb & Co., on behalf of said depositors, many months afterwards sold said stock to the Union Pacific Railroad Company, but that the price of said stock was fixed by Messrs. Stewart and Mitchell, Mr. Harriman declining to participate in fixing said price. The testimony further showed that said stock was sold by Kuhn, Loeb & Co. to said Union Pacific Railroad Company at $86.50 per share,

out of which price Kuhn, Loeb & Co., in accordance with said agreement, retained for their services a commission of $2.50 per share.

Notwithstanding the fact that respondent answered all questions concerning said transaction which related to the personal interest therein of Kuhn, Loeb & Co., and notwithstanding the fact that the testimony showed the cost of said stock to the Union Pacific Railroad Company, the following additional questions concerning said transaction were propounded to this respondent:

79 Question: "Now, will you state whether the directors of the Union Pacific Railroad Company were the real owners of the shares deposited with you and sold to the Union Pacific Railroad Company?"

Question: "The question I asked you was whether any of your fellow directors were owners of any of that stock (referring to the stock of the Chicago & Alton Railway Company so sold to the Union Pacific Railroad Company)."

Respondent declined to answer each of said questions, and by way of explanation respondent then stated to the Commission:

"I will answer every question relating to our own dealings with the Union Pacific, but I cannot answer questions relating to the dealings of our clients with us. Every banker considers his client's affairs as confidential as a lawyer considers the affairs of his clients or a doctor considers the affairs of his patients, and I cannot be instrumental in disclosing them."

The testimony also showed that in July, 1906 (no member of the firm of Kuhn, Loeb & Co. then being a director of the Union Pacific Railroad Company) the Board of Directors of the Union Pacific Railroad Company decided to purchase, at the price of $175.00 per share, 105,000 shares of the stock of the Illinois Central Railroad Company which was owned or controlled by Kuhn, Loeb & Co., 30,000 shares of such stock held by E. H. Harriman, 30,000 shares of such stock held by James Stillman, and 30,000 shares of such stock held by H. H. Rogers; and that such purchases were made by the Union Pacific Railroad Company accordingly; that the purchase of said stock at said price was recommended to the Board of Directors of the Union Pacific Railroad Company by a committee of said Board appointed to investigate the subject; and that directors

80 Harriman, Stillman and Rogers declined on account of their personal interest which was disclosed to the Board of Directors to vote upon any of the questions connected with the purchase of said stock or price to be paid therefor.

Notwithstanding the fact that respondent testified as to said sale by Kuhn, Loeb & Co. of 105,000 shares of stock, and notwithstanding the fact the testimony showed the cost to the Union Pacific Railroad Company of said stock and also of such stock sold to said Company by Messrs. Harriman, Rogers and Stillman, the following additional questions were propounded to respondent with respect to said transactions:

Question: "Then I will ask you the direct question, Mr. Kahn: Of the 105,000 shares of stock which you sold—of Illinois Central stock which you sold on the 9th day of August, 1906, to the Union

Pacific Railroad Company, and for which you were paid $175 a share—will you please state how much, if any, of that stock was held by you in the interest of or for the benefit of any or all of the directors of the Union Pacific Railroad Company?"

Respondent declined to answer said question, and stated:

"I do not believe I ought to answer that question also. I would be perfectly willing to answer if it were not that it involved relationship as to which I ought not to be asked."

"We will gladly disclose our transactions in every detail."

"I decline to answer as to the transactions of my clients.."

Question: "And you decline to state whether that 105,000 shares of stock or any part of that stock which you sold to the Union Pacific for $175 a share really equitably belonged to or was held by you for any person or any number of persons who were at that time directors of the Union Pacific Railroad Company?"

81 Respondent declined to answer said question and stated: "As a matter of principle I decline to answer."

Question: "Did you also buy at the same time for Messrs. Harriman, Rogers and Stillman the stocks they sold at the same time you sold yours?"

Respondent declined to answer said question.

Question: "Was this 105,000 shares of Illinois Central stock and the 90,000 shares turned in by Stillman, Rogers and Harriman all of it bought through your instrumentality for a pool of which these gentlemen and yourself were members, who were operating in Illinois Central stocks during the period of several months at least prior to July 1, 1906?"

Respondent declined to answer said question.

Each of the questions above set forth which respondent declined to answer was designed exclusively to relate to transactions between Kuhn, Loeb & Co., as private bankers, and their individual clients or customers, and to obtain information affecting the rights and interests of such clients or customers, which information if within the knowledge of the respondent at all was within his knowledge by reason of the confidential relations of Kuhn, Loeb & Co., as private bankers, to such clients or customers. In all banking and business circles such information has always been and must be regarded as strictly confidential so far as the bankers are concerned. Respondent is advised and believes that he is not compelled by law to answer the said questions or any of them, but on the contrary believes that it was and is his duty to decline to answer questions designed to make public through him confidential information possessed by Kuhn, Loeb & Co., concerning the affairs of their clients and customers.

82 Respondent has no knowledge or information as to the scope or purpose of the hearing which the Commission was conducting because there was no petition, complaint or statement of charges filed or pending before the Commission with respect thereto, or with respect to the subject-matter of such hearing or investigation, and because the said order adopted by the Commission on the 15th day of November, 1906, was so general in terms as to fail to define any matter as being under investigation either with respect to the

Union Pacific Railroad Company or with respect to any other person or corporation.

Respondent does not admit the averments of the petition with respect to the terms or effect of any bonds or other securities issued by the Union Pacific Railroad Company or by the Oregon Short Line Railroad Company, or as to the money received upon any such securities or as to the investment thereof, but as to all such matters respondent refers for the ascertainment of the facts to the tesimony heretofore taken as aforesaid, before the Commission.

Respondent denies that it was incumbent upon the petitioner to procure the information sought by any of said questions which this respondent refused to answer, or that any information sought by any of said questions would have tended to enable the petitioner to perform the functions for which it was created, and denies that said questions or any of them were or are relevant or material to the matters under investigation, or that answers thereto or to any of them were or are necessary to enable the Commission to discharge its duties or to execute or enforce the provisions of said act to regulate commerce, or to inform the petitioner as to the manner or method in which the business of any of the common carriers mentioned in the petition was or is conducted or to enable the petitioner to obtain full or complete information necessary to enable the petitioner to perform the duties or carry out the objects for which it was created.

Respondent says that none of said questions was relevant to
83 any matter under investigation by the Commission, and that at the time said questions were asked, no matter was legally under investigation by the Commission, and that none of said questions was relevant to any matter concerning which the Commission had the right to conduct an investigation. Answers to said questions could not have aided the Commission in the execution or enforcement of the act to regulate commerce, or of any of the acts amending or supplementing the same, and would have had no connection with the subject-matter of any of said acts. If any of said acts should be construed as authorizing the Commission, or the Court at the instance of the Commission, to compel the disclosure by respondent of any such information as is sought by said questions, such act so construed would be unconstitutional and void because in excess of the powers conferred upon Congress by the Constitution of the United States, and because in violation of the constitutional rights of this respondent and of Kuhn, Loeb & Co. and of their clients and customers.

Wherefore, this respondent, having fully answered, prays that the said petition be dismissed and that he be not required to answer the said questions.

OTTO H. KAHN, *Respondent.*
CRAVATH, HENDERSON & DE GERSDORFF,
Attorneys for Respondent Otto H. Kahn.

PAUL D. CRAVATH,
WALKER D. HINES,
Of Counsel.

84 STATE OF NEW YORK,
Southern District of New York,
County of New York ss:

Otto H. Kahn, being duly sworn, deposes and says, that he is one of the respondents above named and that the foregoing response is true in point of fact to the best of his knowledge, information and belief.

OTTO H. KAHN.

Subscribed and sworn to before me this 6th day of November, 1907.

[SEAL.] JARVIS P. CARTER,
Notary Public, New York County.

85 In the Matter of The Consolidation and Combination of Carriers, Relations Between Such Carriers, and Communion of Interest Therein, Their Rates, Facilities and Practices.

Before the Interstate Commerce Commission.

Present: Hon. Martin A. Knapp, Chairman, Hon. Franklin B. Lane, and Hon. James C. Harlan, Commissioners.

Appearances.

Frank B. Kellogg, Esq., and C. A. Severance, Esq., Attorneys for the Interstate Commerce Commission.
John G. Milburn, Esq., and R. S. Lovett, Esq., for the Union Pacific Railroad Company.

NEW YORK CITY, N. Y., *Jan.* 4, 1907—10 o'clock A. M.

Present: Commissioners Martin A. Knapp, Franklin K. Lane, James C. Harlan.

The CHAIRMAN: Gentlemen, please give us your attention. The Commission has assigned for hearing at this time and place a matter entitled in the matter of Consolidations and Combinations of Carriers, Relations between such Carriers, Community of Inter-
86 ests therein, their rates, facilities and practices. The purpose of the present hearing is to investigate the relations between the two systems of railway commonly known as the Southern Pacific and the Union Pacific, together with the question as to the control of those companies or either of them, of other systems of railroads, and the ownership, of stock by them or their officers, or otherwise. For the purpose of aiding the Commission to prosecute this inquiry, Mr. Frank B. Kellog and Mr. C .A. Severance have been retained, and will be entrusted with the duty of arranging for the attendance of witnesses and determining the order in which they will be called. We assume they are ready to proceed.

Mr. KELLOGG: We are ready.

The CHAIRMAN: Who desires to be noted as appearing for any party interested in this proceeding?

Mr. LOVETT: Mr. John G. Milburn, if the Commission please, of this city, and myself, R. S. Lovett appear for the Union Pacific and Southern Pacific.

The CHAIRMAN: Are there any other appearances to be noted?

(No response)

The CHAIRMAN: If not, we are ready to proceed.

Mr. MILBURN: If your Honors please, Mr. Harriman is under subpœna to appear here this morning at this time. Just two weeks ago he was compelled to undergo a minor surgical operation and it has been expected all along that he would be entirely able to be out at this time so as to give his testimony. We continued to expect that until within a day or two. Mr. Harriman is not we regret to say in a condition that he can leave his house. He is not disabled from testifying. It is simply a disability of a kind which makes it, not only imprudent, but practically out of the question for him to leave his own house. As far as I can suggest, with all due and proper regard to the dignity of the Commission, I would say that Mr. Harriman's testimony can be taken today or tomorrow at his own house; that is, he is able to give it there and under conditions of just as much publicity as it would be given here. While I can ap-
87 preciate objections to that, none the less I feel it proper to say that he can give his testimony now under those conditions and is quite willing to do so, and he regrets himself personally very much that he cannot be present in this building today. Now, that is the situation so far as Mr. Harriman is concerned. Of course, Mr. Harriman must necessarily be an important witness on this subject. He has been connected with the various matters to which the inquiries will be directed. There is no doubt that he is a man who can furnish the fullest and most connected information on these subjects. I regret that he is not here at this time, because, no doubt, in the evolution of this case he would be one of the first men called, apart from the testimony concerning entries in the books, etc.

I make this statement with a view to suggesting to the court that there should be a postponement of that branch of the matter for some days. It is useless to expect that Mr. Harriman will be out or can come downtown within the next two or three days, but any time after that—that is, there is no expectation of prolonging the matter—any time after that, he is at the command of this Commission or Court here or in Washington, or wherever it may appoint.

Com'r LANE: Could he be in Chicago on Wednesday?

Mr. MILBURN: No.

The CHAIRMAN: Mr. Milburn, the Commission deems it manifestly unsuitable to hold this inquiry at a private place for Mr. Harriman or any other interested party. Of course, if Mr. Harriman is in such physical condition that it is unsafe for him to be here today in obedience to the subpœna, that is sufficient ground for a postponement of his examination. We assume, subject to objection to the contrary, that the statement of his counsel as to his condition will be accepted as altogether according to the fact.

Mr. MILBURN: I trust it will be accepted.

The CHAIRMAN: Are you able to state with any high degree of probability when he is likely to be able to attend?

88 Mr. MILBURN: It is an uncertain matter—a week or ten days. I just name that time. We fully expected he would be here today. Four or five days ago, when I saw Mr. Harriman, at that time, I fully expected he would be here, but there has not been a recovery.

The CHAIRMAN: Mr. Milburn, is there any probability that he would be able to attend here next Monday?

Mr. MILBURN: I do not think so on the minute. I do not think it is worth while, your Honors, trying to plan with reference to that.

The CHAIRMAN: Nor in Chicago on Wednesday?

Mr. MILBURN: No, I would not want him to take that trip. I know that trip to Chicago would not be advisable for him in his condition.

The CHAIRMAN: Nor at any time next week?

Mr. MILBURN: I will not say that.

The CHAIRMAN: I mean in Chicago.

Mr. MILBURN: No, not in Chicago.

The CHAIRMAN: Very well. We will not undertake to determine at this time when there will be a further hearing in this matter after the one in Chicago on Wednesday. All we want to say is that we regard the statement as a sufficient excuse for Mr. Harriman's failure to attend here this morning in response to the subpœna. Mr. Kellogg.

Mr. KELLOGG: Mr. Millar; Aleck Millar.

ALEXANDER MILLAR, called as a witness, having been duly sworn testified as follows:

Mr. KELLOGG: Your name is Aleck Millar?

Mr. MILLAR: Alexander Millar.

Mr. KELLOGG: Usually called Aleck?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: You are the Secretary of the Union Pacific Railroad are you not?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And of the Oregon Short Line Railroad?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And of the Oregon Railway & Navigation Co.?

89 Mr. MILLER: Assistant Secretary of that.

Mr. KELLOGG: Assistant Secretary of the Oregon Railroad & Navigation Co.?

Mr. MILLER: Yes, sir.

Mr. KELLOGG: And of the Southern Pacific Company?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: You have the minutes of the meetings of all those companies?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Are you also an officer of the Steamship lines belonging to the Union Pacific, the Short Line, or the Navigation Company?

Mr. MILLER: The Oregon Railroad & Navigation Company is the

owner of steamships; and other companies do not so far as I know, operate steamships.

Mr. KELLOGG: The Oregon Navigation Company is the owner of steamships?

Mr. MILLAR: Yes, sir. But no separate company.

Mr. KELLOGG: No separate company?

Mr. MILLAR: No.

Mr. KELLOGG: Does the Union Pacific own any steamship lines?

Mr. MILLER: No, not to my knowledge.

Mr. KELLOGG: Does it own any stock in any steamship line?

Mr. MILLAR: Not to my knowledge; no sir; except so far as the Navigation, is a steamship company.

Mr. KELLOGG: Isn't it a stockholder in the Occidental & Oriental Steamship Co.?

Mr. MILLAR: Yes, sir; it is.

Mr. KELLOGG: Where do the steamers of the Navigation Company—from what ports do the steamers of the Navigation Company run?

Mr. MILLAR: From Portland, Oregon, to points on the Columbia and the Willamette Rivers, and also the San Francisco.

Mr. KELLOGG: Does the Navigation Company have steamers engaged in eastern trade with China & Japan?

Mr. MILLAR: I think not; not to my knowledge.

90 Mr. KELLOGG: Have they any stock in any companies engaged—does the Navigation Company have any stock in any company engaged in traffic between this country and the Orient?

Mr. MILLAR: Not to my knowledge.

Mr. KELLOGG: Where do the steamers of the Occidental & Oriental Steamship Company ply?

Mr. MILLAR: I cannot tell you that.

Mr. KELLOGG: You don't know?

Mr. MILLAR: No, sir.

Mr. KELLOGG: How much stock does the Union Pacific Company own in the Occidental & Oriental Steamship Line?

Mr. MILLAR: I cannot give that from recollection. The books of those companies are not in my charge.

Mr. KELLOGG: They are not in your charge?

Mr. MILLAR: No, sir.

Mr. KELLOGG: Are you Secretary of that Company?

Mr. MILLAR: No, sir; I am not an officer of that Company.

Mr. KELOGG: You are not an officer of that Company?

Mr. MILLAR: No, sir.

Mr. KELLOGG: Who is the Secretary of that Company?

Mr. MILLAR: I cannot give you his name. He is in San Francisco.

Mr. KELLOGG: Do you know whether the Union Pacific Company controls that company by stock ownership?

Mr. MILLAR: It is a joint ownership so far as I know.

Mr. KELLOGG: Equal ownership?

Mr. MILLAR: Equal with what? I don't get the idea.

Mr. KELLOGG: With any other company?

Mr. MILLAR: I think there are—I think in the minority holders, there are individuals as well as corporations owning the stock.

Mr. KELLOGG: What corporations own stock in the Occidental & Oriental Steamship Line?

91 Mr. MILLER: I can only talk from a general impression. I think the Southern Pacific is a part owner.

Mr. KELLOGG: You are also the Secretary of the Southern Pacific, you say?

Mr. MILLER: Yes, sir.

Mr. KELLOGG: And of many of its subsidiary corporations?

Mr. MILLER: A very few; very few.

Mr. KELLOGG: The Southern Pacific owns and controls a line of railway extending from Portland, Oregon, through San Francisco, California, Arizona, New Mexico, Texas, and Louisiana to New Orleans, does it not?

Mr. MILLER: I was not aware of the fact, sir. No.

Mr. KELLOGG: What?

Mr. MILLER: I am not aware of that, no sir.

Mr. KELLOGG: Doesn't the Southern Pacific control that line of railway?

Mr. MILLER: I understood you to say "own and control."

Mr. KELLOGG: No, no. Own through stock ownership, and control?

Mr. MILLER: I understand it to be a leasing and owning company of the corporations that do operate between those points.

Mr. MILLER: Yes, it owns through stock ownership the companies operating the railroads between those points.

The CHAIRMAN: Or by lease.

Mr. KELLOGG: Or by lease?

Mr. MILLER: There are distinctions there that I think the question hardly covers.

Mr. KELLOGG: Well, explain it, explain the whole thing.

Mr. MILLER: The Southern Pacific Company is a stock owner and lessee of the lines operating between the points named.

Mr. KELLOGG: And controls them?

Mr. MILLER: I should think possibly.

Mr. KELLOGG: And you are the secretary of the Southern Pacific Company of Kentucky?

92 Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Where is the general office of the Southern Pacific Company; I mean its corporate office, under the laws of Kentucky?

Mr. MILLAR: We have an office in Louisville, Kentucky, and also in New York; the general offices are in San Francisco and Oakland at the present time.

Mr. KELLOGG: Under your articles of incorporation, they provide for a general office in Kentucky, do they not?

Mr. MILLAR: Beachmont, Kentucky.

Mr. KELLOGG: Where is Beachmont?

Mr. MILLAR: In the suburbs of Louisville.

Mr. KELLOGG: That is your corporate headquarters under the laws of Kentucky?

Mr. MILLAR: I so understand; yes, sir.

Mr. KELLOGG: Are you an officer of the Texas-Louisiana & Morgan Steamship & Railway Company?

Mr. MILLAR: No, sir.

Mr. KELLOGG: Who is the secretary of that company; do you know?

Mr. MILLAR: I couldn't give you his name off hand. If you will permit me to refer to a book I have here, I can give you that.

Mr. KELLOGG: All right. (Witness refers to book.)

Mr. MILLAR: Have you got the name of that road right, Mr. Kellogg?

Mr. KELLOGG: Perhaps not. I mean the steamship line which runs steamers from New Orleans to New York.

Mr. MILLAR: Then, for the sake of the record, Morgan's Louisiana & Texas Railroad & Steamship Co.

Mr. KELLOGG: We will call that the Morgan Steamship Line for convenience.

Mr. MILLAR: M. B. Bergerner, is secretary of the company and I am assistant secretary.

Mr. KELLOGG: Assistant Secretary?

Mr. MILLAR: I want to correct my testimony to that extent.

93 Mr. KELLOGG: Where is the principal office of that company?

Mr. MILLER: In New Orleans.

Mr. KELLOGG: In New Orleans?

Mr. MILLER: Yes, sir.

Mr. KELLOGG: The Southern Pacific Company owns all the stock of that company, does it not?

Mr. MILLER: I am not able to testify to that. I don't know the facts.

Mr. KELLOGG: It votes it, does it not, at meetings?

Mr. MILLER: It votes the stock it owns, but what proportion I am unable to tell.

Mr. KELLOGG: It votes the control, does it not, Mr. Miller?

Mr. MILLER: I think substantially yes.

Mr. KELLOGG: And it owns a line of steamships, you know, in a general way, running in connection with the Southern Pacific system from New Orleans to New York?

Mr. MILLER: Yes, sir.

Mr. KELLOGG: The Union Pacific?

Mr. MILLER: Excuse me. That is hardly correct. The Southern Pacific does not connect at New Orleans with the steamship line.

Mr. KELLOGG: Where does it connect?

Mr. MILLAR: The Southern Pacific Company as an operating company connects at El Paso, but still it is not the Southern Pacific Company.

Mr. KELLOGG: Oh, well. The Southern Pacific owns the stock of and controls the line of railway, clear from Portland to New Orleans, does it not?

Mr. MILLAR: Yes, sir; by stock control and lease.

Mr. KELLOGG: And speaking of the companies which own the

physical property from El Paso to New York as belonging to the Southern Pacific Company. By stock ownership, the steamships connect with the Southern Pacific system at New Orleans, don't they?

Mr. MILLAR: Well, in a loose way of talking, yes. Not as we—as I look at it.

Mr. KELLOGG: State why.

94 Mr. MILLAR: Because the Southern Pacific Company have no line in Texas or Louisiana.

Mr. KELLOGG: What company owns the lines through Texas and Louisiana?

Mr. MILLAR: Beginning at New Orleans, the Morgans, Louisiana & Texas Line goes to the Sabine River.

Mr. KELLOGG: Goes from New Orleans to the Sabine River?

Mr. MILLAR: In connection with one other company, the Louisiana Company.

Mr. KELLOGG: The Louisiana Company?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Who owns the stock of these companies? Does the Southern Pacific Company?

Mr. MILLAR: I think so.

Mr. KELLOGG: You know it, don't you, from your books?

Mr. MILLAR: No, sir. I don't keep the books.

Mr. KELLOGG: You know the Southern Pacific Company votes the stock, don't you?

Mr. MILLAR: No, I don't know that, no.

Mr. KELLOGG: Well, the steamship line connects with that railway at New Orleans, doesn't it?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: So that, by steamship and rail, the Southern Pacific Co. controls lines of transportation from Portland, Oregon, through San Francisco, California, New Mexico, Arizona, Texas, and Louisiana, and New York City?

Mr. MILLER: Yes, I think so.

Mr. KELLOGG: And the Southern Pacific also owns the stock of and controls and operates by lease the Central Pacific Railway, does it not?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Which line extends from San Francisco to Ogden?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the Union Pacific owns the line of railway from Council Bluffs and from Kansas City to Denver and to Ogden and Salt Lake?

Mr. MILLAR: The stockholders do.

95 Mr. KELLOGG: Well, the Union Pacific Company.

Mr. MILLAR: The stockholders.

Mr. KELLOGG: I say, the Union Pacific Railroad Company owns that line, does it not—I am only just getting in a general way the layout of those two properties.

Mr. MILLAR: Yes, sir, that is the Union Pacific Railway Co.

Mr. KELLOGG: And the Union Pacific Co. owns all the stock of the Oregon Short Line?

Mr. MILLAR: Substantially, yes, sir.

Mr. KELLOGG: And of the Railway & Navigation Company?

Mr. MILLAR: I think not.

Mr. KELLOGG: Well, the Oregon Short Line owns it, doesn't it?

Mr. MILLAR: Part owner, I think.

Mr. KELLOGG: And the Union Pacific Company owns part and the Short Line owns part?

Mr. MILLAR: I am not sure about the Navigation Company. I am not keeping the books of that Company.

Mr. KELLOGG: The Union Pacific controls the lines by ownership of stock from Council Bluffs and Kansas City to Portland?

Mr. MILLAR: I think so, yes, sir.

Mr. KELLOGG: All of these companies known as the Pacific Companies, the Southern Pacific, Union Pacific, the Short Line and the Navigation Company, have the same president have they not?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Mr. E. H. Harriman?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the same vice president, Mr. W. D. Cornish?

Mr. MILLAR: Judge Cornish is vice president of all of these companies, but there are other vice presidents.

Mr. KELLOGG: Well, he is vice president of all these companies; isn't he?

Mr. MILLAR: I should say he is one of the Vice Presidents of some of them.

96 Mr. MILLAR (referring to book): Yes sir.

Mr. KELLOGG: And you are secretary or assistant secretary of all of them?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: You are secretary of all of them?

Mr. MILLAR: Except the Navigation Co.

Mr. KELLOGG: You are assistant secretary of that company?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: They have the same Traffic Director?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: Mr. J. C. Stubbs?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: The same assistant Traffic Managers?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: The same comptroller?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: The same auditor?

Mr. MILLAR: No, sir.

Mr. KELLOGG: Is not Mr. Young Auditor of the Union Pacific?

Mr. MILLAR: Oh, General Auditor.

Mr. KELLOGG: General Auditor?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the same Directors of Maintenance and Operation?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: The same Director of Purchases?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the same attorneys and counsel—general counsel, I mean?

Mr. MILLAR: Hardly.

Mr. KELLOGG: Is Mr. Lovett the General Counsel of all four companies?

Mr. MILLAR: No.

Mr. KELLOGG: Is he General Counsel of the Union Pacific?

Mr. MILLER: Yes, sir.

Mr. KELLOGG: Is he general counsel of the Southern Pacific?

Mr. MILLAR: Not by that title.

97 Mr. KELLOGG: What is the title?

Mr. MILLAR (Referring to book): Beginning with the Union Pacific, Judge Lovett is counsel.

Mr. KELLOGG: Of the Southern Pacific.

Mr. MILLAR: Union Pacific.

Mr. KELLOGG: He has general charge of the legal department, hasn't he?

Mr. MILLAR: In which road?

Mr. KELLOGG: General charge of the legal department?

Mr. MILLAR: Which company?

Mr. KELLOGG: The Southern Pacific.

Mr. MILLAR: I think not.

Com'r HARLAN: The witness is speaking of the Union Pacific.

Mr. MILLAR: My first answer was to the Union Pacific.

Mr. KELLOGG: He is general counsel of the Union *Union* Pacific?

Mr. MILLAR: Yes.

Mr. KELLOGG: And in charge of the legal department?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And general counsel of the Short Line and the Navigation Company?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And of the Southern Pacific?

Mr. MILLAR: I think his relations with the Southern Pacific is different. I would like to refresh my memory on that (Referring to book). Judge Lovett is counsel in New York for the Southern Pacific.

Mr. KELLOGG: And has general charge of the legal department hasn't he?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Now, I show you a list of the directors of the Union and Southern Pacific for the year- 1900, 1901, 1902, 1903, 1904, 1905 and 1906, Mr. Millar? I don't know whether you have checked that up, but, subject to corrections, we will take it.

Mr. MILLAR: Yes.

Mr. KELLOGG: If there are any corrections, you can make them in it afterwards, Mr. Millar.

98 Mr. MILLAR: I have examined for the years 1905 and 1906, and I think they are correct, but would like to identify the others subject to verification.

Mr. KELLOGG: They are taken from Poor's Railroad Manual.

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Of course, you furnish that information to Poor's Manual, don't you?

Mr. MILLAR: We do.

Mr. KELLOGG: Now, subject to any corrections which you may make in this, I will ask you if this is a correct list of the directors of the company during those years?

Mr. MILLAR (Subject to verification): I have not seen the papers, I should like to put them in in that way.

Mr. MILBURN: He may say yes.

Mr. MILLAR: I have only seen them this morning for the first time.

Mr. KELLOGG: Now, were you connected with the Union Pacific in any capacity prior to 1900?

Mr. MILLER: Oh, yes; yes, sir.

Mr. KELLOGG: You were secretary from the time of the organization of the present company in 1897, were you not?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Of the Union Pacific Company?

Mr. MILLAR: Yes, sir, December of 1897.

Mr. KELLOGG: Prior to that you were with the Receivers.

Mr. MILLAR: Yes.

Mr. KELLOGG: And prior to that with the old Union Pacific Company?

Mr. MILLAR: Yes.

Mr. KELLOGG: I offer this list in evidence.

Chairman KNAPP: That is a list of the directors of the various companies?

Mr. MILLAR: Yes, sir; of the Union and Southern Pacific.

(Paper marked Exhibit No. 1, to Mr. Millar's testimony.)

99 Mr. KELLOGG: I show you a list of the Executive Committee of the Union Pacific Railroad Co. for the years 1900, 1901, 1903, 1905, and 1906; and I think 1904, I am not sure.

Mr. MILLAR: Yes.

Mr. KELLOGG: And 1904. Also, a list of the Executive Committee of the Southern Pacific during the same time, the Oregon Short Line Railroad and the Oregon Navigation Company, was that made by you?

Mr. MILLAR: Yes.

Mr. KELLOGG: Or under your direction?

Mr. MILLAR: Yes.

Mr. KELLOGG: Is this correct?

Mr. MILLAR: I would like to say that it was made yesterday on very short notice and in a very great hurry and has not been verified personally by me.

Mr. KELLOGG: I understand all these documents are subject to any corrections, and your testimony may be so understood.

Mr. MILLAR: I believe it to be substantially correct.

Mr. KELLOGG: I offer the paper in evidence.

(Paper received and marked Exhibit No. 2 to Mr. Millar's testimony.)

Mr. KELLOGG: Prior to the acquisition of Southern Pacific stock

by the Union Pacific Company or the Short Line Company, there were no directors in the Southern Pacific Company who were common directors in the Union Pacific Company, were there?

Mr. MILLAR: I think not.

Mr. KELLOGG: That was acquired by the Union Pacific, or in its interest, in about March, 1901, was it not?

Mr. MILLAR: Yes, sir. It was the Spring of 1901.

Mr. KELLOGG: Since that time either the Union Pacific or the Short Line, or parties in their interests, have voted that stock at the meetings of the stockholders of the Southern Pacific Company, have they not? Either the companies or persons in their interest by proxy, or persons holding the stock in their own names, for those companies?

100 Mr. MILLAR: I want to give you my best understanding of that.

Mr. KELLOGG: Oh, certainly.

Mr. MILLAR: I think that is true with the exception of possibly one year, when the holdings of the—I put it this way, that such stock as has been owned by the Union Pacific or by the Oregon Short Line, has been voted by it or in its interest—other interests?

Mr. KELLOGG: I show you a paper purporting to show the date of the annual meeting of the Southern Pacific Company, the number of shares of stock voted at those meetings, both common and preferred, the number of shares of each class of stock owned by the Union Pacific, or the Short Line Companies. Is that a correct statement?

Mr. MILLAR: Yes, sir; as shown by the books.

Mr. KELLOGG: I offer the paper in evidence.

(Received in evidence and marked Exhibit 3, to Mr. Millar's testimony.)

Mr. KELLOGG: According to this statement, the Union Pacific owned 750,000 shares in 1902?

Mr. MILLAR: Yes, sir; March, 1902.

Mr. KELLOGG: At that meeting?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: That stock had been acquired by March, 1901?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And at the next meeting on April 3d, 1903, 900,000 shores of the Oregon Short Line?

Mr. MILLAR: I would like to speak from the paper, if possible.

Mr. KELLOGG: All right. I will stand back here by you. I am not going into the details. I just want to get it generally.

Mr. MILLAR: Yes, sir. I would like to have that question.

The STENOGRAPHER (Reading): And at the next meeting on April 3d, 1903, 900,000 shares of the Oregon Short Line.

101 Mr. MILLAR: Well, what?

Mr. KELLOGG: Was voted by the Short Line Company.

Mr. MILLAR: I cannot testify to that, sir. I intended to say it was owned by the Short Line.

Mr. KELLOGG: Doesn't this paper purport to show the stock voted at those several meetings by the Union Pacific? and by the Short Line?

Mr. MILLAR: No, sir; it doesn't purport to show who voted the proxies.

Mr. KELLOGG: Well, I mean either voted by the Short Line and Union Pacific, or persons for them, by proxy.

Mr. MILLAR: I could not testify to that.

Mr. KELLOGG: Then we will have to find out. I supposed this paper showed.

Mr. MILLAR: I wasn't at the meeting and the record doesn't show. I would like to put on the record that I wasn't at those meetings, and the record doesn't show.

Mr. SEVERANCE: That was handed to us by Judge Levett as a correct statement.

Mr. MILLAR: But it doesn't show the fact covered by the question.

Mr. KELLOGG: Oh, you are a little too technical on that.

Mr. MILLAR: Excuse me. I do not mean to be.

Mr. MILBURN: This paper, from our point of view, is intended to show the stock voted.

Mr. LOVETT: And the stock of the Union Pacific and Oregon Short Line was voted with proxies there, except at the year when the election was not held.

Mr. KELLOGG: Oh, certainly. This paper shows the amount of the Southern Pacific stock voted by the Union Pacific or the Oregon Short Line, by proxy, at each annual meeting of the Southern Pacific Company, does it not? I don't care whether it is voted by persons or by proxy—It would have to be voted by proxy, being a corporation.

Mr. MILLAR: I understand this statement to show the total
102 amount owned by the certain holding companies at the dates stated, and how the stock was voted, but not by whom voted.

Mr. KELLOGG: Well——

Mr. MILLAR: It does not show what amount was voted by the Short Line or the Union Pacific, or their representatives.

Mr. KELLOGG: I will give you this paper, and I will take another one, and we will see. I think we won't disagree at all.

Mr. LANE: Isn't it possible for you to agree with counsel as to those facts?

Mr. KELLOGG: I think so, if counsel will admit them.

Mr. SEVERANCE: They admitted them.

Mr. MILBURN: This statement shows the figures given there, as voted by proxy and include the stock of the Southern Pacific Railway Company owned by the Union Pacific or the Oregon Short Line. The record may so state.

Mr. KELLOGG: Yes.

Mr. SEVERANCE: This is admitted to be a correct transcript from the records?

Mr. MILBURN: Yes.

Mr. KELLOGG: I offer Exhibit No. 3 in evidence.

Mr. KELLOGG: Then the statement shows that at every meeting since and including April 8, 1903, the Oregon Short Line by proxy, or in person through its officers, voted the majority of the stock present at each meeting of the Southern Pacific Company.

Mr. MILLAR: I have no knowledge as to that.

Mr. KELLOGG: Don't your books show it?

Mr. MILLAR: No, sir.

Mr. KELLOGG: Then, we will see (referring to papers); the statement shows they do.

Com'r LANE: They admit that.

Mr. KELLOGG: They have not admitted it yet.

(Addressing Mr. Milburn): Do you admit that, Mr. Milburn?

Mr. MILBURN: Yes, sir.

Mr. KELLOGG: The Secretary keeps the books.

Mr. MILLAR: I beg pardon. I do not keep the books showing the facts asked.

103 Mr. MILBURN: Mr. Kellogg; our admission is that, based on that paper (referring to Exhibit), the majority of the stock voted at the election.

Mr. KELLOGG: Yes. That is, the Union Pacific and the Southern Pacific—the Union Pacific and Oregon Short Line voted at each meeting the majority of the stock which was voted at each of the Southern Pacific annual meetings for the election of directors?

Mr. MILBURN: That is right.

Mr. KELLOGG: I offered in evidence Exhibit No. 1, showing the common officers. I notice by that—I do not care to go into the details of it—that a majority—not the statement you have, but *my* Exhibit No. 1, that a majority of the directors of the Southern Pacific Company each year, except one, since the Union Pacific or the Oregon Short Line acquired the Southern Pacific Stock, are also directors in the Union Pacific Company. Is that correct, as you understand it?

(Mr. Millar examines Exhibit No. 1.)

Mr. KELLOGG: While the witness is checking that up, I would like to offer these by-laws. (Addressing the stenographer): Please mark them.

The same are marked Exhibits Nos. 4 to 10 inclusive, for identification to Mr. Millar's testimony.

Mr. MILLAR (after examination of Exhibit No. 1): Yes, except as to 1906.

Mr. KELLOGG: I will ask you to have the last question repeated.

Question repeated as follows:

"I notice by that, I do not care to go into the details of it—that a majority—not the statement you have, but by Exhibit No. 1, that a majority of the directors of the Southern Pacific Company, each year except one, since the Union Pacific or the Oregon Short Line acquired the Southern Pacific Stock are also directors in the Union Pacific Company. Is that correct, as you understand it?"

Is that correct?

Mr. MILLAR: I answered that—yes, except as to 1906.

104 Mr. KELLOGG: In the list of directors of 1906, I notice R. W. Goelet and Robert Goelet. Are they the same person?

Mr. MILLAR: No, sir; they are not.

Mr. KELLOGG: Relatives?

Mr. MILLAR: I understand they are cousins.

Mr. KELLOGG: Have an office together, do you know?

Mr. MILLAR: I believe they do.

Mr. KELLOGG: I also notice that W. V. S. Thorne, who is a director of the Southern Pacific is not a director of the Union Pacific. Is that correct (handing paper to witness)?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Who is Mr. Thorne?

Mr. MILLAR: Officially, you mean?

Mr. KELLOGG: Yes, what official is he of the Union Pacific Road?

Mr. MILLAR: He is the director of purchases of all these four companies.

—. ——.

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And he is a director in the Southern Pacific, but not in the Union Pacific?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: A. K. Vandeventer is a director in the Southern Pacific in 1906, but not in the Union Pacific. Who is A. K. Vandeventer?

Mr. MILLAR: He is Assistant Treasurer of the Southern Pacific Company.

Mr. KELLOGG: Assistant Treasurer of the Southern Pacific Company?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Is he an officer of any of the other companies?

Mr. MILLAR: Of the three other companies, no, sir.

Mr. KELLOGG: Is not he assistant secretary of one of the companies?

Mr. MILLAR: Well, not to my recollection.

Mr. KELLOGG: Mr. Maxwell Evarts I see is a director in the Southern Pacific in 1906, but not in the Union Pacific Company. Officially, what position does Mr. Evarts hold in the Union Pacific?

105 Mr. MILLAR: Attorney.

Mr. KELLOGG: He is attorney for the Union Pacific?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Now, the Board of Directors for 1906, elected in October, 1906, of the Union Pacific Company is the same Board elected in 1905 and shown on this list, is it?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: So we have the complete Boards, if this is correct (referring to exhibit)?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: From and including 1900 and down to the present time?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: I have simply had identified the by-laws of the four Pacific Companies and I mean by that, the Union Pacific, the Short Line, the Navigation and the Southern Pacific Companies as Exhibits from four to ten, inclusive. I offer them now in evidence.

(Same are marked Exhibits 4, 5, 6, 7, 8, 9 and 10, inclusive to Mr. Millar's testimony.)

Mr. KELLOGG: Will you turn to the record book of the Executive Committee meetings of the Union Pacific Railroad Company, Page 213, March 19, 1903, Mr. Millar? (Witness refers to book.)

Mr. KELLOGG: Well, never mind that, Mr. Millar. It does not seem to be the right resolution. Mr. Millar, the Southern Pacific Company's meeting is held in April every year, is it not?

Mr. MILLAR: The annual stockholders', yes, sir.

Mr. KELLOGG: Along about April 6th? What day? Do you remember?

Mr. MILLAR: No, sir.

Mr. KELLOGG: Monday or Tuesday?

Mr. MILLAR (referring to book): The Wednesday following the first Monday in April.

Mr. KELLOGG: The Wednesday following the first Monday?

106 Mr. MILLAR: Yes, sir.

Mr. KELLOGG: About when are the books of the Southern Pacific Company closed for this annual meeting?

Mr. MILLAR: We have not had any fixed date. I think the effort has been to give sufficient time to make up the lists—about 30 days.

Mr. KELLOGG: About thirty days? That is, the Executive Committee or the Board of Directors of the Southern Pacific Company close the books on a certain day, about thirty days before the Annual Stockholders' Meeting, in order to allow you to make up the list of stockholders appearing of record as the stockholders of that company on that date?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: This is the usual custom in all railways, is it not?

Mr. MILLAR: Yes, I think so, with some exceptions.

Mr. KELLOGG: They close their books on a certain day?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the stockholders appearing on that day vote the stock?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Now, the books of the Southern Pacific Company showing its stockholders on the day are of course, and have been, under your control, since the Union Pacific acquired its stock, have you not?

Mr. MILLAR: The stock books, yes, sir.

Mr. KELLOGG: And no one but you or the officials of that company have access to those books?

Mr. MILLAR: Nor ordinarily, no sir. There have been exceptions.

Mr. KELLOGG: Ordinarily not, you say?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: When the books have been closed, you, as Secretary, or under your direction, you have prepared a list of the stockholders of the Southern Pacific Company who are entitled to vote at its annual meeting?

Mr. MILLAR: Yes, sir.

107 Mr. KELLOGG: Those are the stockholders who show of record on the date the books are closed?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Now as a matter of fact you then send out proxies?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: To each stockholder who appears of record on the books of the Southern Pacific on the day they are closed?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Those proxies are sent out with the names of certain persons which you have inserted to vote their stock, are they not?

Mr. MILLAR: I think generally, yes, sir.

Mr. KELLOGG: Generally three names?

Mr. MILLAR: I am not aware that there is any rule about the number.

Mr. KELLOGG: Well, you generally put in two or three, do you not?

Mr. MILLAR: Yes, more than one, usually.

Mr. KELLOGG: They are usually officials, or somebody connected with your organization?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And in every instance since the Union Pacific obtained the stock in the Southern Pacific Company, those proxies have been some persons in the employ of the Union Pacific Company, have they not?

Mr. MILLAR: I could not answer that offhand. I have never attended the meetings of that company.

Mr. KELLOGG: Well, what is your recollection—either officers or somebody connected with the organization of the Union Pacific Railroad?

Mr. MILLAR: I should want to see those names before committing myself, because I am not familiar with those proxies.

Mr. KELLOGG: Well, I show you a Southern Pacific proxy (handing proxy to witness), which may be marked No. 11, which purports to be the proxy for the annual meeting of the Southern Pacific Company to be held at Beechmont, Jefferson County, Kentucky, Wednesday, the 4th of April, 1906. The names of the parties inserted as voting the Union Pacific or Short Line stock at that time are E. H. Harriman, Alex. P. Humphrey and W. D. Cornish. Mr. Harriman and Mr. Cornish are respectively the president and vice president of the Union Pacific Railroad Company, are they not?

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Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Who is the other?

Mr. MILLAR: I think a lawyer in Louisville, not identified with the Union Pacific, according to my knowledge.

Mr. KELLOGG: Mr. Harriman is the only president of the Union Pacific, isn't he?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: You said, "among others" he is the only president of the Union Pacific, isn't he?

Mr. MILLAR: Among other companies, I mean?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: I show you Exhibits 11, 12, 13, 14, 15, 16, 17, 18,

and 19. Are those the proxies, form of proxies, sent out by you or under your direction to the stockholders of the Southern Pacific Co. at each annual meeting since 1900 for the election of directors?

It is admitted by Judge Lovett that they are; that is correct.

Mr. HARLAND: From what office are they sent out?

Mr. KELLOGG: I was just going to ask that. From what office are they sent out?

Mr. MILLAR: Southern Pacific Co.

Mr. KELLOGG: In New York?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Under your charge?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: The same office the Union Pacific has down here?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: 120 Broadway, isn't it?

Mr. MILLER: Yes, sir.

109 Mr. KELLOGG: All these four companies, Pacific companies, have common offices here in New York, have they not?

Mr. MILLAR: Well, hardly.

Mr. KELLOGG: They are in the same building?

Mr. MILLAR: Yes sir, they are in the same building.

Mr. KELLOGG: The principal offices are — the same building?

Mr. MILLAR: Some of them yes, sir.

Mr. KELLOGG: The president and vice president, you have already told us?

Mr. MILLAR: Yes, sir. Some of the departments are entirely separate.

Mr. KELLOGG: Some of the departments are separate?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Yes, but the secretary's office and the comptroller's office and the president's office and the vice president's office and the counsel's office are all common.

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And I notice by looking at each of these proxies that a majority of the persons to vote the Southern Pacific stock were Union Pacific officials or employees, is that not true?

Mr. MILLAR: The majority, you say?

Mr. KELLOGG: Yes.

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Those exhibits, from 11 to 19 are offered in evidence.

(The same are hereto annexed and marked Exhibits 11, 12, 13, 14, 15, 16, 17, 18 and 19 in Mr. Millar's testimony.)

Mr. KELLOGG: Now, when you make up these stock lists for the annual meeting for the election of directors of the Southern Pacific, you usually preserve them, do you not?

Mr. MILLAR: Yes sir; that is our intention.

110 Mr. KELLOGG: I wish you would (speaking to the reporter) mark these Exhibits 20, 21, 22 and 23.

(The same are hereto annexed and marked Exhibits 20, 21, 22 and 23 to Mr. Millar's testimony.)

I show you Exhibits 20 to 23, inclusive. Are those the stock lists for the annual meeting of the Southern Pacific Company for 1903, 1904, 1905 and 1906.

Mr. MILLAR: I would just like to see the signatures on those, Mr. Kellogg.

(Counsel shows signatures to witness.)

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: They are?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: You have never obtained at a meeting of the Southern Pacific Company since you became its secretary a full vote of the stockholders, have you?

Mr. MILLAR: No sir.

Mr. KELLOGG: It is not usual, taking into consideration the number of stockholders of the company to have anywhere near a full vote of the stockholders, is it?

Mr. MILLAR: Do you want my opinion?

Mr. KELLOGG: Yes.

Mr. MILLAR: Some of our companies *had* a full vote and some do not.

Mr. KELLOGG: The only companies you have which have a full vote are those where the Union Pacific owns all the stock, isn't it?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Or the Southern Pacific owns all the stock?

Mr. MILLAR: The Union Pacific.

Mr. KELLOGG: I say whether the Union Pacific or the Southern Pacific owns all the stock?

Mr. MILLAR: I limit my answer to the Union Pacific.

Mr. KELLOGG: Well, limit it to the Union Pacific.

111 Mr. MILLAR: Yes, sir.

Mr. KELLOGG: A company whose stock is on the market like the Souther- Pacific Company's stock since the Union Pacific's control, or like the Union Pacific, never has a full vote, does it, at any meeting?

Mr. MILLAR: Not to my knowledge, no, sir.

Mr. KELLOGG: Rarely two-thirds of the stockholders vote, do they?

Mr. MILLAR: It varies, I think.

Mr. KELLOGG: Yes, in the Southern Pacific Co. out of $197,000,000 of common stock—(addressing reporter) will you give that exhibit? Out of $197,000,000 and a little over, of common stock, state about the average amount of stock represented at a meeting.

Mr. MILLAR: At the meeting of 1900, out of 1,884,000 shares, 1,859,000 shares were voted.

Mr. KELLOGG: That was before the Union Pacific's control wasn't it?

Mr. MILLAR: Yes, sir. In 1901 out of 1,978,000 shares 1,736,000 were voted. At a second meeting of the same year 1,742,000 shares were voted. In 1902, 1,572,000 were voted, and up to 1904, about the same number of shares were voted. In 1905, after an increase of the capital stock, 1,974,000 shares were voted; and in 1906, 2,000,000; a little over 2,000,000 shares were voted.

Mr. KELLOGG: And the Oregon Short Line owned and voted more than a majority, a large majority of the stock voted at the meeting?

Mr. MILLAR: I am not capable of testifying to that fact.

Mr. KELLOGG: That is admitted by your counsel. It appears in this paper, does it not?

Mr. MILLAR: I think not, sir, no.

Mr. KELLOGG: Doesn't it appear?

Mr. MILLAR: I don't acknowledge it in any way.

Mr. KELLOGG: Well, a majority?

Mr. MILLAR: This statement does not show who voted, and I am not familiar with the facts.

Mr. KELLOGG: They owned a majority that was voted at that meeting, didn't they?

112 Mr. MILLAR: I have no means of knowing that, no, sir.

Mr. KELLOGG: Is it admitted?

Mr. MILBURN: Yes, sir, it is on the record.

Mr. KELLOGG: I show you page 151 and 152 of Volume 2 of the Executive Committee of the Union Pacific, is that the original record?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Of these Executive Committee meetings of the Union Pacific Railroad Company?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Will you please read the resolution by which the Union Pacific designated the directors to be voted for in the Southern Pacific, with the names of the directors?

Mr. MILLAR: Yes, sir, the record reads as follows:

Mr. MILLAR (Reading): "March 21st, 1901. Attention having been called to the approaching stockholders' meeting April 3rd, of the Southern Pacific Company, it was, on motion duly made and seconded, unanimously resolved that the stock held for and on behalf of this company be voted for the following list of directors:

T. J. Coolidge, Jr., George J. Gould, E. H. Harriman, Edwin Hawley, Charles M. Hayes, H. E. Huntington, James H. Hughitt, Otto Kahn, John W. Mackey, D. O. Mills, Winslow S. Pierce, James Schiff, James Speyer, James Stillman, Charles H. Tweed."

Mr. KELLOGG: Mr. Millar, who gave you the names of the persons to vote the Southern Pacific stock as proxies, to put in the printed proxies which you sent out?

Mr. MILLAR: Do you mean every year or in one particular year?

Mr. KELLOGG: Every year, who directed it.

Mr. MILLAR: I do not recall it.

Mr. KELLOGG: Mr. Harriman?

Mr. MILLAR: I do not recall it.

Mr. KELLOGG: You don't know?

113 Mr. MILLAR: I don't remember. We have so many proxies and so many meetings that I really don't remember that fact.

Mr. KELLOGG: Judge Cornish?

Mr. MILLAR: I might have discussed it with Judge Cornish?

Mr. KELLOGG: And discussed it with Mr. Harriman?

Mr. MILLAR: I think not.

Mr. KELLOGG: Who gave you the list of directors to elect in the Southern Pacific Company?

Mr. MILLAR: I don't understand that question. I don't elect the directors.

Mr. KELLOGG: Well, who names the list of directors, then, to be elected in the Southern Pacific Company?

Mr. MILLAR: I don't know.

Mr. KELLOGG: To be voted for, then.

Mr. MILLAR: I don't know.

Mr. KELLOGG: Well, you know one year there the Oregon Short Line did it, don't you—or the Union Pacific, I mean.

Mr. MILLAR: The Committee ordered that list, yes, sir, that year.

Mr. KELLOGG: Do they usually do that?

Mr. MILLAR: I don't recall that they do.

Mr. KELLOGG: You don't know?

Mr. MILLAR: No.

Mr. KELLOGG: You don't know, then, who does select them?

Com'r LANE: Who is the Executive Committee of the Union Pacific?

Mr. KELLOGG: The Executive Committee of the Union Pacific is composed of how many directors?

Mr. MILLAR: There are five at the present time.

Mr. KELLOGG: By your By-laws they are given all the power of the Board, are they not?

Mr. MILLAR: Yes, sir, when the Board is not in session.

Mr. KELLOGG: And by the By-laws the chairman of the Executive Committee is given all the powers of the Executive Committee when it is not in session, is he not?

114 Mr. MILLAR: I think not; no, sir.

Mr. KELLOGG: Are you sure about that?

Mr. MILLAR: I do not feel sure about that; new By-laws have recently been adopted, and I am not so familiar with them as I might be.

Mr. KELLOGG: I will show you the By-Laws in a printed form; Section 12 of the By-Laws of the Oregon Railway & Navigation Company——

Mr. SEVERANCE: You want the Southern Pacific.

Mr. KELLOGG: Well, the Southern Pacific; they are alike, are they not?

Mr. SEVERANCE: I think so, practically.

Mr. KELLOGG: Article 7 of the By-Laws of the Southern Pacific provides——

Mr. MILLAR: Of the Southern Pacific Company?

Mr. KELLOGG: Yes—well, I will take the Union Pacific; they are all the same, I see. Section 12 provides, "The Directors shall elect from their number an Executive Committee of five members. Such Committee shall hold office until the next annual election of directors, and shall, when the Board of Directors is not in session, have all the powers of the Board of Directors to manage and direct all the business and affairs of the company in such manner as such committee shall deem best for the company's interests in all cases in

which specific directions shall not have been given by the Board. The Chairman of the Executive Committee shall be elected by the Board of Directors, and subject to the control and approval of the Executive Committee, shall represent it when it is not in session."

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: So that Mr. Harriman is chairman, isn't he?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Of each executive Committee of all the companies?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the companies have uniform by-laws practically on that subject?

115 Mr. MILLAR: Practically. I have not compared them carefully.

Mr. SEVERANCE: They are in evidence anyway.

Mr. KELLOGG: Now, who designated, from year to year, the names of the directors to be voted for by the Southern Pacific Stockholders?

Mr. MILLAR: I don't know, sir.

Mr. KELLOGG: Who designated the Executive Committee to be elected?

Mr. MILLAR: The Board of Directors.

Mr. KELLOGG: You simply know they were elected?

Mr. MILLAR: Yes.

Mr. KELLOGG: Who designated their names to be voted for?

Mr. MILLAR: I don't know, sir.

Mr. KELLOGG: You don't know. All right.

Com'r LANE: Does the record show who introduced that resolution?

Mr. MILLAR: No, sir. We do not in our records generally give the name of the party making the motions.

Com'r LANE: You don't know who introduced that resolution?

Mr. MILLAR: No, sir—this particular resolution?

Com'r LANE: Yes.

Mr. MILLAR: No, sir.

Mr. KELLOGG: I show you a resolution of the Board of the Union Pacific adopted August 29, 1899, and certified by you. Is that a correct certified copy of the resolution of that date?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: I offer the same in evidence.

(Paper marked Exhibit No. 24, to Mr. Millar's testimony.)

Mr. KELLOGG: State generally what that resolution is. Isn't that the resolution for the acquisition of the securities of the Oregon Short Line and the Navigation Company by the Union Pacific?

116 Mr. MILLAR: It provided for the acquisition of the Income A bonds and the Income B bonds of the Oregon Short Line Railroad Company, and a part of the preferred and common stock of the Navigation Company.

Mr. KELLOGG: Yes, sir. The Union Pacific already owned the stock or most of it, of the Short Line, did it not—1899, if you recollect?

Mr. MILLAR: I do not recall the dates, Mr. Kellogg. I think that is probably the fact.

Mr. KELLOGG: I call the attention of the Commission to one recital in this resolution for the acquisition of stocks of the Navigation Company and certain income bonds: "Whereas the lines of railroad of the said Oregon Short Line Railroad Company and the said Oregon Railroad and Navigation Company constitute extensions of auxiliary lines of the railroad of this company, and they are not parallel or competitive therewith."

Please mark this paper.

(Paper marked Exhibits 25, to Mr. Millar's testimony.)

Mr. KELLOGG: I show you Exhibit 25. Is that a certified copy of a resolution?

Mr. MILLAR: This is a certified copy of a resolution adopted by the Board of Directors of the Union Pacific Railroad Company February 20, 1901.

Mr. KELLOGG: That was for the acquisition of the Southern Pacific stock, was it not?

Mr. MILLAR: It had in view the purchase of some shares of Southern Pacific.

Mr. KELLOGG: I offer the resolution in evidence.

(Paper marked Exhibit 25 to Mr. Millar's testimony.)

Mr. HARLAN: Is the amount given there?

Mr. KELLOGG: For its acquisition, 750,000 shares.

Mr. HARLAN: Does it also appropriate the funds of that company?

117 Mr. KELLOGG: Provides how they should be paid for.

Now, please mark this paper.

(Paper marked Exhibit 26.)

Mr. KELLOGG: I show you Exhibit 26. Is that a certified copy of a resolution of the Board of Directors of the Union Pacific Company adopted January 21st, 1901, for financing the Union Pacific matters?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: I offer that exhibit in evidence.

(Paper marked Exhibit 26 to Mr. Millar's testimony.)

Com'r LANE: What does it purport to be?

Mr. KELLOGG: For financing the Union Pacific Company.

Com'r LANE: A transcript of the record?

Mr. KELLOGG: A transcript of the record of the Board of Directors of the Union Pacific Company. I do not think it is important to take the time to read these to the Commission now. Most of them are formal matters, but we will call the attention of the Commission to those which we particularly wish to, later.

Com'r LANE: It should be specifically stated in each case that they are transcripts of the books.

Mr. KELLOGG: Oh, yes, I may ask the question.

Mr. LOVETT: They have been certified by the secretary.

Mr. KELLOGG: Kindly mark these papers.

(Papers marked Exhibits 27 to 37 inclusive.)

Mr. KELLOGG: I show you Exhibits 27 to 37; are those exhibits

certified transcripts from the record books of the Board of Directors, stockholders and Executive Committee of the Union Pacific
118 and Short Line Companies, as they purport to be—certified by you?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: I offer those in evidence.

(Papers marked Exhibits 27 to 37 respectively to Mr. Millar's testimony.)

Mr. KELLOGG: I show you volume 3 of the Executive Committee records of the Union Pacific Railroad Company (page 59) and ask you what the resolution is that appears on that page?

Mr. MILLAR: In brief, the resolution which was adopted September 29, 1904, page 59, showed that the president of the company stated to the meeting that he had purchased 102,000 shares preferred capital stock of the Chicago & Alton Railway Company, and that such action on his part was approved and confirmed.

Mr. KELLOGG: Is that all?

Mr. MILLAR: Mr. Kahn, a member of the committee, being excused from voting on the resolution at his own request.

Mr. KELLOGG: Is that the only resolution there?

Mr. MILLAR: A following resolution requested Messrs. E. H. Harriman, James Stillman, Jacob H. Schiff and R. S. Lovett, for the account of the Union Pacific Company, to make and execute with Messrs. W. B. Leeds, W. H. Moore, D. G. Reid and J. H. Moore a contract substantially in the form submitted to the meeting, and to deposit with the trustees thereunder certain shares of preferred stock of the Chicago & Alton Railway Company owned by the Union Pacific Company.

Mr. KELLOGG: How many shares?

Mr. MILLAR: It is the same stock, presumably.

Mr. KELLOGG: 103,431 shares, wasn't it?

Mr. MILLAR: 103,431 shares preferred stock of the Chicago & Alton Railway Company and to take such action as was necessary to carry out the agreement.

119 Mr. KELLOGG: I offer the full resolution, containing a copy of the contract, in evidence, and ask the counsel to admit that the copy furnished us is a true copy of the contract and the supplemental contract.

Mr. LOVETT: Yes, and that they were executed by the parties.

Mr. KELLOGG: And that they were executed by the parties.

Mr. KELLOGG: And that they were executed by the parties named.

Com'r LANE: What is the substance of that contract?

Mr. KELLOGG: I will state it in a moment.

(Paper marked Exhibit 38, to Mr. Millar's testimony.)

Mr. MILLAR: Have you the copy of the resolution Mr. Kellogg?

Mr. KELLOGG: I want a copy of the resolution and the contract, and a copy of the subsequent resolution modifying the contract, or for the supplemental contract and the supplemental contract.

Mr. SEVERANCE: You had better state to Mr. Lane what the substance of that contract is——

Mr. KELLOGG: Just a moment.

Mr. LOVETT: How many shares was that?

Mr. KELLOGG: 103,431. The contract contained in that resolution—perhaps the easiest way is to read a section of it to the Commission so the Commission may know what it is as we go along:

Mr. KELLOGG (reading): "This agreement, made and entered into this 4th day of October, 1904, by and between E. H. Harriman, Jacob H. Schiff, James Stillman, and R. S. Lovett, all of the State of New York, parties of the first part; W. B. Leeds, W. H. Moore, D. G. Reid, all of the State of New York, and J. H. Moore, of the State of Illinois, parties of the second part; and Central Trust Company of New York, a corporation of the State of New York, hereinafter called the Trustee, party of the third part."

120 Generally speaking, this is a contract for the joint control by the election for the directors of the Chicago & Alton Railway Company, between the Union Pacific and the Rock Island—is that the Rock Island?

Mr. LOVETT: Yes.

Mr. KELLOGG: And the Rock Island Company.

Mr. LOVETT: I suppose they were acting for the Rock Island.

Mr. KELLOGG: Yes, I know. We will try and prove that. Section I of the contract provides that "The parties of the first part have transferred, set over and assigned,"—that is, Mr. Harriman, Mr. Schiff, Mr. Stillman and Mr. Lovett—"and do hereby transfer, set over and assign to the Trustee certificates for 103,431 shares of the preferred stock of the Chicago & Alton Railway Company, a corporation organized and existing under the laws of the State of Illinois, hereinafter called the Railway Company. The parties of the second part have transferred"—that is Mr. Leeds, Mr. W. H. Moore, Mr. D. G. Reid, and Mr. J. H. Moore—"set over and assigned, and do hereby transfer, set over and assign unto the Trustee certificates for 40,000 shares of the preferred stock and for 63,431 shares of the common stock of the Railway Company. All said shares of stock shall be held by the Trustee under the powers and subject to the terms and conditions of this agreement.

Second, the Board of Directors of the Railway Company is composed of the following named six persons, who are the nominees of the parties of the first part, to wit, Normal B. Ream, James B. Forgan, S. M. Felton, John J. Mitchell, James Stillman, E. H. Harriman; and the following named five persons who are the nominees of the parties of the second part, to wit, W. B. Leeds, James Hobart Moore, William H. Moore, Daniel G. Reid and Robert Mather.

At the annual meeting of the stockholders of the Railway Company for the election of directors to be held in the year 1905, the Trustee shall vote or cause to be voted all the shares of stock deposited with the Trustee under this agreement in favor of the

121 election as directors of the Railway Company, of two persons to be nominated by the parties of the first part, and of two persons to be nominated by the parties of the second part. At the annual meeting of the stockholders of the Railway Company for the election of directors to be held in the year 1906, the trustee shall vote or cause to be voted all the shares of stock deposited with the

trustee under this agreement in favor of the election as director of the Railway Company of one person to be nominated by the parties of the first part and of three persons to be nominated by the parties of the second part. Thereafter at each annual meeting of the stockholders of the Railway Company, for the election of directors, the Trustee shall vote or cause to be voted all the shares of stock deposited with the Trustee under this agreement in favor of the election as directors of the Railway Company, or person to be nominated by the parties hereto respectively, in such manner that in each year the Board of Directors of the Railway Company shall be composed of six nominees of such party hereto as shall have been represented on said Board of Directors during the preceding year by five nominees; the purpose and intent of the agreement being to provide and to insure that during the continuance of this agreement the Board of Directors of the Railway Company shall until the usual election of directors in the year 1906, and during each alternate year thereafter, be composed of a majority nominated by the parties of the second part. To that end the parties of the first part and the parties of the second part covenant and agree to and with each other, for themselves as directors, of the Railway Company and for their nominees, that all vacancies occurring in the Board of Directors of the Railway Company shall be so filled as to effectuate and carry out the purpose and intent of this agreement; and that the Executive Committee of the Railway Company shall in each year be composed of a majority of Directors nominated by or representing the
122 parties whose nominees for the time being are entitled under this agreement to constitute a majority of the Board of Directors of the Railway Company.

There is no use reading any more. The effect of it is that one year the Rock Island has the control and one year the Union Pacific has the control of the election of a majority of the Board, and alternate. This continues for ten years—I think it is ten years.

Mr. LOVETT: And as to the purchase of stock——

Mr. KELLOGG: There was also a part of it giving to the party of the second part, the Rock Island interests, the right to buy the Union Pacific's 103,431 shares of stock. Has that been exercised?

Mr. LOVETT: It is conceded that it has not.

Mr. KELLOGG: It is conceded that it has not been and that the contract is in full force?

Mr. LOVETT: Yes.

Mr. KELLOGG: The contract provides, as to the two classes of stock named, whether the Union Pacific and the Rock Island, constitute a majority of the stock of the Alton Company of both classes; is that not so?

Mr. LOVETT: Yes.

Mr. KELLOGG: I think it is, yes.

The CHAIRMAN: Does it appear in what manner the funds are procured by the Union Pacific for the purchase of this stock of the Alton, or will that be developed later?

Mr. KELLOGG: That will be developed later.

Mr. KELLOGG: You don't know, or do you know how the funds were procured for this Rock Island stock by the Union Pacific?

Mr. MILLAR: No, only out of the current assets of the company.
Mr. KELLOGG: Out of the current assets of the company?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Of the Union Pacific Company?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: The Union Pacific still owns this stock, does it?
123 Mr. MILLAR: Yes, sir.
Mr. KELLOGG: And Mr. Harriman, Mr. Schiff, Mr. Stillman and Mr. Lovett are the representatives of the Union Pacific?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Who is Mr. W. B. Leeds?
Mr. MILLAR: I know Mr. Leeds by reputation, but I don't know him very well.
Mr. SEVERANCE: Mr. Leeds is out.
Mr. KELLOGG: Well, W. H. Moore and Mr. D. G. Reid and Mr. J. H. Moore were at that time directors of the Rock Island Company, were they not?
Mr. MILLAR: Yes, I know those gentlemen.
Mr. KELLOGG: Do you know whether they still are?
Mr. MILLAR: I believe they are, yes, sir.
Mr. KELLOGG: Do you understand that they represent the Chicago, Rock Island and Pacific Railroad Company?
Mr. MILLAR: There are several Rock Island companies. I really don't know the connections between the one and the other.
Mr. KELLOGG: But one of the Rock Island Railroad Companies they represent?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: And the Rock Island Company owns everything as designated as in the name of the party of the second part?
Mr. MILLAR: I have no knowledge of that.
Mr. KELLOGG: You don't know. Where are the books of the Chicago & Alton Railway Company?
Mr. MILLAR: The last I knew of them I turned them over to Mr. George T. Boggs, who succeeded me as secretary of the company. I refer to the books of record.
Mr. KELLOGG: Yes, I do, too.
Mr. MILLAR: 71 Broadway.
Mr. KELLOGG: About what time did you become the secretary of the Chicago & Alton Railway Company?
Mr. MILLAR: My recollection isn't clear as to that; some four or five years ago.
124 Mr. KELLOGG: Up to what time were you the secretary?
Mr. MILLAR: Up to October, 1906.
Mr. KELLOGG: October, 1906. During all of that time Mr. W. D. Cornish, who is vice-president, or was vice-president of the Union Pacific, was Vice-President of the Chicago & Alton?
Mr. MILLAR: In nearly all that time, yes, sir.
Mr. KELLOGG: And the same auditor, Mr. Young, was general auditor of the Alton, was he not?
Mr. MILLAR: Part of the time.

Mr. KELLOGG: Part of the time?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: During the later years?
Mr. MILLAR: The later years, yes, sir.
Mr. KELLOGG: And the same treasurer; they had the same treasurer?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: And the same secretary?
Mr. MILLAR: Yes.
Mr. KELLOGG: And the same comptroller?
Mr. MILLAR: Yes, part of the time the same comptroller.
Mr. KELLOGG: The same as the Union Pacific, I mean?
Mr. MILAR: Yes, sir; part of the time.
Mr. KELLOGG: Now, October 1st, 1906, you ceased to be secretary. Did these other officers resign?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: And the road turned over to the company?
Mr. MILLAR: I am not aware there was any turning over.
Mr. KELLOGG: Well, the management of it?
Mr. MILLAR: The same president remains president.
Mr. KELLOGG: Mr. Felton?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Did the Vice President resign?
Mr. MILLAR: I don't know, sir. I wasn't at the meetings where this action was taken.
125 Mr. KELLOGG: To whom did you say you delivered the record book?
Mr. MILLAR: Mr. George T. Boggs, the secretary.
Mr. KELLOGG: Where is his office?
Mr. MILLAR: 71 Broadway.
Mr. KELLOGG: Is that the Rock Island office?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: To whom did the comptroller turn over the books, do you know?
Mr. MILLAR: I don't know.
Mr. KELLOGG: You don't know anything about it except the secretary's books. Did you say G. D. Boggs.
Mr. MILLAR: George T. Boggs.
Mr. KELLOGG: George T. Boggs.
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Have you in your possession any of the records or papers of the Chicago & Alton Railway Company or the Chicago & Alton Railroad Company, or of any of the companies connected therewith?
Mr. MILLAR: I think I have a few copies of pamphlets, and there were duplicates which they decided they would not take over until they were ready to take them over.
Mr. KELLOGG: You have no other papers?
Mr. MILLAR: No, sir.
Mr. KELLOGG: I show you a resolution, or rather a certified transcript of resolution of the stockholders of the Oregon Short Line

Railway Company, adopted Oct. 14, 1903, and headed "Approval of San Pedro Agreements, conveyances, etc."; is that a certified transcript of the record of the meetings of the stockholders of the company of that date?

Mr. MILLAR: It is.

Mr. KELLOGG: While Judge Lovett is checking up this document, I will read this resolution, which purports to be a resolution of the stockholders of the Short Line Co. adopted October 14, 1903:

126 "*Approval of San Pedro Agreements, Conveyances, Etc.*

Upon motion, duly made and seconded, it was unanimously

Resolved, That all and singular the action of the Board of Directors and executive committee, as set forth or referred to in their respective minutes be and they are hereby ratified, approved and confirmed.

Resolved further, That all the acts of E. H. Harriman, as trustee, and the acts of each of the officers of this company, in making the arrangements, contracts, and conveyances, between E. H. Harriman, trustee, and W. A. Clark, trustee, the said Harriman and Clark, as trustees, and the San Pedro, Los Angeles and Salt Lake R. R. Co. and each of the other arrangements, contracts, and conveyances, made in connection with the settlement of controversies with said San Pedro, and to provide for acquiring and holding an interest in the capital stock of the said San Pedro Company, and to provide for certain traffic arrangements, all of which are set forth in full in the minutes of the Executive Committee; including the making, execution and delivery of conveyances by the Oregon Short Line Railroad Company, the New East Tintic Railway Company, the Utah and Pacific Railroad, the Utah, Nevada & California Railroad Company, and by W. H. Bancroft, as Trustee, to the San Pedro, Los Angeles & Salt Lake Railroad Company; and also including the making of assignments of the capital stock of the New East Tintic Railway Company, the Utah & Pacific Railroad Company, the Utah, Nevada & California Railroad Company, the Utah & Nevada & California Railroad Company in California, to the said San Pedro, Los Angeles & Salt Lake Railroad Company; and including also the execution and delivery of a certain agreement between W. A. Clark, trustee for himself and as trustee, as the party of the first part, and E. H. Harriman as trustee, as party of the second part, and

127 the Farmers' Loan & Trust Company as party of the third part, and the assignment and delivery to said Farmers' Loan & Trust Company of the stocks in said agreement specified; and also in executing a certain agreement between said W. A. Clark, and E. H. Harriman, as trustees, and the said San Pedro, Los Angeles & Salt Lake Railroad Company, dated June 3rd, 1903, providing for the loan of certain capital stock of the said San Pedro Company, to be pledged as therein provided, and all of the acts of the said E. H. Harriman, as Trustee, done or performed, and all of the acts of each and every officer of this company required or deemed necessary to be done to fully perform and execute the terms and conditions of

each of said contracts and arrangements; including that certain contracts of July 9, 1902, made between W. A. Clark and E. H. Harriman and each and every one of them, be and the same are hereby ratified, approved and confirmed."

Mr. KELLOGG: Will you get me the contract of 1902, which Judge Cornish was having copied?

Mr. SEVERANCE: Leave a blank space there.

Mr. KELLOGG: You may state that Exhibit 52 was numbered and is to be produced this afternoon.

Mr. LOVETT: Just refer to it as if it was introduced in that connection.

Mr. KELLOGG: It is a contract made in 1902, between Mr. Harriman and Mr. Clark, and referred to in that resolution.

It is admitted that Exhibits Nos. 40 to 51 are as follows:

No. 40 is a contract between William A. Clark individually and as tristee, Edward H. Harriman as trustee, and the Farmers' Loan & Trist Co. for the deposit of all of the stock of the San Pedro Railroad—called San Pedro for short—with the Farmers' Loan & Trust Company.

No. 41 is a traffic agreement between the Oregon Short Line Railroad Company and the San Pedro, Los Angeles & Salt Lake Railroad Company, and Union Pacific Company, dated June 18th, 1903.

128 No. 42 is a Traffic Contract between the Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Company, dated the same date.

No. 43 is a contract between the Oregon Short Line Railroad Company, and the San Pedro, Los Angeles & Salt Lake Co., dated June 18th, 1903.

No. 44 is a contract between the Oregon Short Line Railroad Company, the San Pedro, Los Angeles & Salt Lake Company and the Union Pacific, being the guarantee of the Union Pacific Company to release the lien of present and future holdings of income A, or income B bonds.

No. 45 is a contract between the Southern Pacific Company and the San Pedro Company for trackage from Riverside to San Bernardino.

The other contracts are deeds of various railways from the Short Line or the companies owned and controlled by the Short Line to the San Pedro Company, which as I understand was about 512 miles. These facts I believe are admitted and the contracts are all duly execued between these companies.

I call the Commissioner's attention, simply for the convenience of the Commission when it comes to examine this record, to Article 2 and 3, of Exhibit No. 42, a contract between the Southern Pacific Co. and the San Pedro, Los Angeles, and Salt Lake Railroad Company dated June 18, 1903:

"Article 2. In partial consideration of the said covenants and agreements of the said Southern Company contained in Article 1 hereof, said San Pedro Company hereby covenants and agrees with said Southern Company, that it will, upon the execution of this agreement, adopt, print, publish and put in force at all points upon its lesed, owned or operated railroad, for the handling of local busi-

ness thereon, the lawful rates, tariffs, classifications and charges used by said Southern Company for the handling of any local business which may be the subject of competition between them."

129 That is all of Article 2. Now, Article 3:

"Each party hereto mutually covenants and agrees to and with the other that after the adoption and putting in force of rates as provided by Article 2 hereof, neither of them shall or will change any such rates without the consent of the other party hereto unless such change may be made necessary in order to meet the rates, charges, classifications or tariffs of any other company or competing line of railroad or to conform to the final decree or judgment of some court of competent jurisdiction, or some lawful and valid requirement of State or National law."

Com'r LANE (Referring to Exhibit No. 42.): It says that this contract shall exist and be binding upon each of the parties hereto for the term of ninety-nine years from the date hereof, or so long as the said agreement between the said Oregon Short Line Railroad Company and the Union Pacific Railroad Company, bearing date the 18th day of June, 1903, shall be in force and observed by the parties thereto."

Mr. KELLOGG: That is a traffic agreement between the Oregon Short Line Railroad Co., and the San Pedro, Los Angeles and Salt Lake Railroad Co., and the Union Pacific Company. That is a long time contract; the exact time I do not know.

Mr. SEVERANCE: 99 years.

Com'r LANE (Addressing Mr. Kellogg): Will you let me see that one? (Indicating Exhibit No. 41.)

Mr. KELLOGG: Yes, sir.

(Exhibit No. 41 handed to Com'r Lane.)

The CHAIRMAN: Do we understand, Mr. Kellogg, that that agreement, running ninety-nine years, contains a provision, among other things, by which each party agrees not to change its rates without the consent of the other?

Mr. KELLOGG: That is exactly what it is, and that one party to that contract is the Southern Pacific Company, which does not own, so far as I know, a share of stock in the San Pedro Company. In other words, the San Pedro road is tied up by contracts, be-

130 tween the Oregon Short Line and the Union Pacific and Southern Pacific and all its stock—the San Pedro's stock—deposited with the Farmers' Loan & Trust Company of New York—the Trust agreement is in evidence—to be voted by it under direction —by Clark and Harriman, and the letters giving those directions will be furnished us this afternoon by the Farmers' Loan & Trust Company and offered in evidence. Are they there now?

Mr. SEVERANCE: No.

Com'r LANE: It goes still further than that. (Referring to contract.) It goes this far: that this company, the San Pedro company, agrees to put in the Southern Pacific rates.

Mr. KELLOGG: Yes, that was Section 2.

Mr. SEVERANCE: Article 2.

Mr. KELLOGG: Article 2. Article 3 agrees not to change them.

The CHAIRMAN: So the construction of another Trans-Continental

line did not have the effect of reducing the charges of the Trans-Continental carriers.

Mr. KELLOGG: I should say not, under that contract. That is all the questions I wish to ask Mr. Millar immediately, but I should like to recall him when I get the rest of the copies they are making for us.

The CHAIRMAN: Do counsel for the railroads desire to interrogate Mr. Millar?

Mr. MILBURN: Mr. Millar is to be recalled, I understand.

The CHAIRMAN: You do not care to interrogate him at this time?

Mr. MILBURN: No.

The CHAIRMAN: Well, he will be excused for the time. Who will you call next?

Mr. KELLOGG: I will call Mr. Mahl.

WILLIAM MAHL, called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Mahl, what official position do you occupy with the Union Pacific Railroad Company?

131 Mr. MAHL: That of comptroller.

Mr. SEVERANCE: What official position have you with the Southern Pacific?

Mr. MAHL: Comptroller.

Mr. SEVERANCE: And with the Oregon Short Line?

Mr. MAHL: Comptroller, also.

Mr. SEVERANCE: And with the Oregon Railroad & Navigation Co.?

Mr. MAHL: The same.

Mr. SEVERANCE: And with the various steamship companies that are controlled by those systems? I will name them. Have you any official connection with the Pacific Mail & Steamship Co.?

Mr. MAHL: Yes sir.

Mr. SEVERANCE: What is it?

Mr. MAHL: Controller.

Mr. SEVERANCE: Have you any official connection with the Occidental & Oriental Steamship Co.?

Mr. MAHL: None, that I know of.

Mr. SEVERANCE: Have you any official connection with any steamship line that is affiliated or controlled by the Southern Pacific or Union Pacific interests?

Mr. MAHL: No sir; none that I now control.

Mr. SEVERANCE: Now, as controller of the Union Pacific Railroad Company, what, in general, are your duties?

Mr. MAHL: My jurisdiction extends over the matters in the New York office; the payment of moneys, the keeping of the accounts of moneys that are received and the disbursement.

Mr. SEVERANCE: Does that include the accounts of moneys received from sales of stocks and bonds?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Does it include the accounts relating to the disbursements in the purchase of stocks and bonds?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And does that testimony apply as well to the other companies as to the Union Pacific?

Mr. MAHL: You mean with reference to the Short Line?

132 Mr. SEVERANCE: Yes; and the Southern Pacific.

Mr. MAHL: All the companies of which I am controller?

Mr. SEVERANCE: I beg your pardon?

Mr. MAHL: All the companies of which I am controller?

Mr. SEVERANCE: Yes, that is what I meant; all the companies of which you are controller.

Mr. MAHL: It does, so far as they are made in New York.

Mr. SEVERANCE: Now, Mr. Mahl, it appears that Mr. Erastus Young, of Omaha, is general auditor of these companies. What relations have you with Mr. Young? Does he report to you?

Mr. MAHL: Only a summary of the operations.

Mr. SEVERANCE: What jurisdiction has Mr. Young in the accounting department?

Mr. MAHL: Entirely.

Mr. SEVERANCE: Entire jurisdiction over——

Mr. MAHL (interrupting): The accounting departments of the lines of the railroads—out on the lines of the railroads and steamship companies.

Mr. SEVERANCE: That is, all the operating accounts are controlled by Mr. Young of all the companies I have named—these four companies I mean?

Mr. MAHL: Let me make—each of these companies have an auditor of their own.

Mr. SEVERANCE: I understand. But Mr. Young is the general auditor and they are all under his direction are they not?

Mr. MAHL: Yes sir.

Mr. SEVERANCE: And Mr. Young is, to a certain extent, I suppose, under your direction, isn't he?

Mr. MAHL: None.

Mr. SEVERANCE: How is that?

Mr. MAHL: None whatever.

Mr. SEVERANCE: He merely reports to you a summary of the operations because you have charge of the accounts relating to the financiering of the company?

Mr. MAHL: In New York.

133 Mr. SEVERANCE: Yes. Well, the financiering is done in New York, isn't it?

Mr. MAHL: Yes sir.

Mr. SEVERANCE: And your office is at 120 Broadway?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Now, Mr. Mahl, you have in your office the accounts which show the properties owned by these various companies, haven't you?

Mr. MAHL: What do you mean by "properties"?

Mr. SEVERANCE: Well, by stocks and bonds and that sort of thing.

Mr. MAHL: Yes sir.

Mr. SEVERANCE: You have stated that you are an officer of the

Pacific Mail Steamship Co. Do you recall how many ships that company has?

Mr. MAHL: Not now, they are published in the last annual report.

Mr. SEVERANCE: Published in the last annual report of what company?

Mr. MAHL: The Pacific Mail.

Mr. SEVERANCE: Do you make a report—you do not make a report to the Interstate Commerce Commission, do you?

Mr. MAHL: We publish an annual report.

Mr. SEVERANCE: Have you copies of that at your office?

Mr. MAHL: I can send to the office and get one.

Mr. SEVERANCE: Will you have it here after lunch? That will be just as well?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Between what ports do the boats of the Pacific Mail ply?

Mr. MAHL: Central America, China and Japan.

Mr. SEVERANCE: Honolulu?

Mr. MAHL: I believe so.

Mr. SEVERANCE: San Francisco is the home port of those ships?

Mr. MAHL: At present.

Mr. SEVERANCE: Do you recall, Mr. Mahl, what percentage of the capital stock of the Pacific Mail is owned by the Southern
134 Pacific Railroad Company, or the Southern Pacific Company, I mean?

Mr. MAHL: That is shown in the annual report. Have you one here?

Mr. SEVERANCE: Don't you remember, as a matter of fact that they control a very large majority of that stock, or at least a majority?

Mr. MAHL: No, the report gives it. Have you one here?

Mr. SEVERANCE: No; I don't seem to have it; yes, I have it (counsel hands report to witness).

Mr. MAHL: Out of $20,000,000 capital stock the Southern Pacific Company controls $10,010,000; a fraction over a half.

Mr. SEVERANCE: Just a majority?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: By "controls" you mean, do you not, that the Southern Pacific Company owns that stock?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: What other ships outside the ships of the Pacific Mail does the Southern Pacific Company own, either by stock ownership or direct ownership?

Mr. MAHL: It owns directly a steamship line between New York, Galveston and New Orleans.

Mr. SEVERANCE: And at Galveston and New Orleans this steamship line connects with the rail lines of the Southern Pacific or its subsidiary companies, does it not?

Mr. MAHL: I presume so. I don't know anything about what their traffic arrangements are.

Mr. SEVERANCE: You have stated that the Southern Pacific Com-

pany owns the ships running from New York to Galveston and New Orleans?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: What other steamships, if any does the Southern Pacific own?

Mr. MAHL: None that I now recall. They are all published in the annual report. It is all a matter—it is all there.

135 Mr. SEVERANCE: You don't recall any others than the ones yo have stated?

Mr. MAHL: Than what I have stated.

Mr. SEVERANCE: Now, Mr. Mahl, you, as auditor of the Union Pacific—I mean, as controller of the Union Pacific, have information as to the ownership of any stock in any steamship lines, or any steamships direct by that company?

Mr. MAHL: Repeat that.

Mr. SEVERANCE: Union Pacific——

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Do they own any ships or any stock in steamship lines, steamship corporations?

Mr. MAHL: I think the annual report shows that.

Mr. SEVERANCE: I will let you see it, if you like.

Mr. MAHL: Sir?

Mr. SEVERANCE: I can show you the annual report if that will be of any assistance to you.

(Counsel hands report to witness.)

Mr. MAHL: I thin*d* we show in the table of assets here for the Union Pacific that they own the steamers Aragonia and Numantia.

Mr. SEVERANCE: They belong to the Union Pacific?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And between what ports do those ships ply? They run out of San Francisco to the Orient?

Mr. MAHL: I don't know as a fact where they run to.

Mr. SEVERANCE: You know that they go out of San Francisco?

Mr. MAHL: I have read it in the papers and have read it in the advertisements.

Mr. SEVERANCE: Do you know anything about the steamship company called the Occidental & Oriental Company? Hasn't the Union Pacific stock in that company?

Mr. MAHL: Yes sir.

Mr. SEVERANCE: What is that company?

136 Mr. MAHL: It is a company which I believe has gone into liquidation.

Mr. SEVERANCE: When?

Mr. MAHL: Possibly within the last six, or seven or eight months.

Mr. SEVERANCE: Oh, this year some time.

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: They owned or chartered some ships, don't they? Running out of San Francisco?

Mr. MAHL: That I don't know.

Mr. SEVERANCE: You don't know about that?

Mr. MAHL: No.

Mr. SEVERANCE: Has it gone out of existence?

Mr. MAHL: I am not certain as to that.

Mr. SEVERANCE: Your annual report shows that you——

Mr. MAHL: I heard that they were going into liquidation.

Mr. SEVERANCE: Your report shows that you own stock in that company?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Now, Mr. Mahl, what steamships, if any, does the Oregon Railroad & Navigation Company control or own?

Mr. MAHL: None that I know of. She is a river line. I think it is stated here in the annual report. She is a water line from Portland, Oregon, to Hwaco; about 258 miles of river line along the Columbia River to various points.

Mr. SEVERANCE: Did they in 1905 have any ships; if so, what has become of them?

Mr. MAHL: I couldn't say now, unless I referred to the reports.

Mr. SEVERANCE: I call your attention to the fact that at a meeting of the Executive Committee of the Oregon Railway & Navigation Company held on the 13th of April, 1905, it appeared that "the chairman Mr. Harriman, stated that when the steamships 'Arabia' 'Aragonia' 'Nicomedia' and 'Numantia' were chartered by the Portland & Asiatic Steamship Co. (capital stock of which is owned by this company) it was understood that this company would
137 indemnify the Hamburg-American Line, the owners of such steamships, against loss and damage arising by reason of the arrest, detention, seizure or confiscation of any of said ships by the Russian and Japanese Governments, due to or caused by the carrying of said contraband of war."

Do you know anything about a corporation called the Portland & Asiatic Steamship Company, the stock of which is owned by the Oregon Railroad & Navigation Company?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Between what ports do the ships of the Portland & Asiatic Steamship Company ply?

Mr. MAHL: I don't know.

Mr. SEVERANCE: How is that?

Mr. MAHL: I don't know.

Mr. SEVERANCE: You don't know?

Mr MAHL: No.

Mr. SEVERANCE: Do you know how many ships they have?

Mr. MAHL: I couldn't say even that now.

Mr. SEVERANCE: Have you records in your office to show?

Mr. MAHL: I might have some records.

Mr. SEVERANCE: Do you know how much capital stock that company has which is owned by the Oregon Railroad & Navigation Company?

Mr. MAHL: I could find out by going to the records.

Mr. SEVERANCE: You give us that at two o'clock?

Mr. MAHL: I don't know whether I can give it to you at two o'clock or not, but I will do the best I can.

Mr. SEVERANCE: Well, you will try to get it?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: That company is still in existence, is it not?

Mr. MAHL: So far as I know.

Mr. SEVERANCE: And is in business still, is it not, so far as you know?

Mr. MAHL: I can only tell that from the statement I received in the office.

138 Mr. SEVERANCE: You will have to look that up at the office?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: All right. Now, is there a line of steamships running from Portland to San Francisco, that is owned directly, or through stock ownership by any of those four companies which I have asked you about?

Mr. MAHL: Not that I know of.

Mr. SEVERANCE: What has become of the ships the Oregon Railroad & Navigation Company used to run from Portland to San Francisco?

Mr. MAHL: I don't know anything of my own knowledge. I have only read in the papers that they are sunk.

Mr. SEVERANCE: That they are sunk?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Do your records in your office show whether any ships are still owned?

Mr. MAHL: Their headquarters are out in Portland. I would not——

Mr. SEVERANCE (interrupting): That is what I want to find out. What office would I have to go to to get the facts with reference to that steamship line?

Mr. MAHL: To R. P. Schwerin.

Mr. SEVERANCE: At what place?

Mr. MAHL: San Francisco.

Mr. SEVERANCE: What is his title?

Mr. MAHL. Vice-President and general manager.

Mr. SEVERANCE: Of what company?

Mr. MAHL: Of that steamship company.

Mr. SEVERANCE: What is the name of it?

Mr. MAHL: San Francisco and Portland.

Mr. SEVERANCE: The name is the San Francisco & Portland.

Mr. MAHL: It is either one or the other. It may be the Portland & San Francisco.

Mr. SEVERANCE: You are unable to give us any information about those boats?

Mr. MAHL: Yes, sir.

139 Mr. SEVERANCE: You don't know whether they are still in operation or not?

Mr. MAHL: Not to my knowledge.

Mr. SEVERANCE: You would not be able to ascertain from the records in your office?

Mr. MAHL: No, I will see if I have any records when I return.

Mr. SEVERANCE: Now, Mr. Mahl, I suppose you would not be able

to state offhand, but will you kindly make up, or have made up in your office, unless you have already done so, a statement showing the original stocks and bonds of the Union Pacific?

Mr. MAHL: How is that?

Mr. SEVERANCE: I say, will you kindly have made up in your office a statement showing the original stocks and bonds of the Union Pacific and the dates and amounts of increases, and the amounts received for such increased stock and bonds? I asked Judge Lovett the other day for that, but I understand you haven't yet made them up.

Mr. LOVETT: Yes, I have it.

Mr. SEVERANCE: Oh, I beg your pardon. Judge Lovett has just handed me the statement.

Mr. KELLOGG: Counsel suggest that if it is a convenient place that we adjourn now.

Mr. SEVERANCE: Mark these.

(The same are hereto annexed and marked Exhibits 1 and 2 to Mr. Mahl's testimony.)

Mr. SEVERANCE: I show you Exhibits "1 and 2 Mahl" and will ask you if those papers were prepared under your direction in your office?

Mr. MAHL: They were.

Mr. SEVERANCE: And they are correct, are they—that is your belief?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: I offer in evidence those two exhibits and propose to ask something more about them.

We are quite willing to stop here.

The CHAIRMAN: We will suspend and take a recess until two o'clock.

At 12:45 the Commission adjourned until 2:00 P. M.

140

After Recess.

2 O'CLOCK P. M.

The CHAIRMAN: Proceed, gentlemen.

Mr. SEVERANCE: We are waiting for Mr. Mahl.

Mr. KELLOGG: None of the witnesses seem to be here, that we want.

(After a pause.)

Mr. SEVERANCE: Mr. Millar, do you know where Mr. Mahl is?

Mr. MILLAR: No, sir; we can telephone him.

Mr. SEVERANCE: I wish you would.

Mr. LOVETT: Mr. Mahl left just ahead of me. He had a few minutes and said he was coming right on.

(Mr. Mahl entered the room and resumed the stand.)

Mr. SEVERANCE: Mr. Mahl, I was asking you this morning about the Occidental and Oriental Steamship Company, and you said that that company was in liquidation. I find by examining the Official Railroad Guide—the Railroad and Steamship Guide—during the recess, that in the December issue of that publication, it appears that

that company is still in operation with the steamers "Doric" and "Coptic" and their sailings are given from Hong Kong and other Asiatic ports.

Mr. MAHL: I guess that is more accurate than my information. My understanding was that the company was in liquidation.

Mr. SEVERANCE: What has it done with the ships?

Mr. MAHL: I do not know.

Mr. SEVERANCE: Have you any entries on your records that show any transfers made of the ships?

Mr. MAHL: Not here. The books of the company are in San Francisco.

Mr. SEVERANCE: You know nothing about that?

Mr. MAHL: No, sir.

Mr. SEVERANCE: Now, the annual report of the Union Pacific, which has been introduced here, shows that the Union Pacific
141 road owned certain stock in the Chicago & Alton Company at that time. Have you at our request made up a statement of stocks purchased by the Union Pacific and the Oregon Short Line since the last annual report? (Handing paper to witness.)

Com'r LANE: When was the last annual report made?

Mr. SEVERANCE: It runs up to June 30, 1906.

Mr. MAHL: (Referring to paper handed him by Mr. Severance). That is the statement.

Mr. SEVERANCE: That is the correct statement from your books?

Mr. MAHL: Yes, sir.

The CHAIRMAN: That is a statement of stock in other railroads and steamship companies purchased by the Union Pacific?

Mr. SEVERANCE: And the Oregon Short line?

The CHAIRMAN: Since the 1st of July.

Mr. SEVERANCE: That is right; since the last annual report.

Com'r LANE: What are they?

Mr. SEVERANCE: I will read them. I will have this statement marked Exhibit No. 3, to Mr. Mahl's testimony.

(Same marked No. 3 to Mr. Mahl's testimony.)

(Reading from Exhibit No. 3.)

"The Union Pacific Railroad Company has purchased and owns $28,123,100 of Illinois Central Railroad Company stock"——

The CHAIRMAN (interrupting): Pardon me one moment. Does that statement show the date on which the purchases were made?

Mr. SEVERANCE: No, sir; it does not show the dates; I will inquire about that later. It is a statement of stocks purchased since the 1st of July, since the last annual report.

The CHAIRMAN: And the first item is what?

Mr. SEVERANCE: Illinois Central Railroad Company stock, $28,123,100, out of a total capitalization of $95,040,000, or
142 29.69 per cent. of the stock of the Illinois Central, that is, purchased and owned by the Union Pacific Railroad Company.

The CHAIRMAN: The Union Pacific as a corporation owns nearly 30% of the stock of the Illinois Central?

Mr. SEVERANCE: That is correct, 29.59 per cent. The second item is the St. Joseph & Grand Island common stock, of which they own

$2,900,000, out of a total issue of $4,600,000, or 63.04 per cent., and St. Joseph & Grand Island first preferred, $932,200, out of a total of $5,500,000, or 16.95 per cent.; and second preferred, stock of the St. Joe & Grand Island, $1,250,000 out of a total of $3,500,000, or 35.71 per cent.; or in all 37.37 per cent. of the capitalization of the St. Joe & Grand Island.

This table shows that the Oregon Short Line Railroad Company has purchased and owns $10,000,000 of preferred stock of the Atchison, Topeka & Santa Fe Railroad Company, out of a total outstanding preferred stock capitalization of $131,486,000, or 7.61 per cent. The Santa Fe also has $102,000,000 of common stock, of which the Oregon Short Line owns none; so that they have 4.28 per cent. of the total capitalization of the Santa Fe; also $32,334,200 common stock of the Baltimore & Ohio Railroad Company, out of a total common stock issue of $152,330,060.

The CHAIRMAN: That is held by the Oregon Short Line?

Mr. SEVERANCE: Yes, sir. That is 21.2[illegible] per cent. of the common stock of the Baltimore & Ohio. The Oregon Short Line also owns $7,206,400 of the preferred stock of the Baltimore & Ohio, out of a total issue of $60,000,000, or 12.01 per cent. or a total of 18.62 per cent. of the total capitalization of the Baltimore & Ohio; also $3,690,000 of the common stock of the Chicago, Milwaukee & St. Paul Railroad Company, out of a total common stock issue of that Company of $58,183,900, or 6.34 per cent. The St. Paul road also has $49,654,400 of preferred stock outstanding, of which the Short Line owns none; so that they have in all 3.42 per cent. of the
143 total capitalization of the St. Paul. Of the Chicago & Northwestern Railway Company, they have $2,572,000 of common stock, out of a total issue of $77,516,745.97, or 3.32 per cent. of the common stock issue of the Chicago & Northwestern. The Northwestern also has $22,398,954.56 outstanding of preferred stock, of which the Short Line owns none, so that their holdings amount to 2.58 per cent. of the entire capital stock of the Northwestern. Of New York Central & Hudson River Railroad Company, the Oregon Short Line owns $14,285,745, out of a total outstanding issue of $179,282,060, or 7.97 per cent.

Now, Mr. Mahl, do your books show the prices paid for these various stocks?

Mr. MAHL: They do.

Mr. SEVERANCE: Have you a memorandum with you that shows that?

Mr. MAHL: No.

Mr. SEVERANCE: I asked Judge Lovett for a statement of that. He says it has not yet been prepared, could you have that ready tomorrow if not held here too long this afternoon?

Mr. MAHL: I will try.

Com'r LANE: Those stocks were bought since the last annual report, June 30?

Mr. SEVERANCE: Yes, sir, that is right.

Com'r Lane: Is there any showing of the holdings of the Oregon Short Line or the Union Pacific prior to June 30?

Mr. SEVERANCE (addressing witness): You held none of these stocks of these issues prior to that time?

Mr. MAHL: There was none held then. The report shows everything held after June 30.

The CHAIRMAN: Pardon me, Mr. Severance. This statement shows that the Union Pacific owns about 30% of the Illinois Central. Was that all acquired at one time or at different times?

Mr. MAHL: I think at different times.

The CHAIRMAN: Can you tell at about what date?

Mr. MAHL: I could not.

144 The CHAIRMAN: Well, you have some recollection. Was it seen after the 1st of July, or recently?

Mr. MAHL: Some in July; possibly some in September and October.

The CHAIRMAN: When was the Atchison stock purchased?

Mr. MAHL: I believe in July.

The CHAIRMAN: And the Chicago, Milwaukee & St. Paul?

Mr. MAHL: I think in the same month.

The CHAIRMAN: And the New York Central?

Mr. MAHL: It might be the same month, but I could not say.

The CHAIRMAN: Judge Lovett, will you be good enough to have prepared a statement of the prices paid and showing the dates of the several purchases?

Mr. LOVETT: Yes, sir. While I am on my feet, if the Commission pleases, I would like to state that this memorandum that Mr. Mahl prepared, and which has been introduced in evidence, that this twenty-eight and a half million of Illinois Central stock, includes the holdings of a corporation known as the Railroad Securities Corporation, some $9,500,000.

The CHAIRMAN: What is that?

Mr. LOVETT: Nine and a half millions of the Illinois Central is owned by the Railroad Securities Company, the stock of which is owned by the Union Pacific the Union Pacific does not own directly the entire $28,000,000 but owns part of it through the Securities Company.

The CHAIRMAN: Perhaps you will be good enough to exhibit those details in the statement you prepare as to the dates of purchase and the prices paid?

Mr. LOVETT: Yes, sir.

Com'r LANE: How about the funds with which these stocks were bought? Out of what funds of the Union Pacific were they bought?

Mr. MAHL: I think the report shows here that we had about $51,000,000 cash on hand.

Com'r LANE: Had $51,000,000 cash on hand the 30th of June?

145 Mr. MAHL: Yes; in June.

Com'r LANE: Was the same true of the Oregon Short Line?

Mr. MAHL: It is difficult to put a mark on the money. We only take the general assets.

Com'r LANE: Did the Oregon Short Line borrow any money to make those purchases?

Mr. MAHL: Not that I recollect now.

Com'r LANE: Did the Union Pacific borrow money?

Mr. MAHL: No.

Mr. LANE: None?

Mr. MAHL: No, sir.

Com'r LANE: So the investments must have been made out of the funds of the Oregon Short Line and Union Pacific?

Mr. MAHL: Yes, sir.

Com'r LANE: I say the funds were furnished by the Union Pacific and the Oregon Short Line which bought these stocks?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: In reference to that last question asked you by Mr. Lane, is it not a fact that the Oregon Short Line this fall declared a dividend of 50% on its stock held by the Union Pacific, which nearly exhausted its surplus?

Mr. MAHL: It declared a dividend of 50%, that accumulation for a number of years.

Mr. SEVERANCE: Yes, I understand that, but did it not take $13,000,000 and more to pay that dividend and was not the entire accumulated surplus only $16,000,000 or something of that sort?

Mr. MAHL: That surplus is an operating surplus, a surplus from operation—transportation operation. It is not a surplus of money from the sale of securities.

Mr. SEVERANCE: Well, Mr. Mahl, are you certain that you are correct in that last statement? Was not that surplus of sixteen million and odd dollars made by adding together income from all sources, operation and income from securities and everything else?

Mr. MAHL: I could not tell you.

146 Mr. SEVERANCE: Can you make up a statement showing the amount of money that the Oregon Short Line had on hand at the time these various purchases were made, and deliver that to the Commission, in connection with the statement which Commissioner Knapp has requested?

Mr. MAHL: Yes.

Mr. LOVETT: I would like to understand, if the Commission please, in these requests, just what we are expected to furnish?

Mr. SEVERANCE: The Commission seem to desire the sources from which this money came, whether it was borrowed money or taken out of the treasury.

Mr. LOVETT: We can prepare a statement, which will exhibit the financial condition of the Oregon Short line from which this surplus may appear, or we can prepare a statement which will exhibit all of its assets.

Com'r LANE: It would appear from Mr. Mahl's statement that there might be two surplus funds; one a surplus from accumulated earnings upon investments, and another from operating receipts. Which one was it from which this dividend was paid, and which one was it from which these investments were made?

Mr. LOVETT: We can get that up so it will show, sir.

Mr. SEVERANCE: Now, Mr. Mahl, you have prepared, in response to our request exhibits one and two, which were presented to you

just before the Recess, showing the capitalization of the Union Pacific and the purposes for which the stock was issued. It appears, from this statement that seventy-five million dollars of preferred stock was issued to the reorganization committee; fourteen million eight hundred and forty-one thousand dollars issued against, $14,-841,000 of Oregon Short Line Railroad Income Bonds, and $10,-159,000 against $10,159,000 of O. R. & N. Co. preferred stock; that accounts for the preferred capitalization, and the common stock which aggregates $195,479,900 was issued, as follows: $61,000,000 to the Reorganization Committee, $27,460,100 against $27,460,100 of shares of the capital stock of the Oregon Short Line; $7,718,600 against $7,718,600 shares of common stock of the Oregon
147 Railroad and Navigation Company; and $100,000,000 against a like amount of Union Pacific Railroad first lien convertible 4 per cent. bonds. Now, of that one hundred millions, $99,450,000 seems to have been converted, leaving outstanding only $550,000 of the $100,000,000 issue. Now, that shows what the stock was issued for, but do your books show what that $100,000,000 of first lien convertible bonds were issued for, that is, for what purpose the money from the sale of those bonds was used?

Mr. MAHL: I think they do.

Mr. SEVERANCE: They do?

Mr. MAHL: Yes.

Mr. SEVERANCE: Were those bonds issued in connection with the purchase of Northern Pacific stocks and Southern Pacific stocks.

Mr. MAHL: Mr. Severance, I was not connected with the Company at that time. I only came over towards the end of 1902, I believe, so I am not as familiar with those transactions as I should like to be.

Mr. SEVERANCE: You could make up a statement showing that, could you not?

Mr. MAHL: Yes.

Mr. SEVERANCE: You can make up a statement that will show the uses to which the company put that $100,000,000. from your books?

Mr. MAHL: It is rather difficult to say what you do with this money, because at the time the Company is engaged in all sorts of enterprises; she is building new lines and buying new securities; we cannot say that this particular money went to this purpose or this particular lot went for another purpose.

Mr. SEVERANCE: Of course you would not have issued $100,000,000 of bonds for the sake of having $100,000,000. lying idle?

Mr. MAHL: No, if it is a general statement of what the company required at that time, or what it used at that time——

Mr. SEVERANCE: Yes, that is what I require.

Mr. LOVETT: I think circulars were issued at the time those bonds were offered to the stockholders for subscription. I suppose
148 they have something to say about the immediate purpose, and I will see if we can get copies and furnish them. I was not connected with the company at that time, but I imagine that will show.

Com'r LANE: Your account will show what you received for the bonds and what is charged against that money?

Mr. LOVETT: I suppose the books will show that.

Com'r LANE: I understood that was the request which Mr. Severance made of Mr. Mahl, and Mr. Mahl said he would prepare it.

Mr. SEVERANCE: This is in addition to your capital account.

Mr. MAHL: Yes.

Mr. SEVERANCE: Now presumably you do not increase your capital to pay operating expenses or ordinary disbursements; it naturally would be increased for the purpose of adding something to the tangible property of the corporation; that is what we want to know.

Mr. MAHL: If you want a statement of the assets which were added to the company or with regard to the money put into new lines or equipment or stocks, that is a different matter.

Com'r LANE: And showing that which was taken out of this one hundred millions.

Mr. MAHL: No, I cannot do that. We might have other money.

Mr. LOVETT: The books will show what was received for these bonds, so much money. Unless they were issued against other securities that money went into the treasury. Of course it shows various payments from the treasury for various purposes afterwards, but I do not imagine that the receipt of money is connected with any particular payment. It went into the treasury of the company, and then these purposes for which the bonds were issued were met out of any funds in the treasury. We cannot trace the particular fund, I imagine.

Mr. SEVERANCE: I know money has no particular earmark, but what I want to get at is, you issued new bonds and that added
149 to your capital account, and something must be charged against that capital account to make up the other side of the books.

Mr. LOVETT: It went into the treasury.

Mr. SEVERANCE: The amount received, one hundred million dollars, from the sale of bonds, that adds to your fixed charges. That $100,000,000 as Mr. Mahl says is not used to defray operating expenses; it is used to pay for stocks or equipment or railroads, or what-not.

Com'r LANE: Either that $100,000,000 is in the treasury, or you have bought something with it; and if you have bought something with it, what have you bought. That is what we want to know?

Mr. LOVETT: It went into the treasury, and we will have Mr. Mahl furnish whatever his books show on it. I imagine it went into the treasury, and whether it can be traced beyond that to any particular investment, I do not know.

Mr. SEVERANCE: Then Mr. Mahl can be examined further after we get that statement. Now Mr. Mahl I will ask you in general whether outside of these summaries, by Mr. Young that are sent to you, you have any persons along the line that send you any reports?

Mr. MAHL: Send me a report?

Mr. SEVERANCE: Yes, outside of the summaries you get from Mr. Young?

Mr. MAHL: I receive a report for instance, from the officers of the Texas & New Orleans Railroad, not from Mr. Young.

Mr. SEVERANCE: From the Pacific Mail?

Mr. MAHL: Yes, that is a separate and distinct corporation, yes.

Mr. SEVERANCE: And you have an auditor of the Pacific Mail in San Francisco have you?

Mr. MAHL: Yes.

Mr. SEVERANCE: And he reports to you?

Mr. MAHL: No, he reports to Mr. Young.

Mr. SEVERANCE: How is that?

Mr. MAHL: He reports to Mr. Young.

150 Mr. SEVERANCE: Do you get any reports at all from the Pacific Mail?

Mr. MAHL: Yes.

Mr. SEVERANCE: From whom?

Mr. MAHL: From the auditor in San Francisco.

Mr. SEVERANCE: That is what I asked you a moment ago. You said he reported to Mr. Young. Doesn't he send you reports too?

Mr. MAHL: Yes.

Mr. SEVERANCE: And what is his name?

Mr. MAHL: Mr. Railton, I think it is. It is given in the last report of the company.

Mr. SEVERANCE: So that he sends a report to Mr. Young and also to you?

Mr. MAHL: Yes.

Mr. SEVERANCE: And Mr. Young has his office at Omaha, doesn't he?

Mr. MAHL: Yes.

Mr. SEVERANCE: And he is the general auditor of the Union Pacific and the Southern Pacific and of the Pacific Mail?

Mr. MAHL: I believe so; the reports will show it. (Referring to paper) Yes.

Mr. SEVERANCE: Where is the auditor who has immediate jurisdiction over the accounts of the line of steamers running from New York to Galveston and New Orleans?

Mr. MAHL: In New York.

Mr. SEVERANCE: What is his name?

Mr. MAHL: Parker.

Mr. SEVERANCE: Do you know his first name?

Mr. MAHL: I don't recall it.

Mr. SEVERANCE: W. C.?

Mr. MAHL: Yes.

Mr. SEVERANCE: To whom does he make reports?

Mr. MAHL: He makes reports to myself and I think also to Mr. Young.

Mr. SEVERANCE: Mr. Young and yourself?

Mr. MAHL: Yes.

Mr. SEVERANCE: Now as long as the Occidental and Oriental Steamship Company was in operation, were any reports

151 of any sort of their operation sent to you.

Mr. MAHL: Yes, a financial statement at the end of the month.
Mr. SEVERANCE: You still get that, don't you?
Mr. MAHL: I cannot say that I do now.
Mr. SEVERANCE: You don't know?
Mr. MAHL: I would have to ascertain.
Mr. SEVERANCE: Who is the auditor of the O. R. & N. Where is his office?
Mr. MAHL: Portland. I think his name is Mr. Sterling, I think Mr. Sterling was auditor.
Mr. SEVERANCE: Yes, Mr. Sterling, and does he send reports to you?
Mr. MAHL: Yes.
Mr. SEVERANCE: How often?
Mr. MAHL: Once a month.
Mr. SEVERANCE: And where is the office of the auditor of the Short Line?
Mr. MAHL: Salt Lake City.
Mr. SEVERANCE: And who is the auditor?
Mr. MAHL: C. J. McNitt.
Mr. SEVERANCE: Does he report to you?
Mr. MAHL: He send- his statements to me.
Mr. SEVERANCE: Sends statements to you?
Mr. MAHL: He reports directly to Mr. Young.
Mr. SEVERANCE: Therefore you get from them—well you also get a report from Mr. Young or somebody at Omaha, don't you, in connection with the Union Pacific?
Mr. MAHL: Yes.
Mr. SEVERANCE: So that each branch of this system, the Southern Pacific, the Union Pacific, the Short Line, the O. R. & N. and the steamship lines both on the Atlantic and Pacific in some form make a report to you once a month of their financial operations so that you keep in touch with all of them?
Mr. MAHL: Yes.
Mr. SEVERANCE: And that is sent to you here in New York?
152 Mr. MAHL: Yes.
Mr. SEVERANCE: Does Mr. Young, the General Auditor make that report to you?
Mr. MAHL: The papers are signed by him as General Auditor or by someone for him.
Mr. SEVERANCE: Yes, a report to you from his office, I mean?
Mr. MAHL: Yes.
Mr. SEVERANCE: Can you tell who has charge of the division of joint office expenses where the same offices are used by the different parts of the system?
Mr. MAHL: For the offices out on the line I think that is done in the General Auditor's office.
Mr. SEVERANCE: Well I will just give you an instance as a concrete example; it appears by the manuals that the Union Pacific and the Southern Pacific have the same General Agent at Chicago—the Commercial Agent—as well as other officers, but I am speaking

about the agent who looks out for the traffic, gets traffic—gets business. Now, how are his expenses divided, or the expenses of that office?

Mr. MAHL: I don't know.

Mr. SEVERANCE: That don't come under your jurisdiction?

Mr. MAHL: That does not come under my jurisdiction.

Mr. SEVERANCE: You don't know about that?

Mr. MAHL: No.

Mr. SEVERANCE: And you could not state in connection with any of that sort of thing?

Mr. MAHL: No, sir, nothing.

Mr. SEVERANCE: Who could tell us that—Mr. Young?

Mr. MAHL: I should think so, yes.

Mr. SEVERANCE: And you don't know, I suppose, who makes the division; that is, who fixes the amount that shall be charged to each company?

Mr. MAHL: No.

Mr. SEVERANCE: You don't know that?

Mr. MAHL: No.

Mr. SEVERANCE: Now, how are the expenses of maintaining the offices of Traffic Director, Director of Maintenance and Op-
153 eration, Director of Purchases, Secretary, General Auditor, Comptroller and so forth divided? I show you a memorandum that I think was prepared by you?

Mr. MAHL: Yes. The Director of Maintenance and Operation is paid in Chicago and I don't know who could furnish that information. The Traffic Director, the Director of Purchases, the Secretary, and the Comptroller are paid in New York, and the apportionment is made in New York.

Mr. SEVERANCE: On what basis?

Mr. MAHL: On the basis—I think in nearly all instances the expenses of the office of director of purchases, allotted in proportion to the number of locomotives and cars owned by the respective companies.

Mr. SEVERANCE: Now, by respective offices you mean the Southern Pacific, the Union Pacific, the Oregon Short Line, and the Oregon Railroad & Navigation Company?

Mr. MAHL: Yes.

Mr. SEVERANCE: All right, go ahead.

Mr. MAHL: Expenses of the transfer office allotted actually to the various companies as near as those can be ascertained. That is the stock transfer.

Mr. SEVERANCE: The stock transfer is allotted to the various companies?

Mr. MAHL: Yes. And all salaries and expenses in New York, including salaries of Mr. J. C. Stubbs, Mr. E. O. McCormick, Mr. P. C. Stohr and Mr. H. B. Thrall, allotted on the basis of gross transportation receipts.

Mr. SEVERANCE: That is to say, Mr. Stubbs is the director of traffic at Chicago for all the lines, isn't he?

Mr. MAHL: Yes.

Mr. SEVERANCE: And Mr. Stubb's salary and the expenses of his office are divided between the Southern Pacific, the Union Pacific, the O. R. & N. and the Oregon Short Line on the basis of the gross transportation receipts of those respectively?

Mr. MAHL: No, let me correct this.

Mr. SEVERANCE: All right.

154 Mr. MAHL: Not the expenses. I don't know anything about the expenses of those.

Mr. SEVERANCE: You don't know about the expenses?

Mr. MAHL: No. I don't know anything about the salaries of his office. This merely has reference to his own salary.

Mr. SEVERANCE: That is, by your testimony then, you mean that the salaries of Mr. Stubbs, the director of traffic, Mr. E. O. McCormick, Mr. P. C. Stohr, assistant to Mr. Stubbs, and Mr. H. B. Thrall, who is the railway agent of all the lines, are divided on the basis of the gross transportation receipts, of the respective lines; that is correct, is it?

Mr. MAHL: That is correct.

Mr. SEVERANCE: And those amounts are paid from here?

Mr. MAHL: Yes.

Mr. SEVERANCE: As far as their expenses are concerned and the expenses of maintaining their offices from what source can you ascertain the information as to that division?

Mr. MAHL: I should think you would have to obtain that at Chicago.

Mr. SEVERANCE: From whom?

Mr. MAHL: I suppose from the offices.

Mr. SEVERANCE: Mr. Young wouldn't have that?

Mr. MAHL: He might and might not.

Com'r KNAPP: Do the gross receipts which you referred to there, which are the basis of division of salaries of the officials named, include receipts from passenger traffic as well as freight traffic?

Mr. MAHL: Yes; receipts from all sources, rents and so forth.

Mr. SEVERANCE: Can you tell what person or what committee or party decides how the salaries paid to these gentlemen who are acting for all the companies are to be divided, or apportioned among the lines?

Mr. MAHL: I don't know.

Mr. SEVERANCE: Well, your own salary for instance, is apportioned to the four lines, isn't it?

155 Mr. MAHL: Yes.

Mr. SEVERANCE: Who employed you or appointed you?

Mr. MAHL: The chairman of the Committee.

Mr. SEVERANCE: Mr. Harrison?

Mr. MAHL: Yes.

Mr. SEVERANCE: Who directed you as to the method in which you should apportion your salary?

Mr. MAHL: I don't think there was any particular direction given about that. Mr. Young—I believe we followed what was established out on the line of the road, and it is customary by railroads, by all railroads to allow salaries of traffic officers along certain lines or

divisions, for instance by transportation receipts. I think *in* the companies just followed what is customary elsewhere.

Mr. SEVERANCE: Mr. Mahl; you did not assume, did you, without direction from some person to charge to the Southern Pacific a certain amount per month or per year, and the Union Pacific a certain amount and so on, to make up your salary? You were instructed by some one, were you not?

Mr. MAHL: I cannot recall now how that division was made. I can go back upon the papers and find out and see.

Mr. SEVERANCE: You merely know that it was made?

Mr. MAHL: Yes.

Mr. SEVERANCE: And you know you were employed by Mr. Harriman, but as to whether he directed that kind of a division you do not know?

Mr. MAHL: I do not recall now.

Mr. SEVERANCE: Who directed you as to the method of dividing the salaries of other officials than yourself, where the officials were common all over the system; or did you do that of your own motion?

Mr. MAHL: No, I think it was done—I think it was done through Mr. Young, or rather upon conference with him or following the practice which was followed out on the line of the road in similar instances.

Mr. SEVERANCE: Who had this conference with Mr. Young? Did you have it?

156 Mr. MAHL: No, sir.

Mr. SEVERANCE: So you think that Mr. Young made this division without authority from the Board, or Boards of Directors, or Executive Committees, or the chairman?

Mr. MAHL: No, that might have been originally agreed upon, and I think we simply followed in that manner what was established.

Mr. SEVERANCE: When you came there?

Mr. MAHL: Yes.

Mr. SEVERANCE: Now, in making these divisions, you do not separately charge the steamship lines, do you, with their proportion; or do you make a separate charge against the steamship lines?

Mr. MAHL: We make a separate charge against them; yes, sir.

Mr. SEVERANCE: Against the Pacific Mail you make a specific charge because you only own a part of the stock, but do you make any division of that charge as between the rail lines of the Southern Pacific and the steamship lines that are directly owned by the Southern Pacific?

Mr. MAHL: I do not think so. I don't know. Those divisions are made in the general auditor's office.

Mr. SEVERANCE: Do you know, Mr. Mahl, of anything that is in your office, as to who has charge of the distribution of purchases, such as cars and locomotives, between the different lines; or would you have to get that from Mr. Thorne?

Mr. MAHL: We would have to get that from Mr. Thorne.

Mr. SEVERANCE: Judge Lovett suggests this to refresh your recollection, that one or the other of the companies in the first instance

pays these various salaries, and then a charge is made against the other companies for their respective proportions.

Mr. MAHL: That is correct, with the exception——

Mr. SEVERANCE (interrupting): That is the way it is done?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: It amounts to the same thing?

157 Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Have you made up a statement, Mr. Mahl, of the persons in whose names the 900,000 and the 180,000 shares of Southern Pacific stock appear of record?

Mr. MAHL: I haven't anything to do with that.

Mr. SEVERANCE: Mr. Lovett neglected to ask you that.

Mr. LOVETT: We will furnish that. I didn't ask Mr. Mahl about that. We will furnish them—a list of the names of the individuals who hold the stock. I neglected to ask Mr. Mahl for them.

Mr. SEVERANCE: Mr. Mahl, you can, I assume, without great difficulty, make up for us a statement of the aggregate tonnage hauled by the various lines of the system, can't you? That is reported in your office?

Mr. MAHL: The annual report shows the entire tonnage hauled.

Mr. SEVERANCE: We can find that ourselves by looking at the reports?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Are the Oregon Short Line and the Oregon Railroad and Navigation kept separate from the Union Pacific?

Mr. MAHL: They are; and it is reported in the reports to the Interstate Commerce Commission.

Mr. SEVERANCE: Separately?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: It appears by the minutes of a meeting of the 22nd of August, or rather of the 23rd of August, 1906, that there was produced a statement of certain securities purchased on the 22nd of August, 1906. Can you make up or give us a copy of that statement? Perhaps that would be covered by this general statement which you are to make in response to the Chairman's request?

Mr. MAHL: Yes, sir; I think that is covered by that.

Com'r LANE: Were any resolutions passed by the Board of Directors authorizing the purchase of these stocks?

158 Mr. MAHL: There must have been.

Com'r LANE: Mr. Severance, did you refer to the purchase of stocks that you read out some time ago?

Mr. SEVERANCE: Yes, sir.

Com'r LANE: Were any resolutions passed by the Board of Directors authorizing the purchase of those stocks?

Mr. SEVERANCE: Yes, sir; there are entries, which we will introduce. We have copies of those.

Com'r LANE: Who has those?

Mr. SEVERANCE: We have them. I will call attention to that.

Now, Mr. Mahl, do you make up the statistics that go into the annual reports of your companies?

Mr. MAHL: Yes. Rather, I should amend that by saying that I

aggregate them and compile them from those reports which come in from along the roads.

Mr. SEVERANCE: And you make up the items or compile the items, showing the total mileage, the revenue per ton per mile, and the ratio of net to gross earnings, operating expenses, cost of conducting transportation, gross earnings per mile, and the net earnings per mile.

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And those statements as submitted are, to the best of your belief, correct?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: I will state to the Commission that we have prepared from the reports on file, a rather large statement here which, first, shows the average statistics of all the roads in the United States, beginning with 1896 and running down to 1906, showing the total mileage operated, the average revenue per ton per mile, the percentage that the operating expenses bear to gross earnings, gross earnings per mile in dollars, and the net earnings per mile in dollars per mile of road. I will offer that in evidence, subject to correction by my friends if it is not correct. (The same is hereto annexed and marked Exhibit No. 4, to Mr. Mahl's testimony.)

Mr. SEVERANCE: In connection, we have statements based on the annual reports for the same years of the same items on the
159 Canadian Pacific and the Union Pacific, the Southern Pacific, the Northern Pacific, the Oregon Short Line, Oregon Railroad & Navigation Company, the Atchison, Topeka & Santa Fe, the Chicago, Burlington & Quincy, the Chicago, Rock Island and Pacific, and the Great Northern.

Now, this statement shows, without going into any detail, except to give the Commission an idea of what it is, that in 1906 the average revenue per ton per mile of all railroads in the United States — 0.766 of a cent, and that in 1896 it was a little over .8 of a cent, 0.806 of a cent. On the Union Pacific in 1896 it was 0.957. And in 1906, ten years later, it was 0.924. While the average for the United States had dropped from 0.806 to 0.766, the Union Pacific had dropped from 0.924; and the Southern Pacific average in 1896 was 1.122, and that had only come down to 1.101 in 1906. While the Northern Pacific had come down from 1.135 to .828. The Oregon Short Line from 1.55 to .767. The Oregon Railroad & Navigation Company from 1.680 to 1.130. The Santa Fe from 1.028 to .899. Chicago, Burlington & Quincy from .876 to .804. The Rock Island from 1.017 to .930 of a cent. And the Great Northern from 1.019 to .778.

Mr. LOVETT: Have you a copy of that?

Mr. KELLOGG: I think we have another copy.

Mr. SEVERANCE: This, of course, I offer in evidence for the information of the Commission, subject to correction if my friends find any errors in it, but I do not think there are, because it was made by the statistician in your department.

Mr. MAHL: Does that show what the Canadian Pacific is paying for section labor and material?

Mr. SEVERANCE: It doesn't show anything about that. It merely

shows the mileage, the revenue per ton mile, and the other items that I called attention to.

Mr. MAHL: It doesn't show that they are paying $1.15 a day, while the Southern Pacific is paying $1.75 and $2.00 a day.

Mr. SEVERANCE: It doesn't show what the Northern Pacific or the Great Northern or any of those other lines are paying that
160 have rates much lower than yours.

From your knowledge of railroads in this country, isn't it a fact that the Southern Pacific has a larger percentage of long haul business than, say, the Union Pacific or the Great Northern or the Northern Pacific?

Mr. MAHL: I wouldn't say that.

Mr. SEVERANCE: It has less local business, I mean, in proportion to the through business.

Mr. MAHL: No, I don't think so. Those figures are not clear in my mind.

Mr. SEVERANCE: This is a fact, is it not, that the revenue per ton per mile—I mean the cost, the charge, per ton per mile, decreases as the distance increases. That is the rule, isn't it?

Mr. MAHL: I don't think it would hold good now, with the present increased price of material and labor.

Mr. SEVERANCE: But I say—you don't understand me. That increase in labor, in the cost of labor and materials, would apply to the short haul as well as to the long haul business. Now, the revenue per ton per mile is less, isn't it, always in the case of the long haul than in the case of the short haul? In the adjustment of rates, that is always so?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: So that if it should happen that the Southern Pacific has a large percentage of through business, as compared with these other lines, you would naturally expect, would you not, other things being equal, to show the rate per ton per mile was less?

Mr. MAHL: Well, there might be conditions there——

Mr. SEVERANCE (interrupting): I say, other things being equal.

Mr. MAHL: If you are referring to general conditions, of course that might follow; but there may be exceptional conditions that have always existed on the Pacific system lines.

Mr. SEVERANCE: Did you prepare the figures upon which, or do you prepare figures upon which the board of directors or ex-
161 ecutive committee men act in determining the rate of dividend to be paid?

Mr. MAHL: Yes, sir; but let me qualify that. I prepare the statements for them that they want, the purpose for which they do not always tell me. I am not asked about them. I submit statements to them of the operations of the companies from time to time.

Mr. SEVERANCE: Now, the Union Pacific at present is paying dividends at the rate of 5% each half year, isn't it? It was put on a 10% basis last summer; that is true, isn't it?

Mr. MAHL: There wasn't anything at all about the basis it was put on. We declared a dividend of 5%.

Mr. SEVERANCE: Wasn't that stated in the resolution of the Board, that it was a 5% semi-annual dividend?

Mr. MAHL: That would not be for me to answer. I don't know anything about that.

Mr. SEVERANCE: As a matter of fact, in railroad accounting, you would expect a 5% dividend unless it was stated to be a special dividend at the rate of 10% a year, wouldn't you?

Mr. MAHL: I never expect anything.

Mr. SEVERANCE: You wouldn't know anything about that.

Mr. MAHL: No, sir.

Mr. SEVERANCE: Now, you say you make up statements and submit them to the boards upon which they act in voting dividends?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Now, let me ask you when you make up this statement for the consideration of the Union Pacific Board, before they declared that dividend, did you include among the net earnings applicable to the payment of dividends any profits in the handling of stocks or securities, or did you simply take the profits that were earned in the operation of a railroad?

Mr. MAHL: The operations of the railroad as well as the income from investments.

Mr. SEVERANCE: As well as the income from investments?

162 Mr. MAHL: Yes, sir.

Mr. SEVERANCE: By "Income from investments" do you mean the interest or dividends received upon stocks or bonds owned by the company?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: That is all you mean?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: You don't mean money that might be made by buying stocks or bonds at a certain figure and selling them afterwards at a higher figure?

Mr. MAHL: No, sir.

Mr. SEVERANCE: Have you, Mr. Mahl, where you can readily lay your hand on it in your office, the statement which you prepared for the use of the directors at that meeting?

Mr. MAHL: I think I could—I might find it.

Mr. SEVERANCE: We would like to have that produced.

Mr. MAHL: The statements that are submitted there are submitted every week.

Com'r LANE: Mr. Severance, I understood Mr. Mahl a moment ago to answer to the effect that if the profit was made in a stock transaction that it did not go into the fund from which dividends were paid?

Mr. SEVERANCE: That is what he stated.

Com'r LANE: Well, now, is that so?

Mr. MILBURN: I misunderstood the question, if that was it. That is, if there was a profit realized on an actual transaction, I don't know what the witness would answer, but the question put was, as I understood it, whether on realized profits, that is, stock had gone up——

Mr. SEVERANCE: No, I said, Mr. Milburn—I asked whether if

stock or bonds were purchased at a certain figure and were thereafter sold at a profit, at a higher figure, whether the profit so made went into the gross profits which he submitted to the directors and was applicable to the payment of dividends, and he said they did not; but only dividends upon stocks held by the company, or the bonds held by the company.

Mr. MAHL: There might have been some few minor in-
163 stances; possibly not more than $50,000 or $100,000 that might have gone into it.

Mr. SEVERANCE: That would be contrary to your custom?

Mr. MAHL: No. The annual report shows exactly what has gone into the profits.

Mr. SEVERANCE: You can produce this statement? I am not speaking of the annual report. We do not want to have you make any mistake.

Mr. LOVETT: I think that statement which was referred to can be produced. I think it was filed with the secretary; and that, of course, would be the best evidence of what it shows. We have no objection to informing you as to how that statement was made up. We will produce it.

Com'r LANE: You will produce it?

Mr. LOVETT: Yes, sir; we will produce it. I think it was filed with the secretary.

Com'r LANE: I don't know that I understood the question, or that the witness understood the question.

Mr. SEVERANCE: I think he understood it.

You will produce that, Mr. Mahl, for use at a subsequent examination, then; tomorrow, perhaps?

Mr. MAHL: What statement is that?

Mr. SEVERANCE: Statement which you submitted to the directors at the time they voted this 10%, or the 5% dividend; last August.

Com'r LANE: This statement, Mr. Severance, won't show whether when they bought a block of stock and that stock went up and money was made on it, whether that money made on it went into the fund out of which dividends were paid, will it?

Mr. MILBURN: Judge Lovett says it will.

Mr. LOVETT: As a matter of fact, it only shows the income from the transportation business, and the income from the investments, which Mr. Mahl has stated. I understand it, as Mr. Mahl does. We will get the statement and that will show; if any profits of that sort were included they will appear from the statement.

Mr. SEVERANCE: Will you show me on this annual report
164 the item showing the surplus, the increase in the surplus during the year represented by that report, covered by that report?

Com'r HARLAN: What report is that?

Mr. SEVERANCE: The Union Pacific annual report for the year ended June 30, 1906.

Mr. MAHL: This (indicating).

Mr. SEVERANCE: That is the surplus of the Union Pacific on the 30th day of June, 1905, was $34,943,194.42, and on the 30th day of

June, 1906, the profit and loss surplus was $42,796,026.39, or an increase of a little over $8,000,000?

Mr. MAHL: Yes, sir.

Mr. LOVETT: To guard against a misapprehension there, I would like to call your attention to the fact that that *it* is a combined statement of the Oregon Short Line, the Union Pacific, and the Oregon Railroad & Navigation Company, and not the Union Pacific Railroad Company alone. These income accounts and balance sheets are shown separately in the annual reports of each of these companies filed with the Commission. Mr. Mahl then combines these figures in a report for the information of stockholders; that is a consolidated statement of the three companies.

Mr. SEVERANCE: Would those various items, the three items, make up this total shown in the annual report made to the Commission?

Mr. Lovett: Yes.

Mr. SEVERANCE: Of course, Mr. Mahl, whatever profits are made by the Oregon Short Line, or by the Oregon Railroad & Navigation Company, go into the treasury of the Union Pacific, do they not, directly or eventually?

Mr. MAHL: All in the net dividends.

Mr. SEVERANCE: Yes; certainly in the net dividends, and from time to time dividends are voted on those stocks which are held by the Union Pacific, and the money goes into the treasury in that way.

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And out of those dividends, and out of the surplus from operations, the Union Pacific makes its dividends
165 as well as its income from other stocks or bonds it may hold?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: You treat them all in the same way, do you not?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Is the annual report of the Union Pacific here?

Mr. LOVETT: You have it in your hand.

Mr. SEVERANCE: I mean the report made to the Commission.

Prof. MEYER: It is not here.

Mr. SEVERANCE: Who makes up these reports to the Interstate Commerce Commission; do you make those or does Mr. Young?

Mr. MAHL: No, I think they are mostly made up in my office. The operating details are filled out on the line of the road, and we add the financial details.

Mr. SEVERANCE: Do you keep an account, Mr. Mahl, which shows the profits realized by the Union Pacific Railroad Company in its stock and bond operations arising from the purchase and sale of stocks?

Mr. MAHL: Not always exactly. On those lines we do not always. When we sell a stock we do not always make a division; sometimes we do, and sometimes we don't. We don't always write up and make a division as to the profit, and again in some cases we do.

Mr. SEVERANCE: Well, now, take for instance, Mr. Mahl—I think it was the Oregon Short Line that bought a large amount of stock of the Northern Pacific Railroad Company, did it not?

Mr. MAHL: Yes, sir

Mr. SEVERANCE: And that stock was converted into Northern Securities stock, was it not?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Exchanged for it, I mean?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And then afterwards the Northern Securities stock was exchanged for Great Northern and Northern Pa-
163 cific stock, in certain proportions; that is, such of it that you did not sell in the meantime?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: You had sold some of your Northern Securities stock as such, hadn't you?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And you afterwards sold a considerable amount at least of the Northern Pacific and Great Northern?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Have you sold it all yet?

Mr. MAHL: I cannot recall now. I don't know.

Mr. SEVERANCE: Don't you keep a kind of summary which shows the profits that the Oregon Short Line made on that transaction?

Mr. MAHL: No, I don't think I did in that case. If you will give me the annual report, I will state just what has been done.

Mr. SEVERANCE: You may go ahead. You were going to read something from the report.

Mr. MAHL: In the annual report for the year ending June 30, 1906——

Mr. SEVERANCE (interrupting): That is the report to your stockholders?

Mr. MAHL: Yes, sir; of the Union Pacific, there is this statement under assets and liabilities. There were sold during the year stock of the Northern Securities Company to the amount of $2,850,000 par value; preferred stock of the Great Northern Ry. Co. to the amount of $9,960,089.49 par value; common stock of the Northern Pacific Ry. Co. to the amount of $14,830,082.15 par value; and stubs of the Northern Securities Company to the amount of $18.71 par value. The amounts realized from the sale of these stocks were credited against the cost of the stocks owned.

Mr. SEVERANCE: Well, now, let us understand what that means. You buy—we will say you buy Northern Pacific Stock as you did in this case and you charge that into your account, so much paid for Northern Pacific stock. Now, when you sell that Northern
167 Pacific stock what kind of entry do you make?

Mr. MAHL: Simply credit Northern Pacific stock that amount received on sale.

Mr. SEVERANCE: When the Northern Pacific is all liquidated you strike a balance between what it cost and what you got and credit that to profit and loss?

Mr. MAHL: I do not know.

Mr. SEVERANCE: Is not that your custom?

Mr. MAHL: I do not know.

Mr. SEVERANCE: Let me ask you this: you did buy a large amount of Northern Pacific stock which took about the course I stated in my former question. You sold most of that. Your accounts show the amount of money you paid for this stock, and also show the amount you have received up to date by sale of that stock. By taking those two amounts together you could easily make a statement showing the profits you had realized out of the Northern Pacific venture, could you not?

Mr. MAHL: So far as it has been sold, yes.

Mr. SEVERANCE: Well, will you be kind enough to make up such a statement and also give the number of shares you still have on hand of the Northern Pacific, the Great Northern and the Northern Securities Company?

Mr. LOVETT: Before that statement is passed I would like to state that I do not understand that there would be any entry in the books as the basis of a statement of that sort. Mr. Mahl, as I understand, you testified that there has been no credit to profit and loss on that account yet. Of course, they might lose money on the rest—I do not know—but there is no basis in the books, as I understand, for a statement of that sort.

Mr. SEVERANCE: Well, Judge, I hope you sold enough to pay you out and are not going to come out in a hole?

Com'r LANE: Have you had any stock transactions with this company? (Addressing Mr. Severance.) Find out what has
168 been done as to such transactions—if a profit was made and to what account the credit was given?

Mr. SEVERANCE: Let me ask you this: From your own recollection—you remember, don't you—you have already sold more than enough Northern Securities, Great Northern and Northern Pacific to pay back all you paid for all the Northern Pacific stock you bought?

Mr. MAHL: I do not remember about that, no.

Mr. SEVERANCE: You do not?

Mr. MAHL: No.

Mr. SEVERANCE: Will you make up a statement showing the total amount that the Union Pacific or the Oregon Short Line paid for this Northern Pacific stock, and also a statement of the receipts from the Great Northern, Northern Pacific and Northern Securities stocks, and also the amount you have on hand. Make it in that way.

The CHAIRMAN: The books will show those items.

Mr. SEVERANCE: Yes, he can pick it out and make it *it* into a statement.

Com'r LANE: Have you made a profit on any of the stocks which you have bought and sold?

Mr. MAHL: We do not know until the transaction is closed.

Com'r LANE: Has any transaction been closed?

Mr. MAHL: None of these, they are all open yet.

Com'r LANE: Has any stock transaction been closed?

Mr. MAHL: You mean of these three stocks?

Com'r LANE: No, I mean any stocks you have bought and sold?

Mr. MAHL: Possibly there has.

Com'r LANE: Don't you recall that you have had some transactions by which you have bought stocks and sold them again and a profit has been realized?

Mr. MAHL: I do not recall now. If there has, it has been a small amount?

Com'r LANE: You do not recall that there has been any transaction of that kind.

Mr. MAHL: I do not.

169 Com'r LANE: And the basis for the answer, as I understand it, is that some of the stock is still held?

Mr. MAHL: Yes, sir

Com'r LANE: And when any of the stock is still held you do not credit anything to profit?

Mr. MAHL: That varies.

Com'r LANE: How does it vary?

Mr. MAHL: It depends on what stock they are. We might have a small amount of stock and it would be closed at a profit, but as in cases like the Northern Pacific Stock and the Great Northern the transaction is not complete.

Com'r LANE: Is there a separate rule in the corporation as to where profits of such kind shall be credited, or is that subject to direction?

Mr. MAHL: I think that is always subject to the order of the Board of Directors.

Com'r LANE: Subject to the order of the Board of Directors?

Mr. MAHL: Yes, sir.

Com'r LANE: That is the thing I was getting at some time ago. When you take the money of the Union Pacific and you buy stock with it, and you make a profit with it upon the stock transaction, then you regard the profit as subject to the direction of the Board of Directors and you cannot recall that you have had a transaction of that kind this year?

Mr. MAHL: Not that I have any knowledge of.

Mr. SEVERANCE: Now, so that we may know exactly what we are getting here, I will ask you to prepare a statement which will show first the Northern Pacific stocks purchased. They were bought, were they not, by the Union Pacific and afterwards turned over to the Short Line—you know the purchase I mean, the large block of stock in 1901? Put that down on one side of the sheet. On the other put down the total receipts from the sale of Northern Securities, Great Northern and Northern Pacific stocks; then put on that sheet the amounts of Great Northern and Northern Pacific stock you still hold, and perhaps we will be able to work it out

170 from the market values of those stocks how you have come out, or approximately so.

Mr. MAHL: Bear in mind that many of these transactions occurred before my time.

Mr. SEVERANCE: Is it all on your books?

Mr. MAHL: Yes, but I am not familiar with them.

Mr. SEVERANCE: I am not asking out of your own head but from your books. Bring it down to today.

Mr. MAHL: Yes.

Mr. SEVERANCE: Now, is it not true that from funds you have realized from the sale of Northern Pacific, Great Northern and Northern Securities stocks among other funds, you have bought these stocks that have been mentioned, such as Alton, Illinois Central and others?

Mr. MAHL: From those and other funds, possibly. I *I* cannot tell what particular funds.

Mr. SEVERANCE: You have no entries on your books that will show that?

Mr. MAHL: The books will only show that we received so much cash.

Mr. SEVERANCE: I believe you said earlier in your testimony that there would probably be some entires to capital account to offset the one hundred millions stock issue. After we get all these statements we can tell better where we are at.

Mr. MAHL: You said, I believe, that for some time you were comptroller of the Alton, did you not, or else Mr. Millar said you had been comptroller of the Alton?

Mr. MAHL: Yes, I believe I was for a time.

Mr. SEVERANCE: Who succeeded you in that office?

Mr. MAHL: How is that?

Mr. SEVERANCE: Who succeeded you in that office?

Mr. MAHL: I think Mr. Hilliard.

Mr. SEVERANCE: What are his initials?

Mr. MAHL: C. W.

Mr. SEVERANCE: Where is his office?

Mr. MAHL: I think at 71 Broadway.

Mr. SEVERANCE: 71 Broadway?

Mr. MAHL: Yes, sir

171 Mr. SEVERANCE: The Empire Building?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Did you turn over to Mr. Hilliard all books of account of the Alton in your possession?

Mr. MAHL: I did.

Mr. SEVERANCE: When did he succeed you as comptroller?

Mr. MAHL: Some time in October.

Mr. SEVERANCE: That was at the same time that the Rock Island interests took charge of the road and everybody at your office went out?

Mr. MAHL: Yes, when they elected another set of officers and left us out.

Mr. SEVERANCE: I think that is all we care to ask Mr. Mahl until we get those statements which he is to prepare. I will have those requests written off so that you can come back.

The CHAIRMAN: Mr. Lovett do you desire to interrogate Mr. Mahl?

Mr. LOVETT: Not at this time.

The CHAIRMAN: Mr. Milburn?

Mr. MILBURN: Not at this time.

The CHAIRMAN: Then you are excused, Mr. Mahl.

Witness excused.

Mr. KELLOGG: Mr. Millar, will you take the stand again, please.

ALEX. MILLAR recalled:

Mr. KELLOGG: Will you please give the President and general officers of the Pacific Mail Steamship Co.?

Mr. MILLAR: The following officers were elected June 22nd, 1905, which appears to be the latest I have at hand.

Mr. KELLOGG: All right.

Mr. MILLAR: When any change occurred I will state it.

E. H. Harriman, President.

172 R. P. Schwerin, Vice-President and General Manager.

William Mahl, Comptroller.

H. S. Bradt, Assistant Comptroller.

Alex. Millar, Secretary.

Joseph Hellen, Assistant Secretary.

Do you care to go through the list?

Mr. KELLOGG: Who was general auditor?

Mr. MILLAR: Erastus Young, general auditor.

Mr. KELLOGG: Have you any other vice president?

Mr. MILLAR: No, sir.

Mr. KELLOGG: That is sufficient, unless you have the Board of Directors there.

Mr. MILLAR: I have the Board elected May, 1905.

Mr. KELLOGG: All right, give us the Board of Directors.

Mr. MILLAR: Maxwell Evarts, George J. Gould, E. H. Harriman, George H. Macey, Ogden Mills, Russell Sage, R. P. Schwerin, James Speyer and Paul M. Warburg.

Mr. KELLOGG: Have there been any changes in that Board since that time?

Mr. MILLAR: My recollection is that Mr. Speyer and Mr. Warburg have resigned, but I think the vacancies have not been filled.

Mr. KELLOGG: Mr. Sage is dead.

Mr. MILLAR: Mr. Sage has died in the meantime.

Mr. KELLOGG: Has that vacancy been filled?

Mr. MILLAR: No, sir; I think not.

Mr. KELLOGG: The Southern Pacific Company controls the Pacific Mail Steamship Company, does it not?

Mr. MILLAR: It owns a small amount over half of the stock, yes, sir.

Mr. KELLOGG: It elects the officers and elects the Board of Directors?

Mr. MILLAR: I do not know how that is; I think not.

Mr. KELLOGG: Well, the general officers, President, and auditor and comptroller are the same as the Union Pacific?

173 Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the accounts are kept in the Union Pacific offices?

Mr. MILLAR: Oh, no.

Mr. KELLOGG: Well, at 120 Broadway?

Mr. MILLAR: Oh, yes, the financial transactions are under the charge of Mr. Mahl.

Mr. KELLOGG: And Erastus Young at Omaha is the general auditor?

Mr. MILLAR: The general auditor, yes, sir.

Mr. KELLOGG: Mr. Stubbs has jurisdiction over the steamships as traffic director?

Mr. MILLAR: I hardly think so.

Mr. KELLOGG: You do not know?

Mr. MILLAR: I think not. I do not think he is an officer of that company at all.

Mr. KELLOGG: The Portland & Asiatic Steamship Company?

Mr. MILLAR: Excuse me. Could I have my answer read to that question?

Mr. KELLOGG: Certainly.

(The answer was repeated by the stenographer as follows: "I think not, I do not think he is an officer of that company at all.")

Mr. MILLAR: That is right.

Mr. KELLOGG: Do you know the officers of the Portland & Asiatic Steamship Company?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Please give them.

Mr. MILLAR (referring to book):

E. H. Harriman, Chairman of Board and president;

William D. Cornish, vice president;

R. P. Schwerin, vice president and general manager;

W. R. Litzenberg, secretary;

F. V. S. Crosby, treasurer;

Erastus Young, general auditor;

H. E. A. Railton, auditor.

Mr. KELLOGG: Now, Mr. Crosby is what?

Mr. MILLAR: Treasurer.

Mr. KELLOGG: He lives in Portland?

Mr. MILLAR: No, he is a New York man.

174 Mr. KELLOGG: He is in New York?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: What connection does he have with the other Pacific companies?

Mr. MILLAR: He is treasurer of the Union Pacific and the Oregon Short Line.

Mr. KELLOGG: Is he also treasurer of the Southern Pacific?

Mr. MILLAR: No, he has no connection with it.

Mr. KELLOGG: This man Schwerin, what position does he hold with any of the Pacific companies?

Mr. MILLAR: With which?

Mr. KELLOGG: The Pacific companies?

Mr. MILLAR: He is vice president and general manager of the Pacific Mail and the Portland & Asiatic.

Mr. KELLOGG: The Portland & Asiatic?

Mr. MILLAR: Yes sir.

Mr. KELLOGG: What company owns the stock of the Portland and Asiatic?

Mr. MILLAR: I really do not know.
Mr. KELLOGG: Don't you know who votes it?
Mr. MILLAR: No, sir; I do not.
Mr. KELLOGG: Who gives the proxies for it?
Mr. MILLAR: No, sir.
Mr. KELLOGG: You do not know anything about that?
Mr. MILLAR: I know very little about that company?
Mr. LOVETT: We will get that information for you.
Mr. MILLAR: It is a Portland company.
Mr. KELLOGG: I do not know now who owns the stock of the Portland and Asiatic Company.
Mr. LOVETT: We will get that up.
Mr. KELLOGG: All right. Now, the Occidental & Oriental Steamship Company, I notice the stock of that company in the annual reports of the Union Pacific Railroad Company from time to time, together with dividends declared thereon, one year $25,000, another year $50,000. Do you know whether the Union Pacific owns the stock of the Occidental & Oriental Steamship Company?
Mr. MILLAR: It does.
175 Mr. KELLOGG: It does?
Mr. MILLAR: Oh, well, I mean only a part of the stock. It does not own all.
Mr KELLOGG: Does not own all of it?
Mr. MILLAR: Just one-half as I understand.
Mr. KELLOGG: Who owns the other half?
Mr. MILLAR: The various shareholders on the Pacific Coast.
Mr. KELLOGG: Individuals?
Mr. MILLAR: Partly individuals and partly as I testified before, the Southern Pacific Company.
Mr. KELLOGG: The Southern Pacific and the Union Pacific jointly own control of the Occidental & Oriental Steamship Company?
Mr. MILLAR: That is my understanding, yes sir.
Mr. KELLOGG: Do you know the officials of that company?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Well, give them.
Mr. MILLAR: R. P. Schwerin is president; W. F. Herrin, vice president; David D. Stubbs, secretary and general manager.
I think you asked about the secretary before and I was unable to answer; could not recall. I think there have been changes, but I see Mr. Stubbs is still secretary.
Mr. KELLOGG: Now, who are the directors of that steamship company—just a moment before I ask that question. Mr. Herrin is counsel for the Southern Pacific Road, living at San Francisco, is he not?
Mr. MILLAR: Yes sir.
Mr. KELLOGG: Does he also represent the Union Pacific Road at San Francisco?
Mr. MILLAR: Not to my knowledge.
Mr. KELLOGG: Mr. Schwerin is general manager of the Pacific Coast Steamship Company, isn't he?
Mr. MILLAR: He is.

Mr. KELLOGG: And also general manager of the Occidental & Oriental Steamship Company?

Mr. MILLAR: Yes sir.

176 Mr. KELLOGG: And Mr. Stubbs is a brother of J. C. Stubbs, is he?

Mr. MILLAR: I do not know that.

Mr. KELLOGG: What connection does he have with any of the other Pacific companies?

Mr. MILLAR: None to my knowledge.

Mr. KELLOGG: He is the only man outside of the family. What individuals own stock in the Occidental & Oriental Steamship Company that you know of?

Mr. MILLAR: I do not know as to that.

Mr. KELLOGG: Who has the stock books?

Mr. MILLAR: Of the Occidental?

Mr. KELLOGG: Yes.

Mr. MILLAR: I think they are kept by D. D. Stubbs.

Mr. KELLOGG: In San Francisco?

Mr. MILLAR: Yes, if they were not burned in the fire.

Mr. LOVETT: We will get that information for you also.

Mr. KELLOGG: Very well, sir; the stockholders of the Occidental & Oriental, the stockholders of the Portland & Asiatic, and the stockholders of the Pacific Mail. You do not know who owns the other half interest or not quite half—the minority stock in the Pacific Mail, do you?

Mr. MILLAR: I know it is very widely scattered, Mr. Kellogg.

Mr. KELLOGG: Then, the situation is that the Union Pacific and Southern Pacific control the Occidental & Oriental Steamship Line?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: The Southern Pacific controls the Pacific Mail Steamship Line?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And the Oregon Railway & Navigation Company, do you think, controls the Portland & Asiatic?

Mr. MILLAR: I do not know who owns the stock in that company.

Mr. KELLOGG: All these steamship lines run between Pa-

177 cific ports, Portland and San Francisco, and points in the Orient, do they not?

Mr. MILLAR: They do.

Mr. KELLOGG: And they are in the transportation of freight and traffic to and from those ports?

Mr. *Mr.* MILLAR: Yes, sir.

Mr. KELLOGG: In connection with the various Pacific Railroad Lines?

Mr MILLAR: Yes.

Mr. KELLOGG: Now I do not think it was made entirely clear this morning. Does the Southern Pacific Company own all of the stock, except perhaps a share each for the directors, in the Morgan Steamship Line?

Mr. MILLAR: I am not informed as to that.

Mr. KELLOGG: You are not informed as to that?

Mr. MILLAR: No.

Mr. LOVETT: The annual report of the Southern Pacific Company shows every share it owns.

Mr. KELLOGG: Does it show whether any is outstanding?

Mr. LOVETT: Yes, it shows the total amount outstanding, and the number of shares it owns in every case, I think.

Mr. KELLOGG: Do you happen to know the amount of stock of the Morgan Line owned by the Southern Pacific?

Mr. LOVETT: I think the Southern Pacific owns practically all. There may be a few shares——

Mr. KELLOGG: Judge Lovett says he thinks the Southern Pacific owns practically all of the stock of the Morgan Line, but there may be a few shares outstanding.

Com'r LANE: The Morgan Line runs from New York to New Orleans?

Mr. KELLOGG: It is the Southern Pacific Steamship Line running from New Orleans to Galveston——

Mr. LOVETT: No, the Morgan Company is a Louisiana Company which formerly owned the steamship line between New Orleans and New York, and owns a railroad extending from New Orleans to Lafayette, Louisiana, a part of the main Trans-Continental
178 Line. It does not now own any steamships plying between New York and New Orleans. They are owned by the Southern Pacific Company. The Morgan Line owns only railroads and a few small river boats perhaps.

Mr. KELLOGG: I ask that question, Judge Lovett, because in the Annual Reports of the Southern Pacific Company prior to about 1903, the Morgan Line, so called, or what is the technical name of it?

Mr. LOVETT: Morgan's Louisiana & Texas Railroad & Steamship Company.

Mr. KELLOGG: Yes. That company operate and own the steamship line running from New Orleans and Galveston to New York and Havana. After that date these steamships are not mentioned in the reports of the Southern Pacific, that I can find, and since that time the Southern Pacific, you say, itself owns the steamship line.

Mr LOVETT: Yes.

Mr. KELLOGG: Very well. So that the Southern Pacific has since about—you cannot give me the date.

Mr. LOVETT: No. The facts are that as these old ships which the Morgan Company owned at the time the Southern Pacific bought its stock many years ago, passed out of service and were replaced by new ships, the new ships were owned by the Southern Pacific Company and all of the old boats, I believe, are out of service, and it was still known as the Morgan Line of steamers, but they are owned by the Southern Pacific Company.

Com'r LANE: Are those the only boats on the Atlantic that are owned by the Southern Pacific? Are there any boats that run down to Panama?

Mr. LOVETT: No, there are some boats plying between New Orleans and Havana. I don't recollect whether they are owned by the

Southern Pacific or the Morgan Company. I rather think probably they were owned by the Morgan Company——

Mr. KELLOGG: I think they are owned by the Morgan Company.

Mr. LOVETT: But I am not sure whether they were taken over or not.

179 Mr. KELLOGG: Then as I understand it, Judge Lovett, if you will make the admission, for many years, at least since 1897, the Southern Pacific has, either through the Morgan Company or directly, owned and operated a line of steamships extending from New Orleans to New York and from New Orleans to Havana in connection with the Southern Pacific?

Mr. LOVETT: I cannot say as to Havana.

Mr. KELLOGG: Then strike out Havana. From New Orleans to New York in connection with the Southern Pacific.

Mr. LOVETT: In connection with the lines of which the stock was owned by the Southern Pacific.

Mr. KELLOGG: Yes, I mean in connection with the Southern Pacific System.

Mr. LOVETT: Yes. While that subject has been mentioned, it has been suggested that probably it would be a good time to correct the impression that Mr. Miller perhaps inadvertently made this morning about the operation of those lines. The Southern Pacific Company does not, as I understood Mr. Millar to state, itself operate any lines in Louisiana or Texas or east of El Paso. The lines west of El Paso are operated by the Southern Pacific under a lease. The Lines in Louisiana and Texas known as Southern Pacific Lines are not operated by that company, but practically all of the stock of the corporations owning the railroads is owned by the Southern Pacific Company, but the business is conducted by those corporations in their own names, the Southern Pacific, of course, owning the stock.

Mr. KELLOGG: I so understand that.

Com'r LANE: In speaking of the steamboat lines, you include a line running down the coast to Panama?

Mr. KELLOGG: No.

Mr. LOVETT: We have not any line——

Com'r LANE: Haven't you any stock in any company running down to Panama?

Mr. KELLOGG: Except the Pacific Mail on the west coast, I understand.

Mr. LOVETT: I do not know enough about the conditions
180 out there to make any admission. The Pacific Mail operates steamers out there, but I am not sufficiently familiar with it to state the facts. That can be obtained. I am not familiar with it enough to make any admission.

Mr. KELLOGG: I do not want to make any statement of that, of course, but I understand the Pacific Mail runs or did run in connection with the Panama Railroad. Perhaps they do not now.

Mr. LOVETT: There was something of that sort.

Mr. Kellogg: Will you please mark this paper.

(Paper marked Exhibit 53.)

Mr. KELLOGG: Now, Mr. Millar, turn to the record of the Oregon Short Line Executive meetings, page 250.

Mr. MILLAR: Have you the date of that, Mr. Kellogg?

Mr. KELLOGG: Yes, the date of the resolution is August 11, 1902, approving the preliminary contract between William A. Clark, Trustee and Edward H. Harriman, Trustee of July 9, 1902, in relation to the San Pedro Road.

Mr. MILLAR: I think I misunderstood you. I thought you said Oregon Navigation Company.

Mr. KELLOGG: No, the Oregon Short Line Company.

Mr. MILLAR: I do not find it here.

Mr. KELLOGG: Well, perhaps it is the Board of Directors. All I know about it is that (handing paper). Look at page 250.

Mr. MILLAR: Oh, yes, here it is.

Mr. KELLOGG: I ask you to read in evidence—it is very short and we have not had time to have it copied—the resolution approving the contract which I have referred to, the preliminary contract with the San Pedro Line.

Mr. MILLAR: Meeting of the Executive Committee of the Oregon Short Line——

The CHAIRMAN: Give the date in that connection. It is a meeting of the Executive Committee of the Oregon Short Line——

Mr. MILLAR: Railroad Company. August 11, 1902. The following preamble and resolution were adopted. There was submitted a contract between William A. Clark, in trust for himself and
181 his associates, and Edward H. Harriman, as Trustee, as in said instrument recited, dated 9th day of July, 1902, the execution whereof by the terms of said contract was subject to the ratification and approval of the Executive Committee of this company. After consideration and upon motion duly made and seconded, it was resolved, that the execution of the contract now submitted to the Committee, between William A. Clark as trustee for himself, and his associates, and Edward H. Harriman, as Trustee as in said instrument recited, dated July ninth, 1902, be and the same is hereby ratified and approved."

Com'r LANE: That is the contract referred to this morning which runs for ninety-nine years?

Mr. KELLOGG: No, that is the preliminary contract which ultimately resulted in the contracts referred to this morning for ninety-nine years. I will not stop at this moment to call the attention of the Commission to it, but will offer it in evidence as Exhibit 53.

The CHAIRMAN: Are you now offering the contract to which reference is made in the minutes just read?

Mr. KELLOGG: I am.

The CHAIRMAN: That is a different contract and a prior one to those produced this morning.

Mr. KELLOGG: Yes. The contracts offered this morning were made in June, 1903. This contract was made pending the construction of the San Pedro Line, as I understand from Judge Cornish, I think, and it has been superseded by the other contracts.

The CHAIRMAN: You have that contract, and you offer it on the record?

Mr. KELLOGG: Yes, I have offered it.

Papers marked Exhibit No. 53, to Mr. Millar's testimony.

Mr. SEVERANCE: What book is that you have there?

Mr. MILLAR: This is the Executive Committee Volume, Oregon Short Line.

Mr. SEVERANCE: Well, turn to pages 396 and 397.

182 Mr. MILLAR: 396?

Mr. SEVERANCE: 396.

Mr. KELLOGG: Pages 396 and 397, have you got it?

Mr. MILLAR: Yes.

Mr. KELLOGG: Will you please read in evidence the resolution authorizing the subscription to the Southern Pacific stock, at the meeting held August 18, 1904.

Mr. LOVETT: Put that in, subject to correction. (Referring to a paper held in Mr. Kellogg's hand.)

Mr. KELLOGG: Well, I have no objection to offering this, subject to correction.

Mr. MILLAR: Shall I read it?

Mr. SEVERANCE: It will save time to put it in as it is. It is just a resolution——

Mr. KELLOGG: I offer this in evidence. It has not been compared, has not been certified by him and I don't know whether it is correct or not.

(Marked Exhibit 54, to Mr. Millar's testimony.)

Mr. SEVERANCE: Turn to Page 421.

Mr. KELLOGG: 421. Oh, wait a minute. Yes, it is Page 421.

Mr. MILLAR: March 9, 1905.

(Marked Exhibit 55 to Mr. Millar's testimony.)

Mr. KELLOGG: I offer in evidence this paper, the resolution of Executive Committee of the Short Line purchasing 239,793 shares of the common stock of the Oregon Railroad & Navigation Company at a price not exceeding $125. per share, and 108,623 shares of the preferred stock of the Oregon Railroad & Navigation Railroad Company at a price not exceeding $125. per share: "And the President of this company be and he hereby is authorized and in his discretion to pay for said stock in the four per cent. refunding twenty-five year gold bonds of this company at par and accrued interest, or to execute a note of this company to said Union Pacific Company

183 for the amount necessary to pay for said stock."

Mr. KELLOGG: That stock previous to that time, then, had belonged to the Union Pacific Company, had it?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And that purchase was carried out, was it?

Mr. MILLAR: That is my impression. I couldn't say positively about it, sir.

Mr. KELLOGG: You don't know?

Mr. MILLAR: I have no reason to doubt it.

Mr. KELLOGG: You don't know the price that was paid for it?

Mr. MILLAR: No, sir.

Mr. KELLOGG: In the bonds of the Short Line Company?

Mr. MILLAR: No, sir; I don't.

Mr. KELLOGG: Will you turn to the Union Pacific Stockholders and Directors, Vol. 2, Page 163.

Mr. SEVERANCE: You have that, have you?

Mr. MILLAR: Yes.

Mr. SEVERANCE: May I be permitted to ask the questions for a while? It is a little irregular to have two lawyers asking questions! But if you have no objections, I will ask them. We offer in evidence the rules of the pension system of the Union Pacific Railroad Company, which may be marked as an exhibit.

(Papers marked Exhibit 56 to Mr. Millar's testimony.)

Com'r LANE: Why do you offer those?

Mr. SEVERANCE: I will state really what it is. This is a pension system which is applicable to the employés of the Union System, and Rule 6 of the Rules as they were originally formulated and which has been furnished to us, provided that the term of "service" or "in the service" will refer to employment upon or in connection with any of the railroads forming the Union Railroad System at present, comprising the Union Pacific, the Oregon Short Line and the Oregon Railroad & Navigation Company, and the service of any employé with this company will be considered as continuous
184 from the date upon which he has been continuously employed upon such railroads, whether prior to or subsequent to their acquisition by the Union Pacific Railroad or the Oregon Short Line or the Oregon Railroad & Navigation Company.

Mr. SEVERANCE: Now when was that dated?

Mr. MILLAR: April 10, 1906.

Mr. SEVERANCE: On the 10th of April, 1906, there was an amendment made by which service on the Southern Pacific was treated the same as though upon the others. We offer that as showing in every way they treat this as part of a single system of roads. That resolution may be copied and put in. We will offer in evidence the resolution amending the Rule 6 of the Pension Rules, which was passed at the meeting of the Board of Directors of the Union Pacific Railroad Company, held on the 10th of April, 1906, which put Southern Pacific employés in the same category as those of the roads actually owned by the Union Pacific or the original system.

(Papers marked Exhibit 57 to Mr. Millar's testimony.)

Mr. KELLOGG: Will you please turn to pages 169 and 170 of the directors' meetings of the Union Pacific Road, July 19, 1906, to the statement and resolution in reference to the purchase of the Illinois Central stock and the report of the Special Committee, on Page 171 in reference to the purchase of the same, and read the two in evidence, as we have not got a copy.

Mr. SEVERANCE: Read the statement of Mr. Harriman.

Mr. MILLAR: I think I furnished that, Mr. Kellogg.

Mr. KELLOGG: I couldn't find it this morning.

Mr. MILLAR: It is marked No. 21 of my papers.

Mr. SEVERANCE: Marked what?

Mr. MILLAR: 21. No; that is not right. This mark does not agree; it is a different matter.

Mr. SEVERANCE: It has not been furnished.

185 Mr. KELLOGG: I will say there has not been time to prepare everything. The time was short and it was impossible to get everything by now.

Mr. MILLER (Reading): A meeting of the Board of Directors of the Union Pacific Railroad Company, held July 19, 1906. "Director Harriman called Vice-President Cornish to the Chair and then stated to the meeting in substance that he believed it to be to the interest of the Union Pacific Railroad Company to purchase stock of the Illinois Central Railroad Company. That while the Union Pacific Line served a large grain producing territory, it had no line from that territory to the Gulf or to Chicago and into the southeast; that the export of corn by the Gulf ports is likely to increase steadily, that the value and importance of the system of railroads extending from the Missouri River out and above Omaha and as far north as Minnesota and Wisconsin, and from Chicago and St. Louis on a low grade to New Orleans, as does the Illinois Central, will be enhanced by the construction of the Panama Canal, and the importance and value of such connections to the Union Pacific will be very great; that, while the Illinois Central was generally recognized as an important and valuable system of railroads, yet he believes its strategic value and importance was but little understood and appreciated even by some of those most active in its management; and that, while its stock appeared to be a good investment at prevailing prices, he believes it could be made, and in time, was bound to become, very much more valuable. For these and many other, legitimate reasons which might be stated, he believed the Union Pacific ought to purchase stock of the Illinois Central R. R. Co. now to be had at a fair price. He said, however, that he was interested in the ownership of the stock of the Illinois Central, which he thought the Union Pacific should buy, and because of such interest, could not act for the Union Pacific. He said he sought to procure the attendance at this meeting of the largest number of directors possible, so that the

186 question might receive of the Board the consideration its importance deserves; and that such action should be taken as the Board might think the interests of the Union Pacific R. R. Co. require.

"After extended discussion of the subject, and upon motion duly made and seconded, the following resolution was unanimously adopted:

"*Resolved,* that directors Frick, Willcox and Valentine be and they are hereby appointed a special committee to inquire into and consider the expediency of purchasing stock of the Illinois Central R. R. Co., with power to contract for the purchase, or for the option to purchase such stock, if they deem such purchase advisable, and report their actions or conclusions to the Board.

"Directors Harriman, Rogers and Stillman announce that they were interested in the subject matter and upon request were excused from voting.

At a meeting of the Board of Directors of the Union Pacific Rail-Road Co., held July 31st, 1906, the following action was passed:

"The Special Committee appointed July 19, 1906, to inquire into and consider the expediency of purchasing stock of the Illinois Central Railroad Co. submitted the following report:

"New York, July 25, 1906. To the Board of Directors, Union Pacific Railroad Co. Pursuant to the resolution adopted at your meeting on the 19th inst., as follows:

"*Resolved*, that the directors Frick, Willcox and Valentine be and they are hereby appointed the Special Committee to inquire into and consider the expediency of purchasing stock of the Illinois Central R. R. Co. with power to contract for the purchase, or for the option to purchase such stock, if they deem such purchase advisable, and report their action or conclusions to the Board.

"The undersigned, Special Committee thereby appointed, beg leave to report as follows:

"We have inquired into and considered the expediency of the purchase by this company of capital stock of the Illinois Central
187 R. R. Co. and are of the opinion that closer relations by this company and the Illinois Central Railroad Co. will be to the interest of both, and that the purchase by this company of the capital stock of the Illinois Central R. R. Co. hereinafter mentioned, at the price hereinafter stated, will be greatly to the interest of this company,—assuming such purchase to be within the corporate powers of this company and otherwise lawful.

"Messrs. Kuhn, Loeb & Co. hold or control one hundred and five — shares and Mr. E. H. Harriman, Mr. H. H. Rogers and Mr. James Stillman, members of this Board, each hold 30,000 shares of the capital stock of the said Illinois Central R. R. Co., and, after negotiation with these gentlemen, they have offered to sell to this company, the said stock so held by them, aggregating 195,000 shares out of a total 950,400 shares, issued and outstanding, at $175. per share, as of Aug. 1st, 1906, namely, Ex. dividend.

"The Committee regard this price as fair and reasonable. The Committee is satisfied that the stock is so closely held that no considerable amounts could be purchased upon the market without materially advancing the present market price. We believe the stock is -trinsically worth more than the price at which it is offered. The Illinois Central R. R. Co. during the fifty four and one-half years of its existence has paid 101 dividends, and is now paying dividends at the rate of 7% per annum and is earning considerably more. A copy of the last published Annual Report of the Company (being for the fiscal year ending July 30, 1905), is submitted herewith, and its earnings have largely increased and its financial condition has substantially improved during the fiscal year just closed.

"Entertaining these views, your Committee recommends the acceptance of the offer above mentioned, provided the purchase be within the corporate powers of this company and is otherwise lawful, and to afford counsel an opportunity to examine into and advise respecting the legality of the purchase, and for you to deter-
188 mine what shall be done in the light of such advice, and of this report, your Committee have made an agreement with Messrs. Kuhn, Loeb & Co., and Messrs. E. H. Harriman, H. H.

Rogers, and James Stillman, whereby your company is given an option of fifteen days to purchase the above mentioned stock of the Illinois Central R. R. Co. held by the said Kuhn, Loeb & Co., and Messrs. E. H. Harriman, H. H. Rogers, James Stillman at the price named, with interest at the rate of four per cent. per annum from August 1, 1906, to date of payment.

"Your committee has been informed by Mr. Harriman that he owns a majority of the stock of the Railroad Securities Company which owns (as its only asset, other than cash) 95,000 shares of Illinois Central R. R. Co. stock, subject to the pledge of 80,000 shares to secure $8,000,000,000 par value of four per cent. certificates redeemable at 105 and interest. Mr. Harriman has further stated to the Committee that in case the company purchases the Illinois Central R. R. Co.'s stock, offered by Messrs. Kuhn, Loeb & Co., Mr. Harriman and the other gentleman above named, he thought that the company should have an opportunity to purchase his stock in the Railroad Securities Company at a price based upon the price at which Illinois Central R. R. Co. stock has been offered to the company by Messrs. Kuhn, Loeb & Co., Mr. Harriman and the other gentleman above named, and we have taken from him an option to that effect for fifteen days.

"All of which is respectfully submitted. H. S. Frick, David Willcox, P. A. Valentine.

"There was also submitted to the Board with said Committee's Report, the opinion of counsel, which is on file with the secretary, to the effect that, in the opinion of counsel, the purchase of said stock of the Illinois Central R. R. Co. is within the corporate powers of this company and is otherwise lawful.

"Thereupon and upon consideration of said report and opinion, it was on motion, duly made and seconded, resolved, that the report of the Special Committee composed of Directors Frick, Willcox and Valentine, as above set forth, be and such report is hereby adopted, and the action and recommendation of the said Committee was ratified and approved; and the proper officers of this company are hereby authorized and empowered to take over the said stock, and pay for the same, and to take all such action as may be necessary or proper in the premises.

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"Directors Harriman, Rogers and Stillman, being interested in the subject matter, were excused and did not vote upon the said resolution."

Com'r LANE: Who were present at that meeting?

Mr. MILLAR: Directors Ames, Earlng, Frick, Goelet, Harriman, Hughitt, Lovett, Peabody, Rockefeller, Rogers, Stillman and Willcox.

Com'r LANE: How many directors had the company at that time?

Mr. MILLAR: Fifteen.

Com'r LANE: How many were present?

Mr. MILLAR: Twelve.

Com'r LANE: How many were excused—four?

Mr. MILLAR: Three.

Com'r KNAPP: Have you any knowledge of the circumstances

under which Kuhn, Loeb & Co. at that time had such a large amount of Illinois Central stock?

Mr. MILLAR: No, sir, I have no knowledge as to that.

Mr. KELLOGG: Turn to page 229, Vol. 3, of the Executive Committee meetings of the Union Pacific. Is there a resolution there relative to the purchase of the Railroad Securities stock.

Mr. MILLAR: Yes sir.

Mr. SEVERANCE: Here is a copy of it. It isn't much. It is a copy we made; whether it is correct or not, I don't know; I guess it is.

Mr. KELLOGG: You may read that resolution.

Mr. MILLAR (reading): "At a meeting of the Executive Committee of the Union Pacific R. R. Co. held Oct. 25, 1906, the following action was taken:

"The Chairman reported that he had an opportunity on the 13th instant, to purchase all the shares of the Railroad Securities
190 Company, consisting of 6,625 shares of the preferred stock, and 11,925 shares of the common stock of the Railroad Securities Company, owned by Stuyvesant Fish, at par for the preferred, and $201.78 for the common; one-half of the price to be paid in stocks of the Illinois Central R. R. Co. at $175 per share; and that, as he believed it was for the interest of this company to purchase such stock, upon said terms, and as it was necessary to conclude the agreement at once if at all, he had effected the purchase upon the terms stated, and, for the stock so purchased, he had surrendered 8,769 shares of Illinois Central R. R. Co. owned by this company, which, at $175 per share, amounted to $1,536,449.81, and had paid the balance of the purchase price, amounting to $1,537,020.49 in cash, and had received from Mr. Fish and turned over to the Treasurer of this company certificates of the stock of the Railroad Securities Company, so purchased, and that, as a result, this company now owned 18,984 shares of the preferred and 34,154 shares of the common stock outstanding.

"Upon motion duly made and seconded, it was unanimously resolved that the action of the president of this company in purchasing 6,625 shares of the preferred and 11,925 shares of the common stock of the Railroad Securities Company as above stated, be, and his actions in the premises, is hereby ratified and approved."

Mr. SEVERANCE: Look at a meeting on the date of October 4, 1906, Page 224, same book. Do you find a resolution there relative to the purchase of Baltimore & Ohio stock?

Mr. MILLAR: Yes.

Mr. SEVERANCE: Will you read that please, for the record?

Mr. MILLAR (reading):

"At a meeting of the Executive Committee of the Union Pacific R. R. Co. held October 4, 1906, appears the following:

"The agreement made by the president of the Oregon Short Line R. R. Co., Messrs. Kuhn, Loeb & Co. for the purchase of
191 323,342 shares of the common stock, and 72,064 shares of the preferred stock, of the Baltimore & Ohio R. R. Co. and the resolution adopted by the Executive Committee of said Oregon

Short Line R. R. Co. approving such agreement, were submitted to this meeting. And thereupon, upon consideration of the same, the following resolution was unanimously adopted, namely:

Resolved that the Union Pacific R. R. Co. as owner of the capital stock of the Oregon Short Line R. R. Co. hereby approves the agreement made by the President of said Oregon Short Line R. R. Co. with Messrs. Kuhn, Loeb & Co., and submitted to this meeting for the purchase of 323,342 shares of the common stock and 72,064 shares of the preferred stock of the Baltimore & Ohio R. R. Co."

Mr. SEVERANCE: Have you in your possession, as Secretary of the company, that agreement? I mean, as secretary of the Oregon Short Line, or as secretary of the Union Pacific or of any other company.

Mr. MILLAR: I think so, yes.

Mr. SEVERANCE: Will you kindly have that here tomorrow morning—make a memorandum of that.

Mr. MILLAR: Yes, a copy for filing.

Mr. SEVERANCE: Yes, a copy. Will you turn to page 206 of that book, meeting of July 26, 1906.

Mr. MILLAR: Yes sir.

Mr. SEVERANCE: Do you see a resolution there, empowering Mr. Harriman to borrow money at his discretion for the use of the company?

Mr. MILLAR: Yes sir.

Mr. SEVERANCE: Will you read that into the record?

Mr. MILLAR (reading): "Meeting of the Executive Committee of the Union Pacific R. R. Co., July 26, 1906. On motion duly made and seconded it was unanimously resolved that the resolution adopted by this Committee on the 31st day of December, 1902, authorizing E. H. Harriman, Chairman of this Committee, to borrow such sums of money as may be required for the uses of this company, be and the same is hereby amended to read as follows:

"Resolved, that E. H. Harriman, Chairman of the Execu-
192 tive Committee, be and is hereby authorized to borrow such sums of money as may be required for the uses of this company; to execute in the name and on behalf of this company a note or notes for the amounts so borrowed; and the securities of this company as collateral to such notes. In the absence of the Chairman of the Executive Committee, authority is hereby given to the Treasurer of the Company and to W. D. Cornish, one of the Vice Presidents of the Company or to the Treasurer and Comptroller of the company, to sign jointly, on behalf of his company, notes for the amounts so borrowed, and to pledge such securities as collateral thereto."

Com'r KNAPP: Do we understand that that gave Mr. Harriman unlimited authority to borrow any sum of money he chose and pledge all the assets of the companies as security for the payment.

Mr. SEVERANCE: That is what it says.

Mr. MILLAR: No, sir. The object of this resolution was to comply with the rules of certain banking institutions in the city which required not only the making and execution of a note but the pledg-

ing of collateral with the note; that was the simple object of passing this resolution.

Com'r LANE: Does your record show just what use Mr. Harriman made of the opportunity that was given him there?

Mr. MILLAR: No, sir, no. This simply gave him the power when a note was called for, that he could pledge the securities as well as execute the note. This did not refer to any special borrowing of money.

Com'r LANE: At what time was that passed?

Mr. MILLAR: This was July 26, 1906.

Com'r LANE: What money was borrowed under that resolution?

Mr. MILLAR: I have no knowledge as to that whatever.

Mr. SEVERANCE: I might say that this was an amendatory resolution. A resolution was passed on Dec. 31st, 1902, giving this power to Mr. Harriman and then on the 26th of July it was
193 amended by re-enacting that part of the resolution and inserting also the provision that Mr. Cornish, one of the Vice-Presidents, or the Treasurer might sign notes and pledge securities in the absence of Mr. Harriman.

Com'r LANE: As I understood Mr. Mahl, he said no money had been borrowed.

Mr. SEVERANCE: Yes, he so stated.

Mr. MILLAR: If I may explain, I know personally that this vote was not taken for the purpose of borrowing money, but for the purpose of enabling the Chairman to pledge securities at the same time he executed notes.

Com'r LANE: What would he execute notes for if not to borrow money?

Mr. LOVETT: I cannot answer as to whether he was borrowing money or not. That does not come in my department. I rather think the gentlemen misunderstood. I did not understand him to say the Oregon Short Line had borrowed any money.

Com'r LANE: I understood that neither the Short Line nor the Southern Pacific had borrowed any money for the purchase of these stocks since June 30th.

Mr. LOVETT: Oh, well, that may be. He might borrow money for other purposes.

Com'r LANE: Does that go into that common fund in which one hundred million dollars was lost?

Mr. LOVETT: I haven't heard of the loss.

Com'r LANE: It was not discovered. We could not find out just what became of that one hundred million dollars because its identity was more or less lost.

Mr. LOVETT: I didn't know it was lost. I thought we had agreed to furnish the Commission this information from the books as to what was received for those bonds. I undertook to state that the proceeds of the bonds had gone into the treasury of the company.

Com'r LANE: We understood that was so, but you could not say just what happened with that one hundred million dollars, with that particular money; that is to say that became a part of your assets

and part of your money, and then you could show us just
194 what all of your money has brought and what has been done with it.

Mr. LOVETT: I don't know, but the books may show as to the particular purpose of that bond issue, but whatever they say here, I offered this forenoon to get up, and furnish to the Commission.

Com'r LANE: Was your suggestion to me that perhaps my question was too narrow to Mr. Mahl, and that the Oregon Short Line may have borrowed some money?

Mr. LOVETT: My suggestion is that I did not understand Mr. Mahl testified the Oregon Short Line had not borrowed any money. He may have testified it did not borrow money for some particular purpose, as a corporation, but I did not understand him to state generally that it had not borrowed any money.

Com'r LANE: In other words, they might use the money that the Oregon Short Line had for the purchase of stocks and borrow money to replace that money which had been used in the purchase of stocks.

Mr. LOVETT: Yes. If the Commission please, as I understand, this resolution is merely a formal matter passed away back in 1902, and that the matter that has been read here is an amendment of that resolution, some formal matter, required in banking, and I understood that to be the object of that resolution, as explained by the Secretary—the amendment of that resolution passed in 1902.

Mr. SEVERANCE: Suppose Mr. Millar turns to the original resolution. Let us put that in, adopted the 31st of December, 1902, by the Executive Committee of the Union Pacific. The 31st of December, 1902, Page 324, do you find that resolution authorizing Mr. Harriman to borrow money?

Mr. MILLAR: Yes, sir. At the meeting of the Executive Committee of the Union Pacific, held on Dec. 31, 1902, the following resolution was unanimously adopted:

"*Resolved*, that E. H. Harriman, Chairman of the Executive Committee, be and he is hereby authorized to borrow such sums of money as may be required for the uses of this company, and to ex-
195 ecute it in the name and on behalf of this company, a note or notes for the amounts so borrowed. In the absence of the Chairman of the Executive Committee, authority is hereby given to the Treasurer of the Company and to the Vice-President of the Company to sign jointly on behalf of this Company notes for the amount so borrowed."

Com'r KNAPP: It was simply amended last year so as to allow them to pledge security?

Mr. MILLAR: Yes, sir; as required by one or two banks.

Mr. SEVERANCE: Now, as a matter of fact, pursuant to that authority, Mr. Harriman had borrowed money for the use of the company and given the company's notes a great many times, hadn't he, from 1902 down to 1906?

Mr. MILLAR: I am not very familiar with the financial transactions.

Mr. SEVERANCE: You don't know about that?

Mr. MILLAR: No, I do not.

Mr. SEVERANCE: Now, will you please turn to Page 170 of Vol. 2 of the Executive Committee of the Union Pacific, under date of May 8th, 1901.

Mr. MILLAR: May 8, 1901.

Mr. SEVERANCE: A resolution as to purchasing securities from Kuhn, Loeb & Co.

Mr. MILLAR: Yes.

Mr. SEVERANCE: Do you find a resolution adopted on that day by the Executive Committee with reference to the purchase of certain securities from Kuhn, Loeb & Co.

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Will you read that, please?

Mr. MILLAR: Meeting of the Executive Committee of the Union Pacific R. R. Co., May 8, 1901;

"The Chairman reported that, pursuant to authority he had purchased for the company from Messrs. Kuhn, Loeb & Co. certain securities, specified in detail in the statement submitted to the Executive Committee, upon the terms set forth in the correspondence
196 evidencing the transaction, and submitted to the Executive Committee, which correspondence is on file with the Secretary. And, on motion duly made and seconded, it was resolved that the action of the Chairman in making the purchases from Messrs. Kuhn, Loeb & Co. of the securities mentioned and such detailed statement and correspondence be in all things ratified and approved.

"Mr. Kahn did not vote upon the foregoing resolution, because personally interested as a member of the firm of Messrs. Kuhn, Loeb & Co."

Mr. SEVERANCE: Have you still in your possession that statement which specifies those securities in detail, and also the correspondence?

Mr. MILLAR: I think so. Yes, sir.

Mr. SEVERANCE: Kindly produce them to-morrow.

Mr. SEVERANCE: Will you turn to the meeting of June 6, 1901; page 182 of that same volume?

Mr. MILLAR: Just a moment, please. Page 182?

Mr. SEVERANCE: Yes. Page 182. I think you will find there something under the head of Traffic headquarters at Chicago.

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Will you read that entry?

Mr. MILLAR (reading): At a meeting of the Union Pacific Railroad Company dated June 6, 1901, the following action was had: The Chairman reported to the committee that he had made arrangements for the establishment of the traffic headquarters of the Union Pacific, the Southern Pacific and Oregon Short Line, and the Oregon Railroad and Navigation Company in the City of Chicago, fully explaining the advantages of such an arrangement. Whereupon, upon motion, duly seconded, the action taken by the Chairman in the premises was ratified and approved."

Mr. SEVERANCE: Were you present at that meeting?

Mr. MILLAR: Yes, sir. I was the Secretary.

Mr. SEVERANCE: You say in your minutes that Mr. Harriman

fully explained the advantages of such an arrangement. Do
197 you happen to recall what the explanation was he made of the advantages of a common traffic office for these four companies?

Mr. MILLAR: No, I do not.

Mr. SEVERANCE: You don't remember that?

Mr. MILLAR: No, sir.

Mr. SEVERANCE: Will you turn to pages 306 and 307 of that same volume? Do you find there a resolution concerning the agreement with the Chicago & Northwestern Railway Company?

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Will you kindly read that?

Mr. MILLAR (reading): "Meeting of the Executive Committee of the Union Pacific Company, October 23, 1902. The Chairman submitted a memorandum of agreement between the Union Pacific Railroad Company the Southern Pacific Company, the Oregon Short Line Company and the Oregon Railroad & Navigation Company of the first part, and the Chicago & Northwestern Railroad Company of the second part, dated October 22, 1902, covering the formation of through lines of transportation between the companies named by way of Omaha, Nebraska. Whereupon, upon motion duly seconded, the agreement was approved, and the action of the Chairman in executing the same was ratified and confirmed.

Mr. SEVERANCE: Have you a copy of that agreement in your office?

Mr. MILLAR: I think so.

Mr. SEVERANCE: Kindly produce it; give us a copy of it.

Mr. MILLER: I don't keep all the agreements, but I probably have that one.

Mr. SEVERANCE: Just let us have a copy of it?

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Will you turn to page——

Mr. LOVETT (interrupting): We will get you a copy if he hasn't it.

Mr. SEVERANCE: All right. Will you please turn to page 355; Meeting of March 19, 1903. You will find a reference there to certain loans, amounts borrowed and loaned?

198 Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Will you kindly read that entry?

Mr. MILLAR (reading): "A meeting of the Executive Committee of the Union Pacific Railroad Company, March 19, 1903. The following action was had. The Chairman submitted a memorandum showing the amounts borrowed by the company, and also the amounts loaned by the company to the Southern Pacific Company, the Chicago & Alton Railway Company, the Kansas City & Southern Railway Company, and the Union Depot & Railway Company of Denver. Whereupon, upon motion duly seconded, the amounts borrowed and also the loans made by the company were approved, and the action of the Chairman in arranging for the same was ratified and affirmed."

Mr. SEVERANCE: Have you in your office that memorandum that was submitted by Mr. Harriman at that meeting?

Mr. MILLAR: I couldn't say positively.

Com'r LANE: Have you any record in the minutes of the amounts of these loans?

Mr. MILLAR: No, sir.

Mr. SEVERANCE: It says that he submitted a memorandum showing the amounts that had been borrowed and also the amounts loaned to the Southern Pacific Company and the Alton Company, the Kansas City Southern and the Union Depot and Railway Company at Denver, and his connection in making those loans and in borrowing those sums of money which was approved. It is only a report of a memorandum that was incorporated in the minutes.

Com'r LANE: Was that reported to the Board of Directors?

Mr. SEVERANCE: This is the Executive Committee.

Com'r LANE: Was that reported to the Board of Directors in detail?

Mr. SEVERANCE: No, I think not. Under the by-laws they have all the powers.

Mr. MILBURN: An account of the proceedings was reported to the Directors at their meeting.

199 Com'r LANE: Was the amount given in the report that was made to the directors' meeting of the loan?

Mr. MILLAR: That I wouldn't know.

Mr. SEVERANCE: The only minute that *that* they have at the Directors' Meeting is about this, that the minutes of such and such meetings of the Executive Committee were presented and upon motion approved; so that I assume that nothing is here presented to the Board of Directors that was not presented to the executive Committee; and as far as all these details of the management is concerned, the Executive Committee attends to them without any extra report. That is correct, Mr. Lovett, isn't it?

Mr. LOVETT: Yes, sir.

Mr. SEVERANCE: Turn to page 20, of Volume 3, of the Executive Committee.

Mr. SEVERANCE: Do you find any statement there with reference to the appointment of Mr. Lovett as counsel?

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Now, will you please read that, omitting the amount of the compensation, which is immaterial to this question.

Mr. MILBURN: I might be interested in that.

Mr. SEVERANCE: We will let you find that out for yourself.

Mr. MILLAR: At a meeting——

Mr. SEVERANCE: You understand you need not read the amount of the compensation.

Mr. MILLAR: At a meeting of the Executive Committee of the Union Pacific Ry. Co., held February 18, 1904, the chairman reported that he had appointed Hon. R. S. Lovett counsel of the Union Pacific and Southern Pacific companies, and the allied lines, with headquarters at 120 Broadway, New York City.

Mr. SEVERANCE: Now, right after that, "whereupon on motion"—don't you find that?

Mr. MILLAR: Whereupon on motion, duly seconded, it was resolved that the action of the chairman in appointing the Hon. R.

S. Lovett, as stated above, be and the same is hereby ratified and approved.

200 Mr. SEVERANCE: Turn to page 39 of that same volume, June 9, 1904. Do you find a memorandum with reference to a lease of offices for the Director of Maintenance and Operation?

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Will you read that entry?

Mr. MILLAR: Meeting of the Executive Committee of the Union Pacific Ry. Co., held June 9th, 1904. The Chairman submitted a lease for floor space in the Merchants Loan and Trust Bildg., Chicago, for the offices of Mr. Kruttschnitt, Director of Maintenance and Operation, for use jointly by the Union Pacific, Southern Pacific, Oregon Short Line, and Oregon Railroad and Navigation Company, for a term of three years, at an annual rental of $11,400, payable monthly in advance. Whereupon on motion, duly seconded, it was resolved that the above lease, now submitted, be and same is hereby approved and confirmed.

Mr. SEVERANCE: Now, turn to page 59 of that same book, meeting of September 29, 1904.

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Do you find an entry with reference to the purchase of Chicago & Alton Ry. stock?

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: Read that please?

Mr. MILLAR: At a meeting of the executive committee of the Union Pacific Railroad Co. held September 29, 1904, the president announced to the meeting that he had purchased from Messrs. Kuhn, Loeb & Co., on behalf of the Union Pacific Railroad Co., subject to the approval of its Board of Directors, 102,000 shares of the preferred capital stock of the Chicago & Alton Ry. Co., at $84.00 per share, plus a commission of 2½% upon the par value of said stock; the stock to be delivered and paid for on October 3, next. Whereupon, on motion, it was unanimously resolved that the action of Mr. E. H. Harriman President of this company, in purchasing from Messrs. Kuhn, Loeb & Co. on behalf of this company, 102,000 shares of the preferred capital stock of the Chicago & Alton

201 Railway Company at $84.00 per share, plus a commission of 2½% on the par value of said stock, the stock to be delivered and paid for on October 3, next, be and such action is hereby ratified, and such purchase confirmed.

Mr. Kahn was, of his own request, excused from voting on the foregoing resolution."

Com'r LANE: Do you know why Mr. Kahn was excused?

Mr. SEVERANCE: He is a member of the firm of Kuhn, Loeb & Co.

Mr. MILLAR: The record does not state. I have no special recollection of it.

Com'r HARLAN: The stock was bought from his bank, wasn't it?

Mr. MILLAR: Yes.

Com'r LANE: What time was it that the agreement was entered into between the Rock Island and the Union Pacific regarding the Chicago & Alton?

Mr. SEVERANCE: That was 1904?

Com'r LANE: This was September, 1904?

Mr. SEVERANCE: Well, this must have been about the same time.

Mr. MILBURN: What was the last which was read?

Mr. SEVERANCE: It was in regard to the purchase of the Alton stock. I think that agreement was made right after that.

Mr. MILLAR: Which agreement do you refer to?

Mr. SEVERANCE: Will you turn to the meeting of April 7, 1905, Page 82, of Vol. 3, and read a letter from Mr. Harriman submitted before that meeting, the letter addressed to Mr. Gould?

Mr. MILLAR: At the meeting of the Executive Committee of the Union Pacific Railroad Co. held April 7th, 1905.

"The Chairman submitted for the information of the Committee a copy of his letter to Mr. George J. Gould, dated April 26, 1905, as follows:

202 "George J. Gould, Esq., 195 Broadway, New York City.

DEAR MR. GOULD: I am in receipt of yours of the 25th instant, as follows: 'You doubtless know that I have determined to support the Western Pacific construction. This I regard as necessary for the protection of the system in which my interests are greatest. If you think this involves reasons why we should reciprocally withdraw from the Boards of which we are the respective heads, I would be glad to meet your view. I prefer that you should reach your own conclusion as to whether, remaining as we are, or withdrawing as above suggested, would be better for the interests we represent.'

It seems to me that you settled the question of your own withdrawal from the Union Pacific and Southern Pacific Boards on March 8, last, when, after the Western Union Board meeting, you, Mr. Schiff, and myself had a talk regarding your connection with the Western Pacific. You then stated that you had no interest whatever in the construction of the line and were not committed in any way thereto, but that you did not mean to convey the impression that you might not in the future, but, if you did, you said you did not think it would be right for you to be in the counsels of our allied line, and also you would give us due notice of intention on your part, to promote the construction of the Western Pacific. On March 9, the Union Pacific Executive Committee was elected, and you included therein. I am not conscious of any act on my part which might be considered as detrimental to any of the properties of which I am or have been a director. I have not taken part in any proceeding of the Denver & Rio Grande for a long time, and had presumed that I had not been re-elected to that Board. I also declined to qualify as director after my election to the Rio Grande Western, as I did not want to be in any way responsible for
203 the attitude to be assumed by that company toward the Western Pacific. The era of prosperity through which we are now passing has been marked by less construction or destructive, competitive and non-producing lines of transportation than any former one; but there has been great expenditure in providing for improvements and additional facilities to the already existing lines; thereby better conserving the interests of the public and the shareholders as well. For myself, I shall regard the loss of your advices, which I have valued in our affairs, as well as the personal pleasure

of having you included in them. If there has been any misunderstanding of my directorship in the Denver & Rio Grande and the Rio Grande Western, will you please advise the Boards of those companies of my withdrawal from or declination to qualify as one of their body.

Believe me,

Yours truly,

(Sgd.) E. H. HARRIMAN."

Mr. SEVERANCE: Turn to page 104 of that volume, meeting of July 20, 1905, do you find a reference there to a letter from Mr. Stubbs about advertising?

Mr. MILLAR: Yes.

Mr. SEVERANCE: Will you read that entry?

Mr. MILLAR: At a meeting of the executive committee of the Union Pacific Railroad Co. held July 20, 1905, the following action was taken.

The Chairman submitted a letter from Mr. J. C. Stubbs, traffic director, dated July 6th, 1905, enclosing a memorandum showing estimated advertising expenses for system lines for the fiscal year ending June 30, 1905, of which this company's proportion is $209,227.49, and stated that he had authorized the same. Whereupon on motion duly seconded, the expenditure was approved, and the action of the Chairman in authorizing the same was ratified and confirmed."

Mr. SEVERANCE: I show you a paper which may be marked
204 Exhibit 57, and I will ask you if that is a copy of the letter from Mr. Stubbs, mentioned in that resolution.

Mr. MILLAR: Yes, sir.

Mr. SEVERANCE: I will offer this letter in evidence merely calling attention to the fact that it is a letter dated July 6th, 1905, written by Mr. Stubbs to Mr. E. H. Harriman, President of the Union Pacific, in which he says that attached to the letter is a table showing the amounts required for advertising purposes for the related lines for the fiscal year ending June 30, 1906.

Then in a footnote he says, "U. P. requisition also includes $12,500, necessary to advertise opening of the San Pedro line—with expectation that the San Pedro Co. will appropriate a like sum."

In the table which is annexed he gives a statement of the amount expended for advertising for each year, 1905, 1906,—that is the amount expended in 1905, and the amount proposed to be expended for 1906. First, the Union Pacific Railroad Company, next the Oregon Short Line, the Oregon Railroad & Navigation Company, then the Pacific system, Southern Pacific Company, and the Atlantic system of the Southern Pacific Co. separately.

(The paper was marked in evidence Exhibit No. 57 to Mr. Millar's testimony.)

Mr. KELLOGG: Judge Lovett, this morning we introduced the trust agreement between Mr. Harriman, Trustee, and Mr. Clark, trustee, for the deposit of all of the San Pedro Company stock with the Farmers' Loan & Trust Company, and the Farmers' Loan & Trust Company were to furnish us the request signed jointly by Mr. Clark and Mr. Harriman, requesting the trust company to vote the

stock for the election of the Board of Directors each year at the annual meeting. Copies of those letters with a letter from the attorney of the Farmers' Loan & Trust Company have been
205 furnished us and Judge Lovett consents that the letter and copies may be offered in evidence with the same force and effect as the originals.

(Papers marked Exhibits Nos. 58, 59, 60, 61, 62, 63, 64 and 65, to Mr. Millar's testimony.)

The CHAIRMAN: Are there any further questions to be asked of Mr. Millar?

Mr. SEVERANCE: Oh, yes.

Mr. KELLOGG: Mr. Millar, have you got in your office the printed plan of re-organization of the Union Pacific Railway?

Mr. MILLAR: Those have always been very scarce in our office.

Mr. KELLOGG: The old Union Pacific Railway: have you got it, Judge Lovett?

Mr. LOVETT: Railroad, isn't it?

Mr. KELLOGG: Yes.

Mr. MILLAR: Those have been very scarce in our office, because they were issued before the company was formed, but I could probably get a copy. Do you wish me to?

Mr. KELLOGG: I have a copy; it is printed in a record of another case, in a big volume, with hundreds of other documents. If you have a separate copy I should like to see it.

Mr. MILLAR: As a fact, I believe I have no separate copies in my office. I have one bound up, as you probably have.

Mr. KELLOGG: I know they are very scarce. If you have not one to spare me I will introduce the one I have. I have it somewhere and will produce it.

Mr. SEVERANCE: Now, with regard to the Southern Pacific, will you look at the records of the directors of the Southern Pacific, volume 5, page—I have not got the page, but it is the meeting of June 9, 1904.

Mr. MILLAR: What is the subject?

Mr. SEVERANCE: It is the appointment of Mr. Stubbs and Mr. Kruttschnitt.

Mr. MILLAR: Yes sir.

206 Mr. SEVERANCE: Will you read that entry or resolution?

Mr. MILLAR: This was a meeting of the Board of Directors of the Southern Pacific Company held June 8, 1904. The following resolution was adopted:

"Resolved, that J. C. Stubbs be and he is hereby appointed a vice president of this company with headquarters at Chicago, Illinois; that J. Kruttschnitt be and he is hereby appointed a vice president of this company, with headquarters at Chicago, Illinois; and that C. H. Markham be and he is hereby appointed a vice president of this company with headquarters in San Francisco, Cal. Each of said vice presidents shall have such powers and perform such duties as shall from time to time be conferred and prescribed by the Board of Directors, or executive committee, or the chairman of the executive committee."

Do you want the other officers?

Mr. SEVERANCE: No, that is all. It is now five o'clock.

The CHAIRMAN: You will not be able to conclude Mr. Millar's examination tonight?

Mr. SEVERANCE: He can bring some papers in tomorrow.

Mr. KELLOGG: I think Mr. Millar had better come back as the other side may want to ask some questions.

Mr. SEVERANCE: And we may find something we have overlooked.

The CHAIRMAN: The Commission will now stand adjourned until ten o'clock tomorrow morning.

Adjourned to January 5th, 1907, at 10:00 A. M.

207 NEW YORK CITY, N. Y.,
Jan. 5, 1907—10 o'clock a. m.

The Commission met pursuant to adjournment.

Present: Commissioners Knapp (chairman), Lane and Harlan.

The CHAIRMAN: You may proceed, gentlemen.

E. T. JEFFERY, called as a witness, being duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Jeffery, where do you live?

Mr. JEFFERY: In New York.

Mr. SEVERANCE: What is your business, Mr. Jeffery?

Mr. JEFFERY: Railroad business.

Mr. SEVERANCE: With what corporation are you connected?

Mr. JEFFERY: I am President of the Denver & Rio Grande Railway Company, the Rio Grande Western Railroad Company, the Rio Grande Southern and other affiliated lines of the Rio Grande, and of the Western Pacific Railway Company, and chairman of the Board of Directors of the Wabash Railway Company, and a director in two or three other railroad companies.

Mr. SEVERANCE: How long have you been in the railroad business?

Mr. JEFFERY: Fifty years last September.

Mr. SEVERANCE: And with what different roads have you been connected, in a general way? I do not want to go into great detail.

Mr. JEFFERY: In active management with the Illinois Central and Denver & Rio Grande.

Mr. SEVERANCE: What was your position on the Illinois Central?

Mr. JEFFERY: I held various positions, from apprentice boy in the machine shop to that of general manager.

Mr. SEVERANCE: And when you quit the service of the Illinois Central you were general manager of the system?

Mr. JEFFERY: Yes, sir.

208 Mr. SEVERANCE: Did you go from that road to the Denver & Rio Grande?

Mr. JEFFERY: No, I refrained from railroading for two years, during which time I devoted myself to the work of securing the World's Fair for Chicago in 1893 and the planning of that enterprise.

Mr. SEVERANCE: Well, that is outside. Now, you are familiar in

a general way with the railroad situation in the West are you not, Mr. Jeffery?

Mr. JEFFERY: Yes, in a general way.

Mr. SEVERANCE: And have been for a good many years?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Now, the Southern Pacific road runs from—that is, the road controlled by the Southern Pacific Company runs from New Orleans in the East to Portland in the Northwest?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: And the Union Pacific and its allied lines from Omaha to Portland?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: The Union Pacific to Ogden or Granger and then over the Short Line and the Oregon Railroad & Navigation Company to Portland?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: The Illinois Central line, of which you were formerly general manager, has a line from Chicago to Omaha, has it not?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: And also a line from Chicago to New Orleans?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: So that the Illinois Central forms a connecting link between the Southern Pacific at New Orleans and the Union Pacific at Omaha?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Now, where does the Denver & Rio Grande road and the Rio Grande Western run?

Mr. JEFFERY: From Denver via Colorado Springs and Pueblo to Salt Lake City and Ogden, Utah.

209 Mr. SEVERANCE: With what lines of road does the Denver & Rio Grande connect at Denver?

Mr. JEFFERY: Its friendly connections that it interchanges business with on equal terms are the Burlington and the Rock Island. I might add at Colorado Springs the Rock Island and also at Pueblo the Rock Island and the Atchison, Topeka & Santa Fe and the Missouri Pacific.

Mr. SEVERANCE: And at Salt Lake City and Ogden with what roads does the Denver & Rio Grande connect.

Mr. JEFFERY: The Oregon Short Line and the Southern Pacific.

Mr. SEVERANCE: And the San Pedro?

Mr. JEFFERY: The San Pedro.

Mr. SEVERANCE: You were connected with the Rio Grande system during the receivership of the Union Pacific and Oregon Short Line, were you not?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: What was the situation at Ogden so far as your line was concerned at that time with reference to the interchange of traffic between your line and the Central Pacific, that is, the Southern Pacific from Ogden to San Francisco and the Oregon Short Line?

Mr. JEFFERY: We had a free interchange—free and unrestricted interchange on equal terms with the Union Pacific.

Mr. SEVERANCE: Equal terms with the Union Pacific. What situation grew up after the acquisition of the Southern Pacific by the Union Pacific?

Mr. JEFFERY: There was a gradual shrinkage in our business to and from Oregon Short Line and Oregon Navigation, and to and from the Southern Pacific, due doubtless to the control the Union Pacific had of those properties.

Mr. SEVERANCE: Now, you stated that you are the president of the Western Pacific?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: That company has a line of road under construction, has it not?

210 Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: From what point to what point?

Mr. JEFFERY: From Salt Lake City to San Francisco.

Mr. SEVERANCE: Some letters passing between Mr. Harriman and Mr. Gould were introduced in evidence yesterday, they being part of the records of the Executive Committee of the Union Pacific. Is Mr. Gould interested in the Western Pacific?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Of which you are president?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: He referred to that in his correspondence which was read in evidence here, and he stated that he deemed it necessary to further the construction of the Western Pacific because of the roads with which he was chiefly interested. Is he interested in the Rio Grande?

Mr. JEFFERY: Yes, sir; he is interested in the Rio Grande system and the Rio Grande Western through interest in the Denver & Rio Grande.

Mr. SEVERANCE: Well, now, what interests of the Rio Grande and the Rio Grande Western was it necessary to protect by building the Western Pacific?

Mr. JEFFERY: The proportion of the trans-continental business that the two Rio Grande roads enjoyed, both passenger and freight.

Mr. SEVERANCE: Both passenger and freight, and which, as you stated, you are gradually losing since the acquisition of the Southern Pacific by the Union Pacific?

Mr. JEFFERY: Yes, sir. I might add there that the Denver & Rio Grande Board in its report to its stockholders on June 30, 1905, gave its reasons, and with your permission I will submit that. (Producing annual report.) It is marked with lead pencil.

Mr. SEVERANCE: You have marked the part that is material here to this matter?

Mr. JEFFERY: Yes, sir. (Handing annual report to Mr. Severance.)

211 Mr. SEVERANCE (referring to the report): This is a report made to the stockholders of the Rio Grande by yourself?

Mr. JEFFERY: Yes, sir, with the approval of the Denver & Rio Grande Board of Directors.

Mr. SEVERANCE: With the approval of the Denver & Rio Grande Board of Directors. Wait until Mr. Lane comes back, and I will ask you to read that into the record.

(After a pause).

Mr. SEVERANCE: Mr. Chairman, shall I wait for Commissioner Lane to come in?

The CHAIRMAN: You may proceed.

Mr. SEVERANCE: Mr. Jeffery, will you read from the report you made to the stockholders what you had to say?

Mr. JEFFERY (Referring to annual report): I submit that this is the official published report of the company, in reply to the questions you asked.

Mr. SEVERANCE: Yes, sir.

Mr. JEFFERY: The report is for the fiscal year ended June 30, 1905:

(Reading from report)

"For many years, while the line of railway between Ogden and San Francisco was uncontrolled by interests competitive with your system, your company enjoyed a satisfactory share of the traffic to and from California, and one of the reasons moving the management——

Mr. SEVERANCE (interrupting): Will you speak a little louder. I am sorry to interrupt you.

Mr. JEFFERY: I will commence again:

(Reading)

"For many years, while the line of railway between Ogden and San Francisco was uncontrolled by interests competitive with your System, your company enjoyed a satisfactory share of the traffic to and from California, and one of the reasons moving the management, between four and five years ago, to acquire the Rio Grande Western, was the closer relationship that would be established
212 with the San Francisco line of the Southern Pacific Company and the freer interchange that it seemed probable would result therefrom. Subsequent events were in a measure disappointing. The control of Southern Pacific by Union Pacific interests has led to unexpected restrictions on interchange, and, more especially, unlooked for impediments in the way of securing traffic in territory reached by the Southern Pacific line.

These considerations, in connection with the rapid development of the commercial, agricultural and industrial interests on the Pacific coast, and the increase of commerce with the Philippines, China, and Japan, led the management, reluctantly, to investigate the feasibility of an independent line, in your interest, from either Salt Lake City or Ogden, to San Francisco, with such branches and laterals as might from time to time be desirable for the development of natural resources within reasonable distance of the main stem."

Mr. SEVERANCE: Now, Mr. Jeffery, have not the Union Pacific and the Southern Pacific lines been at all times prior to the acquisition of the Southern Pacific by the Union Pacific competing lines for a coast business coming from the Mississippi Valley?

Mr. JEFFERY: Yes, within certain territorial limits.

Mr. SEVERANCE: What were the territorial limits?

Mr. JEFFERY: The Union Pacific with its eastern connections

would compete with lines in Chicago and vicinity for business to and from Pacific coast, and the Illinois Central would compete, and other lines reaching the South would compete in that territory for business to and from the Pacific coast via New Orleans.

Mr. SEVERANCE: By the Southern Pacific?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Now, as a matter of fact, the business principally originating—both passenger and freight—originating on the Illinois Central was competitive business, was it not, between the Southern Pacific and the Union Pacific?

Mr. JEFFERY: No, I would not say all business, Mr. Severance. I would say that the great bulk of the Illinois Central business
213 was non-competitive with Southern Pacific and Union Pacific.

Mr. SEVERANCE: I know. That is the local business. I mean business from Illinois Central points to the coast?

Mr. JEFFERY: Yes, that would be more or less competitive.

Mr. SEVERANCE: That is what I mean. That is so, both as to passengers and freight?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Is it not a fact that large amounts of freight have moved to the Pacific coast from Chicago via the Illinois Central and the Southern Pacific?

Mr. JEFFERY: I could not answer that question of my own knowledge, because I have not been familiar with that traffic of the Illinois Central for a number of years.

Mr. SEVERANCE: Well, I am speaking of a number of year- ago.

Mr. JEFFERY: Yes, some years ago, when I was connected with the Illinois Central, there was a fair share of the business.

Mr. SEVERANCE: Mr. Lovett would like to know when you ceased to be in the service of that company?

Mr. JEFFERY: The latter part of 1889.

Mr. SEVERANCE: At that time the Southern Pacific was getting a fair share, you say, of the business from the Illinois Central to the coast?

Mr. JEFFERY: They interchanged considerable business, yes, sir.

Mr. SEVERANCE: A large amount went by Omaha and the Union Pacific?

Mr. JEFFERY: At that time the Illinois Central did not reach Omaha. Its Iowa line rested at Sioux City as the western terminus.

Mr. SEVERANCE: Other lines did reach Omaha that took traffic out of Chicago to the coast?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Over the Union Pacific?

Mr. JEFFERY: Yes, sir.

214 Mr. SEVERANCE: Is it not a fact that business originating in the East partly moved over the Southern Pacific by New Orleans to the Pacific coast and partly over connecting lines and the Union Pacific to the Pacific coast?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: That has always been so?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: By "the east" I mean Atlantic coast business.

Mr. JEFFERY: Yes, I took it that you meant Atlantic coast States —North Atlantic coast States and what are called the Central States.

Mr. SEVERANCE: Yes, sir.

Mr. LOVETT: I would like to have that last question read.

(The question was repeated by the stenographer, as follows: "Is it not a fact that business originating in the east partly moved over the Southern Pacific by New Orleans to the Pacific Coast and partly over connecting lines and the Union Pacific to the Pacific Coast?"

Mr. JEFFERY: "Yes, sir."

Mr. KELLOGG: Mr. Jeffery, for many years the rates from all Atlantic—practically all Atlantic coast States and as far west as Western Pennsylvania—Pittsburg, at least—via the Morgan line of steamships and the Southern Pacific to the Pacific coast terminal points and via the Union Pacific and rail, with its eastern connections, have been the same, have they not?

Mr. JEFFERY: Yes, substantially the same, and it was once carried as far west as Indianapolis, and afterwards the rates withdrawn from that territory.

Mr. KELLOGG: So for many years prior to the acquisition of the Southern Pacific by the Union Pacific, which took place March, 1901, the rates from practically all eastern Atlantic coast points and as far west as Pittsburg, and sometimes farther west, were the same by the Southern Pacific as they were by the Union Pacific?

215 Mr. JEFFERY: Substantially. You mean the rail and water?

Mr. KELLOGG: Yes, I mean rail and water.

Mr. JEFFERY: Rail and water via the Morgan Line and Southern Pacific and all rail the other way,—substantially the same.

Mr. KELLOGG: Those two lines were competitive lines for that Pacific Coast business from competitive points, were they not?

Mr. JEFFERY: Yes, sir.

Mr. KELLOGG: Now, on all business from the Orient via steamship to Pacific coast terminal points and to the east, those lines were competitive lines, were they not?

Mr. JEFFERY: Yes, sir.

Mr. KELLOGG: That is all I wish to ask.

The CHAIRMAN: Mr. Milburn, do you desire to interrogate Mr. Jeffery?

Mr. MILBURN: Just a moment. (After a pause.) Mr. Jeffery, you were speaking of the competition between the Atlantic Seaboard and say San Francisco, between the line made up of the Morgan line of steamers and the Southern Pacific and the trans-continental railroad lines, at the end of your direct testimony. For that business originating on the Atlantic seaboard, all the trunk lines going west are competitors, are they not?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: So that the New York Central, the Erie, the Delaware, Lackawanna & Western, the Pennsylvania, and the Baltimore & Ohio are all seeking that business to carry it over their lines and with the western connections transport it to San Francisco as against this steamship line and the Southern Pacific?

Mr. JEFFERY: Yes, sir; within the territorial limits, you know,—

the different systems were mentioned and the territorial limits of their immediate connections.

Mr. MILBURN: Precisely. Now, then, taking the lines running from the seaboard to Chicago and St. Louis, and the lines
216 running from Chicago and St. Louis to Ogden or farther west, they connect with the Union Pacific where? At Omaha?

Mr. JEFFERY: I do not think I have got the question. Read it please.

Mr. MILBURN: The lines made up of these trunk lines I have mentioned, and then the lines going west from Chicago and St. Louis, where do they connect?

Mr. JEFFERY: That is, through the St. Louis and Chicago gateways?

Mr. MILBURN: Yes, sir.

Mr. JEFFERY: At Missouri River points like Omaha and Kansas City, and to an extent, at St. Joe.

Mr. MILBURN: That is where they connect with the——

Mr. JEFFERY (interrupting): Lines leading west of Missouri River points, and they can connect ultimately with the Union Pacific and I might say, the Atchison Topeka & Santa Fe also.

Mr. MILBURN: Now, this competition, or this effort of the lines between the Atlantic seaboard and the west for this California business is just the same today, is it not, as it was before the Union Pacific had any control or ownership of the Southern Pacific and the Morgan line?

Mr. JEFFERY: Well, I would hesitate to speak positively on that point, but my information is that they compete as actively as before.

Mr. MILBURN: They do do it?

Mr. JEFFERY: Except, of course, now the competition is to maintain rates, whereas in former years it was not.

Mr. MILBURN: I am not directing your attention to the question of rates, so much as I am to the question of ownership of the properties. There is nothing that you can see in the ownership, say, by the Southern Pacific, of the Morgan Line, and in the ownership by the Southern Pacific of the Oregon Short Line or the Union Pacific interests that affects the relations of roads like the Pennsylvania and the Lackawanna and the New York Central and Erie, and the business between the Atlantic Seaboard and San Francisco?

217 Mr. JEFFERY: I would hesitate to answer that question.

Mr. MILBURN: Well, can you conceive of any practical reasons why those trunk lines that I have mentioned should be deterred from seeking business over other lines destined for the Pacific Coast because of the ownership of the Morgan Line?

Mr. JEFFERY: Why, no, I don't see why they should be any more than they were twenty years ago, when the Morgan Line was still operating. But, of course, I have no personal knowledge of their affairs, you know. I have not been connected with those Trunk Lines.

Mr. MILBURN: I am simply asking you as to how the situation would impress your mind as a railroad man. The statement, Mr.

Jeffery, that you read here is from the report of the Board of Directors to the stockholders of the Denver and Rio Grande System?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: And as I gather from that, the control of the Central Pacific by the Union Pacific interests has led to the construction of the new Trans-continental Line?

Mr. JEFFERY: Substantially, yes, sir.

Mr. MILBURN: Then you would not consider it an unmitigated evil?

Mr. JEFFERY: No, sir. In fact, for that great western country out there it is a very good thing, and I was very happy to be able to undertake to build it.

Mr. MILBURN: Mr. Jeffery, you know that it is the Southern Pacific which owns the Central Pacific?

Mr. JEFFERY: Yes; I understood that from the reports that I have seen from year to year.

Mr. MILBURN: The Central Pacific is the line from Ogden to the West, to San Francisco?

Mr. JEFFERY: That is my understanding.

Mr. MILBURN: So that, of the Union Pacific's Line from Omaha to Missouri River points and the coast, the Central Pacific is the link between Ogden and the coast?

218 Mr. JEFFERY: That is my understanding.

Mr. MILBURN: Ogden and San Francisco?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: You take freight originating on the Illinois Central and destined for Pacific Coast points, and whether it went via New Orleans over the Southern Pacific System to, say, to San Francisco, or via the Union Pacific to Ogden would have to go, or would go over the Southern Pacific System, would it not?

Mr. JEFFERY: Yes, sir; part way.

Mr. MILBURN: Part way. From Ogden?

Mr. JEFFERY: Yes. From Ogden in one case and New Orleans in the other, assuming San Francisco is the point of destination.

Mr. MILBURN: So that if you would tear away the Southern Pacific from the Union Pacific, the Illinois Central, in taking these routes to the coast, would go over portions of the Southern Pacific under both conditions?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: Are you aware of there having been any change whatsoever in the flow of the business from Illinois Central points to the coast, to connections made either way, by Ogden or by New Orleans, since any change in the ownership of the Southern Pacific?

Mr. JEFFERY: I have no personal knowledge at all of those business matters in recent years.

Mr. MILBURN: Taking the natural situation, Mr. Jeffery, it would always be to the interest of the Southern Pacific to get the business, within territorial limits, from the Illinois Central, for the longer haul from New Orleans?

Mr. JEFFERY: It depends entirely on the divisions of rates at New Orleans and Ogden. I do not know which would give it the most revenue.

Mr. MILBURN: What is the haul between—what is the distance between New Orleans to San Francisco?

Mr. JEFFERY: I think it is about 2300 miles, as I remember it.

Mr. MILBURN: 2300 miles?

219 Mr. JEFFERY: That is my recollection. I may be wrong about it.

Mr. MILBURN: And what is the haul from Ogden?

Mr. JEFFERY: I think it is about 850 miles; I may be a few miles out on that.

Mr. MILBURN: So that getting the freight from Illinois Central points at New Orleans, the Southern Pacific has a haul of 2300 miles?

Mr. JEFFERY: Assuming that distance to be correct, yes, sir.

Mr. MILBURN: And getting it at Ogden the Southern Pacific would have a haul of 800 miles?

Mr. JEFFERY: 850 miles, assuming that distance to be correct.

Mr. MILBURN: 850 miles, and it would be naturally always to the advantage of the Southern Pacific to get the haul at New Orleans rather than at Ogden, unless under conditions where the division of the rate was such that it would get as much for hauling it from Ogden, or nearly as much, as for hauling it from New Orleans?

Mr. JEFFERY: There would be other conditions, but that would influence, of course. For instance, perishable freight would naturally take the short haul by the rail route; it probably would not be able to stand transportation by the long haul. And heavy freight, slow moving freight, would probably take the long haul, because of more revenue that way.

Mr. MILBURN: May I not say, Mr. Jeffery, that under normal conditions, and as to normal freight, a road with a haul of 2300 miles and a haul of 800 miles, would work hardest for the freight to go over its long haul?

Mr. JEFFERY: Why, I should be inclined to do it if I were managing that railroad; yes, sir.

Mr. MILBURN: That is all.

Mr. SEVERANCE: I have two or three questions that I should like to ask. You have stated that it would be to the interest of the road to get the long haul of 2300 miles, as against the 800 mile

220 haul to get it where it connected with another line: that is true, isn't it? That is what you stated?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: It would likewise be true that it would be for the interest of the road connecting with the 800 mile road to lessen the activity of that competition for the 2300 mile haul, wouldn't it if you, on the other hand, instead of managing the Southern Pacific, were managing the Union Pacific, anything you could do to lessen the activity of the Southern Pacific, to obtain the 2300 mile haul, you would naturally do, wouldn't you?

Mr. JEFFERY: I would, under those circumstances, I think, endeavor to throw time freight, perishable freights, and first-class passenger travel by the short haul, because otherwise it would be impossible to control the business. The heavy freights, those that time made but little difference to in the matter of transportation, and tourist travel, I should endeavor to direct to the long haul.

Mr. SEVERANCE: That is, if you owned both?

Mr. JEFFERY: If I owned both.

Mr. SEVERANCE: But I am putting you in another position now. Counsel asked you if you were managing the Southern Pacific, which had a line 800 miles from Ogden to the coast, and another line 2300 miles from New Orleans to the coast, whether, as such manager, you would not try to get the 2300 mile haul and you said yes. Now I ask you, suppose you were the manager of the Union Pacific—and they were separate corporations; that is that the Union Pacific did not control the Southern Pacific at all; then, of course, your activity would be confined to getting all the business you could over the Union Pacific, and throwing it for the short distance over the Southern Pacific?

Mr. JEFFERY: Yes, sir; it would be my duty to the Union Pacific.

Mr. SEVERANCE: Speaking of business originating here in the East, Mr. Jeffery, you have said that Eastern Trunk Lines
221 are still competing actively for west bound business. Of course, that is true, isn't it?

Mr. JEFFERY: I made a qualified answer on that.

Mr. SEVERANCE: To the best of your belief, they are?

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: Now, isn't it a fact that through business to the coast is quite largely secured by the Eastern Agents,—what are called general freight agents, located at large centers like Pittsburg of the Western Lines?

Mr. JEFFERY: It is, very largely. They are what we call Commercial Agents.

Mr. SEVERANCE: They are the men, as a rule, who make the contracts with the shippers, that control the handling of the freight after it gets to the Missouri River or the Mississippi Gateways?

Mr. JEFFERY: Yes, sir; quite generally.

Mr. SEVERANCE: Now, if it should appear, and I think it won't be disputed by my friends here, that the Commercial Agent or the General Agent of the Southern Pacific, and the General Agent of the Union Pacific at Pittsburg, which probably originates more tonnage than any other town in the East happens to be the same person, would you think there was an active and energetic competition between the Union Pacific and the Southern Pacific for the business out of Pittsburg, as there used to be when those agents were separate?

Mr. JEFFERY: I think it would be difficult for a man to compete with himself.

Mr. SEVERANCE: That is what I think myself. It appears here by the testimony—

Mr. MILBURN (interrupting): That would seem to be a proposition concerning which we — not take a great deal of testimony.

Mr. SEVERANCE: I want to bring it out that these are the men who route the traffic.

Mr. MILBURN: I don't think you will route the traffic away from the Eastern Traffic Agents.

222 Mr. SEVERANCE: Some of us live in the western country. Was there not formerly a line of steamers running from

Portland to San Francisco that took freight into San Francisco from Portland?

Mr. JEFFERY: So I understood.

Mr. SEVERANCE: Yes. And the Union Pacific reached Portland over the Oregon Short Line and the Oregon Railroad and Navigation Line.

Mr. JEFFERY: Yes, sir.

Mr. SEVERANCE: That is all.

Mr. MILBURN: Mr. Jeffery, I want you to take this situation. Take the Illinois Central, which I think you have described as running from New Orleans to Chicago and from New Orleans to Omaha?

Mr. JEFFERY: Chicago to Omaha.

Mr. MILBURN: From Chicago to Omaha. That is right. Now, freight originates somewhere on this line between New Orleans and Chicago; we will say it is in the Chicago territory, that is, nearer Chicago than New Orleans; and that could be taken to Chicago and then west over intermediate lines to a connection with the Union Pacific—that is true?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: There are intermediate lines there, over which it has to go, between Chicago and the connection with the Union Pacific?

Mr. JEFFERY: Not if the freight originates on the Illinois Central in Chicago; it would go through over the Illinois Central to Omaha. The Illinois Central has a line from Chicago to Omaha?

Mr. MILBURN: Well, originating on the other line, or either of those lines, it would go over the Illinois Central, as it does to-day, to Omaha?

Mr. JEFFERY: I don't think I quite get the question, and I want to answer it understandingly.

Mr. MILBURN: Freight originating on the Illinois Central, on the line between New Orleans and Chicago, destined for, say, we will take San Francisco, would go over the Illinois Central to Chicago and thence to Omaha?

223 Mr. JEFFERY: Not necessarily.

Mr. SEVERANCE: You mean some point below Chicago?

Mr. JEFFERY: It would not necessarily go that way. We will take, for instance, as an example, Centralia, Illinois, which is the junction of the Chicago Line of the Illinois Central and the Dubuque Line of the Illinois Central. Anything originating there—but probably there would not be any originating there, because it is a very small place; but anything originating there would go via Decatur, Bloomington, Freeport and Dubuque?

Mr. MILBURN: Over other lines?

Mr. JEFFERY: That went to the Union Pacific?

Mr. MILBURN: Over other lines?

Mr. JEFFERY: No. Over the Illinois Central all the way. If, on the other hand, it was destined for the Southern Pacific by New Orleans, it would go directly south via Cairo and be delivered at New Orleans by the Southern Pacific.

Mr. MILBURN: I am assuming now a separation of the Southern and Union Pacific Systems. Taking freight originating on the Il-

linois Central, it would get, somehow or other, to Omaha, either over the Illinois Central Lines or some other lines.

Mr. JEFFERY: Yes, you may say it would go over the Illinois Central, if it originated on that line.

Mr. MILBURN: Then it would go from Omaha to Ogden on the Union Pacific?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: And then it would go from Ogden to San Francisco on the Central Pacific?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: Which is the Southern Pacific?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: That is one line?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: The other route would be to New Orleans and over the Southern Pacific to San Francisco?

Mr. JEFFERY: Yes, sir.

224 Mr. MILBURN: So, under those circumstances, as a competing element, the Union Pacific would only stand with a line from Omaha to Ogden?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: That is, having——

Mr. JEFFERY: The Union Pacific would only stand as a line, as having——

Mr. MILBURN (interrupting): At Ogden connecting with the Southern Pacific.

Mr. JEFFERY: The Union Pacific would stand as having a line from Omaha to Ogden.

Mr. MILBURN: From Omaha to Ogden, and having at Ogden to make a through line with the Southern Pacific?

Mr. JEFFERY: Yes, sir.

Mr. MILBURN: So the Southern Pacific there is on both lines, isn't it?

Mr. JEFFERY: Yes, to New Orleans on the one hand and to Ogden on the other.

Mr. MILBURN: It is a common element in the situation.

Mr. JEFFERY: Yes, sir; in that instance.

Mr. MILBURN: And that competition is affected by the fact of that common element; it is present there, whether the Southern Pacific is owned by the Union Pacific or is not?

Mr. JEFFERY: Yes, sir; physically that is the situation.

Mr. SEVERANCE: One or two more questions.

Com'r LANE: Let me see if I understand your last answer. You say that competition of the Union Pacific was present there. Now from Ogden up to Portland there runs the Oregon Railroad & Navigation Company, that makes one line from Ogden to the Pacific Coast by way of Portland, and then from Ogden to San Francisco runs the Central Pacific, the old Central Pacific Line, and from Ogden to Los Angeles runs the Clark Line, which has a traffic arrangement with the Southern Pacific. Those three lines, tapping

the three ports of California and Oregon, what element of
225 competition is there if the Union Pacific controls those three lines?

Mr. JEFFERY: As between Salt Lake City and Ogden on the East and the coast points on the West?

Mr. LANE: Yes.

Mr. JEFFERY: There is no competition between those lines, Mr. Lane.

Com'r LANE: What element of competition——

Mr. JEFFERY (interrupting): If they are under a common control.

Com'r LANE: If they are under a common control. If they are under the control of the Union Pacific, say, then it is practically a through route from Omaha to Los Angeles and San Francisco and Portland, under the same control?

Mr. JEFFERY: Yes, sir. But it is well to bear in mind that the rates at Portland, you know, would be made by other lines not under that control, and the rates to Los Angeles might be made by other lines.

Com'r LANE: By the Atchison, Topeka & Santa Fe, at Los Angeles?

Mr. JEFFERY: Yes, and its connections.

Com'r LANE: And by the Northern Pacific, we will say, in Portland?

Mr. JEFFERY: Yes; which would fix all Pacific coast rates practically.

Com'r LANE: Then they affect the San Francisco rates as well?

Mr. JEFFERY: Yes, sir.

Com'r LANE: Even though the lines of the Northern Pacific do not reach into San Francisco?

Mr. JEFFERY: Yes, sir.

Com'r LANE: Now, if there is a unity of control of the Union Pacific and the three lines running to Portland and San Francisco and Los Angeles, what chance would a railroad have to get business at Ogden, running East from Ogden?

Mr. JEFFERY: Well, the chances are not very excellent, as we have demonstrated, you know, in operating the Denver and Rio Grande System.

226 Com'r LANE: How have you demonstrated it?

Mr. JEFFERY: As I have already testified, since the Receivership our business has diminished, our transcontinental business has diminished in proportion to the other business.

Mr. MILBURN: May I ask the Commissioner to ask the witness if that resulted naturally from the Union Pacific then becoming a preferred connection through its ownership of the Central Pacific?

Mr. JEFFERY: Yes, unquestionably. The proprietary interests they had, and that led, of course, to endeavoring to secure all the business possible for the Union Pacific.

Mr. MILBURN: They continued to interchange, but not to the extent that they had interchanged?

Mr. JEFFERY: They continued to interchange but not to the extent.

Mr. MILBURN: As it made them the preferred connection?

Mr. JEFFERY: Yes, sir.

Com'r LANE: It might be that the preference was due to something else besides the incorporate relations.

Mr. JEFFERY: Of that I have no knowledge, Mr. Lane.

Com'r LANE: Did you have a traffic agreement with the Southern Pacific before the Union and the Southern Pacific became consolidated?

Mr. JEFFERY: No, sir. We exchanged business on the published divisions, that was generally understood; published divisions of the rates.

Com'r LANE: There was no severance of any relation between you and the Southern Pacific by reason of the consolidation of the U. P. and the S. P.

Mr. JEFFERY: No formal severance. We continued to do our best, and are doing our best now to get all the transcontinental business we can, on agreed rates and agreed divisions of rates.

Com'r LANE: Would it be a statement of the fact, that the Western Pacific was being built because of the Union Pacific and the Southern Pacific?

Mr. JEFFERY: Yes; that is the fact in the case, as we
227 virtually advised our stockholders in the report I read an extract from a short time ago.

Com'r LANE: Even if the Union Pacific had not combined with the Southern Pacific, it would be advantageous to the Denver and Rio Grande to have the Western Pacific from Ogden to San Francisco?

Mr. JEFFERY: Yes; I think it would. It is a low grade line, and it would be profitable in itself, we think.

Mr. SEVERANCE: I want to ask you one or two questions. Now, prior to the acquisition of the Southern Pacific by the Union Pacific, as you have already stated, there was a line of steamers coming down to San Francisco *to* Portland?

Mr. JEFFERY: Yes; so I understood.

Mr. SEVERANCE: Now, freight could move to San Francisco, then, from Missouri River Gateways or the Mississippi Valley over the Union Pacific, the Oregon Short Line, which it owns, the Oregon Railroad & Navigation Line, and the Oregon Railroad & Navigation Steamers to San Francisco?

Mr. JEFFERY: Yes, it could do that, but it would be a circuitous route.

Mr. SEVERANCE: It would be a circuitous route, I understand, but it was a route over which freight was actually moved.

Mr. JEFFERY: Oh, in those days, yes, but I doubt if it could be done again.

Mr. MILBURN: Would you call it a practical route as a railroad man?

Mr. JEFFERY: A railroad man does not like a water route. They prefer a rail route.

Mr. MILBURN: But eliminating that, would you call that practical

route to take freight gotten in Portland and then bring it by steamer to San Francisco under modern conditions?

Mr. JEFFERY: Let me say, it is not a preferential route.

Com'r HARLAN: Do you recall any war in rates between the Southern Pacific and the Union Pacific before consolidation, any disturbance of rates before consolidation?

228 Mr. JEFFERY: Not specifically, Mr. Harlan. There were in those days constant ebullitions on the part of railroad managers and traffic officers, you know, but I could not recall any special instance. Doubtless the traffic managers of those systems when they were separate were concerned in disturbances and rate wars, and sometimes nearly all of the traffic officers where on other roads, sometimes a tide would sweep—a disturbance would sweep from the Canadian border to the Gulf of Mexico and from the Lakes to the Pacific Coast.

Com'r HARLAN: And would involve those two roads?

Mr. JEFFERY: Yes, they could not help themselves.

The CHAIRMAN: Mr. Jeffery, if I understand you, this is the situation. There was a transcontinental line made up of the Morgan Steamship Company and the Southern Pacific, operating by way of New Orleans?

Mr. JEFFERY: Yes, sir.

The CHAIRMAN: There was an all-rail line, made up of various roads leading up to Omaha, and then the Union Pacific to Ogden, and then the Central Pacific to San Francisco?

Mr. JEFFERY: Yes, sir.

The CHAIRMAN: And those two lines were in active competition?

Mr. JEFFERY: Yes, sir.

The CHAIRMAN: Then there was also a third line, was there not, of the lines leading up to and across the Missouri River, to Denver, and going by the road of which you were president to Ogden and Salt Lake City, and so seeking the coast?

Mr. JEFFERY: Yes, sir.

The CHAIRMAN: And was a third and independent competing route?

Mr. JEFFERY: Yes, sir.

The Chairman: And was a third and independent competing route?

Mr. Jeffery: Yes, sir.

The CHAIRMAN: Now, I understand it, that since the
229 consolidation of the Southern route and the one to the north of you, your route has been able to get a less share of the competitive business for the Pacific coast?

Mr. JEFFERY: Since the consolidation, Mr. Chairman, and the control of the consolidated company by Union Pacific interests, together with the control of Oregon Navigation and Oregon Short Line by that interest.

The CHAIRMAN: So it has not only to an extent eliminated the competition between the routes to the north and south of you, but has also operated to diminish the ability of your route to compete for the same traffic?

Mr. JEFFERY: Yes, sir; diminished the ability of our route to com-

pete with the traffic; that is the reason we built the Western Pacific.

Com'r LANE: When did you determine on building the Western Pacific?

Mr. JEFFERY: We reached a definite conclusion about that something over two years ago. I had favored it individually for several years before.

Com'r LANE: Mr. Harriman was a member of your directorate at that time?

Mr. JEFFERY: Not when—yes, up to the time we reached the formal conclusion or decision to proceed.

Com'r LANE: At the time that Mr. Harriman was a director of the Denver & Rio Grande, there was more or less intimacy between the Union Pacific and the Denver & Rio Grande, although they were competing lines territorially?

Mr. JEFFERY: No, I don't think that made any difference one way or the other. I think when Mr. Harriman was in the Denver Board he voted for Denver & Rio Grande interests; and I have no doubt when he was in Union Pacific meetings, he voted for Union Pacific interests. I never could detect any leaning on his part against Denver & Rio Grande especially; he seemed to give fair consideration to its interest when he was in a Board meeting.

230 Com'r LANE: And Mr. Gould was a member of the directorate of Union Pacific at the same time, was he not?

Mr. JEFFERY: Yes, sir; and he followed the same policy with Union Pacific interests when he was in their Board meeting.

Mr. KELLOGG: That is what you used to call "community of interest"?

Mr. JEFFERY: That was a situation it was hoped to bring about.

Mr. KELLOGG: That is what Mr. Harriman called community of interest?

Mr. JEFFERY: Yes, we were on the verge of millen-ium then but did not get quite in.

The CHAIRMAN: You are building your own road to it?

Mr. JEFFERY: Yes, sir; we hoped the streets would be paved with gold.

Mr. MILBURN: The competition of your line as a link in a transcontinental route is with the Union Pacific, not with the Southern Pacific? The Southern Pacific would be your connection in any event, would it not?

Mr. JEFFERY: Yes, if we could have it so.

Mr. MILBURN: Yes, as I say, but your competition is with the Union Pacific—I mean your territorial competition, you go through the same region that they go; your links are through the same general territory?

Mr. JEFFERY: Let me answer this way: The Southern Pacific is of course a connection of the Denver & Rio Grande system at Ogden, but not to the extent we would like to have it.

Mr. MILBURN: And your struggle for the business west is with the Rio Grande at your eastern connection?

Mr. JEFFERY: Yes, our eastern connections like Burlington, Rock Island, Missouri Pacific, Atchison, Topeka & Santa Fe gather up the

business and bring it through the gateway of Denver & Colorado Springs and Pueblo, and we take it on to Ogden.

Mr. MILBURN: You are at that gateway for that business?

231 Mr. JEFFERY: Yes.

Mr. MILBURN: And so is the Union Pacific?

Mr. JEFFERY: Yes.

Mr. MILBURN: You want to haul it to the connection at Ogden or wherever it is with the Southern Pacific, and the Union Pacific wants to haul it there?

Mr. JEFFERY: Yes.

Mr. MILBURN: And you both want to get there and deliver it to the Southern Pacific?

Mr. JEFFERY: Nobody else could take it just now, that is, to San Francisco? We are speaking of San Francisco business.

Mr. SEVERANCE: Now, as to business, however, that originates back in the Mississippi Valley, you are competitive with the Southern Pacific via New Orleans—that is your line is one of the links in the system: That is true, isn't it?

Mr. JEFFERY: Yes.

Mr. LOVETT: You stated in answer to questions of Mr. Severance some time ago with reference to Pittsburg that you would not expect a line to compete against itself. Now, does not that proposition apply to the Southern Pacific? Would you expect the Southern Pacific to use its Ogden-San Francisco line to compete with its New Orleans line?

Mr. JEFFERY: I think what I said Judge Lovett, was that the commercial agent in Pittsburg, if he represented both lines, as stated in the question put by Mr. Severance, would find some difficulty in competing with himself.

Mr. LOVETT: Now, did you mean to convey the impression by the answer to Mr. Severance just now, that that line would compete with the New Orleans line of the Southern Pacific by carrying to Ogden and there turning over to the Southern Pacific line traffic to California?

Mr. JEFFERY: I would mean to have it understood that the eastern connections of Denver & Rio Grande, or portions of the Mississippi territory, might gather up business and deliver it to the Denver & Rio Grande for carriage to Ogden, in competition with

232 lines from the same territory that might take it from New Orleans.

Mr. LOVETT: But they could not deliver that business in San Francisco, except at rates satisfactory to the Southern Pacific Company, could they?

Mr. JEFFERY: No.

DAVID WILLCOX, being sworn, testified as follows:

Mr. KELLOGG: I notice you were elected a director in the Southern Pacific Company in 1905; is that correct?

Mr. WILLCOX: I think so. I don't remember the date exactly.

Mr. KELLOGG: You were also elected a director the same year in the Union Pacific Company; is that correct?

Mr. WILLCOX: I don't remember the dates, Mr. Kellogg. Probably you have them correctly, yes.

Mr. KELLOGG: About 1905, I think it was?

Mr. WILLCOX: About then, yes.

Mr. KELLOGG: In both companies?

Mr. WILLCOX: I was in the Southern Pacific for some time before I was in Union Pacific.

Mr. KELLOGG: You were elected, according to the——

Mr. WILLCOX: No, I don't think I was elected in Union Pacific—yes, it may have been 1905, but it was quite an interval of time.

Mr. KELLOGG: It appears, according to the minutes of the Board of Directors' meeting, that you were elected in April, 1905, in the Southern Pacific Board, and that in October of the same year you were elected in the Union Pacific Board.

Mr. WILLCOX: No doubt those minutes are correct.

Mr. KELLOGG: I do not expect you to recollect exactly.

Mr. WILLCOX: No, I can't remember.

Mr. KELLOGG: Substantially that.

Mr. WILLCOX: Yes.

Mr. KELLOGG: And you have since been a director in both companies?

Mr. WILLCOX: Yes.

233 Mr. KELLOGG: At whose request did you take a position on the Boards of those two companies?

Mr. WILLCOX: Well, I think in the Southern Pacific Mr. Harriman spoke to me about it; I don't remember that any one spoke to me about it in Union Pacific until I received notice of my election.

Mr. KELLOGG: Who notified you—Mr. Harriman?

Mr. WILLCOX: No, I mean from the secretary. I might say in explanation, I have known Mr. Harriman for perhaps thirty-five years, and it was natural enough for him to ask me to go into his Board.

Mr. KELLOGG: Quite so; and you understood that that was the reason you were invited into the Board, because of your acquaintance with Mr. Harriman?

Mr. WILLCOX: No, I don't understand that altogether.

Mr. KELLOGG: I do not mean that that was your qualification at all.

Mr. WILLCOX: I understood the fact that Mr. Harriman had known me a great many years led him to suggest to the Board that possibly I might be of some use as a director; that is all.

Mr. KELLOGG: I have no doubt of that.

Mr. WILLCOX: Thank you.

Mr. KELLOGG: Were you at that time financially interested in either one of those companies?

Mr. WILLCOX: Not at the time I was elected, no.

Mr. KELLOGG: Have you since been to any extent?

Mr. WILLCOX: Yes, I have some stock in both of them.

Mr. KELLOGG: What amount?

Mr. WILLCOX: Is that exactly competent?

Mr. MILBURN: Is it necessary?

Mr. SEVERANCE: It appears by the record that he declines to answer.

Mr. WILLCOX: I don't decline to answer, but I simply raise the point it is perhaps not competent.

Mr. KELLOGG: Well, I won't ask him. That is all.

234 WILLIAM D. CORNISH, being sworn, testifies as follows:

Mr. KELLOGG: Mr. Cornish, you are vice-president of the Union Pacific Company, are you not?

Mr. CORNISH: I am.

Mr. KELLOGG: And of the Oregon Short Line Company?

Mr CORNISH: Yes, sir.

Mr. KELLOGG: And of the Oregon Railway & Navigation Company?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Railroad & Navigation Company and of the Southern Pacific Company?

Mr. CORNISH: Yes.

Mr. KELLOGG: Are you a director or an officer of the San Pedro Company?

Mr. CORNISH: I am a director.

Mr. KELLOGG: You are a director in the San Pedro Company?

Mr. CORNISH: Member of the Executive Committee.

Mr. KELLOGG: And on the Executive Committee of the San Pedro Company?

Mr. CORNISH: Yes.

Mr. KELLOGG: You are a director in each one of those railways I mentioned?

Mr. CORNISH: Yes.

Mr. KELLOGG: You are familiar in a general way with the Pacific system, including the Union Pacific, the Short Line, the Navigation Company and the Southern Pacific and its subsidiary Lines, are you not?

Mr. CORNISH: I am.

Mr. KELLOGG: You were a Master in Chancery of the court during the receivership of the Union Pacific?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: And was familiar with the acquisition of the *Union* Pacific and its subsidiary lines by the Union Pacific?

Mr. CORNISH: I was and am.

Mr. KELLOGG: Prior to the acquisition of the stock of the Southern Pacific Company in March, 1901, the Union Pacific con-
235 trolled, by stock ownership, directly or indirectly, both the Short Line and the Navigation Company's lines, did it not?

Mr. CORNISH: Yes.

Mr. KELLOGG: That is, it controlled by the ownership of a majority of stock the Short Line Company?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: In a general way, the lines of the Short Lines extend from Green River, is it, on the east,——

Mr. CORNISH: No, from Granger.

Mr. KELLOGG: Granger on the east, to Huntington on the west, and from Ogden on the south—no, from Salt Lake at least on the south north to Butte?

Mr. CORNISH: To Silver Bowl.

Mr. KELLOGG: And it also at that time—the Short Line owned and controlled the various lines south of Salt Lake and southwest?

Mr. CORNISH: They were part of the property.

Mr. KELLOGG: They were part of the Short Line Company. The Navigation Company—either the Short Line or the Union Pacific, prior to the acquisition of the Southern Pacific stock in 1901, controlled the Navigation Company?

Mr. CORNISH: Yes, I think they both had stock; I am not clear.

Mr. KELLOGG: Since that time, or at about that time, the Union Pacific got all of the stock, substantially, of both companies, didn't it?

Mr. CORNISH: Yes.

Mr. KELLOGG: So that the Union Pacific operates now under joint operation the entire line from Council Bluffs and Kansas City on the east to Portland on the west?

Mr. CORNISH: I don't regard it so, Mr. Kellogg. The separate companies operate their own property.

Mr. KELLOGG: You make a joint report in the annual report?

Mr. CORNISH: That is the financial report made in New York.

Mr. KELLOGG: You consolidate the earnings?

Mr. CORNISH: For that purpose.

236 Mr. KELLOGG: The operating officials lap over from one onto the other.

Mr. CORNISH: They do in part; not the managing officials, no.

Mr. KELLOGG: Mr. Bancroft operates a part of the Short Line?

Mr. CORNISH: Operates all of the Short Line.

Mr. KELLOGG: And part of the Union Pacific?

Mr. CORNISH: At present part of the Union Pacific west of Green River.

Mr. KELLOGG: The manager of the Oregon Railway and Navigation operates the Oregon Railway and Navigation and the lines of the Central Pacific in Oregon, does he not?

Mr. CORNISH: The lines of the Southern Pacific as far south as Ashland?

Mr. KELLOGG: The lines of the Southern Pacific as far south as Ashland, which is about the south line of the State of Oregon?

Mr. CORNISH: State of Oregon.

Mr. KELLOGG: So that it is a fact that both the operating and traffic officials operate the entire system as far as Portland, do they not?

Mr. CORNISH: Well, each road has its own traffic officials, I think distinctively confined to the line.

Mr. KELLOGG: Yes, but they have common traffic officials?

Mr. CORNISH: You are referring to Mr. Stubbs and his relation?

Mr. KELLOGG: And common operating officers?

Mr. CORNISH: To the extent that you have stated, yes.

Mr. KELLOGG: The general freight agent in Portland is the general freight agent of the O. R. & N., is he not, the general freight agent of the Southern Pacific is general freight agent of the O. R. & N., is he not?

Mr. CORNISH: I don't remember.

Mr. KELLOGG: You don't remember?

Mr. CORNISH: No.

Mr. KELLOGG: Now, the Southern Pacific's line—the ownership of the various sub-companies of the Southern Pacific
237 are accurately stated in the annual reports, are they not?

Mr. CORNISH: I believe so, yes, but I have not been over them.

Mr. KELLOGG: In a general way, the Southern Pacific Company, which is a corporation in Kentucky, operates under lease and owns substantially all the stock of the lines from Ogden to San Francisco and from Portland to the Texas line?

Mr. CORNISH: Yes.

Mr. KELLOGG: And controls by stock ownership all of the Texas and Louisiana lines as far as New Orleans?

Mr. CORNISH: Controls and owns a majority of stock of those lines.

Mr. KELLOGG: I say controls by stock ownership?

Mr. CORNISH: Those lines are operated by the——

Mr. KELLOGG: I am not speaking of operation, but control.

Mr. CORNISH: They control the company through the stock.

Mr. KELLOGG: Now, what steamship line does the Southern Pacific control by stock ownership?

Mr. CORNISH: The line from New York—line of steamers which is running from New York to New Orleans, belongs to the Southern Pacific Company.

Mr. KELLOGG: The line of steamers which is running from New York to New Orleans belongs to the Southern Pacific Company?

Mr. CORNISH: The Pacific Mail is controlled through a slight majority of the stock by the Southern Pacific Company. The Occidental & Oriental Steamship Company——

Mr. KELLOGG: A little louder, Cornish; they can't hear you.

Mr. CORNISH: I can't remember—it owns, however,—the Occidental & Oriental is owned by the Union Pacific, but I have forgotten just how that stands. It used to be held partly in public and partly by the Union Pacific.

Mr. KELLOGG: You think the Union Pacific owns the
238 control of the Occidental & Oriental Steamship lines now?

Mr. CORNISH: I can't just remember how it stands; I have not looked.

Mr. KELLOGG: Does the Southern Pacific own any of the stock of the Occidental & Oriental Steamship Company?

Mr. CORNISH: I think not.

Mr. KELLOGG: Can you find out exactly the stock ownership?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Will you do so, make a memorandum, Judge Cornish, to find out the exact stock ownership of the Occidental & Oriental Steamship Company. Now, the Pacific Mail operates lines of steamers from San Francisco to Japan and China?

Judge CORNISH: Yes, sir.

Mr. KELLOGG: The Sandwich Islands?

Mr. CORNISH: They stop there on some trips.

Mr. KELLOGG: And to the Philippines?

Mr. CORNISH: I am not sure.

Mr. KELLOGG: They also operate a line of steamers from San

Francisco to Panama, do they not, or to the connections with the Panama Railroad?

Mr. CORNISH: I believe they do. There was some question about that a while ago, and yet there was so little to it I don't know.

Mr. KELLOGG: What line of steamships—no, what company owns by stock ownership the Portland and Asiatic steamship line?

Mr. CORNISH: My recollection is that the stock belonged to the Navigation Company, but looking in the report this morning I cannot find it; I don't know what the explanation is; I have not been able to get an explanation from Mr. Mahl as to why that is not in the report.

Mr. KELLOGG: You understood it did belong to the Navigation Company?

Mr. CORNISH: Yes.

Mr. KELLOGG: Where do those ships run from?

239 Mr. CORNISH: Those ships run from Portland to the Orient.

Mr. KELLOGG: If that company belongs to the Short Line Company—I mean to the Navigation Company—then the Union Pacific Company has a through line of railway and steamships through its stock ownership, from Council Bluffs and Kansas City to ports in the Orient via Portland, does it not?

Mr. CORNISH: It would amount to that, yes.

Mr. KELLOGG: And the Southern Pacific has a through line of transportation from New York via Southern Pacific and San Francisco to the Orient, by steamship and rail?

Mr. CORNISH: Yes, through their control of the Pacific Mail.

Mr. KELLOGG: Through their control of the Pacific Mail and the eastern steamship lines. Judge Cornish, prior to the construction of the San Pedro road, the Oregon Short Line, you say, owned or controlled by stock ownership various lines of road south of Salt Lake City and southwest?

Mr. CORNISH: As far south as Milford and Frisco in Utah—yes.

Mr. KELLOGG: About what time was it that Senator Clarke undertook the construction of that road?

Mr. CORNISH: I think it was in 1901.

Mr. KELLOGG: In 1901, yes. After that time there was a contest in the courts between the San Pedro Company and the Short Line Company, was there not, as to some right of way which each company was claiming?

Mr. CORNISH: The San Pedro Company under its present organization was operating a small piece of road in California, had no road east or towards Salt Lake, from about Los Angeles. There was another company, another corporation, of which I don't remember the name, which started a controversy in regard to a grade.

Mr. KELLOGG: In regard to what?

Mr. CORNISH: In regard to a grade in Nevada.

240 Mr. KELLOGG: In Nevada?

Mr. CORNISH: With the Short Line. It was not the San Pedro Company, but it was a company which I assume it controlled, because it disappeared afterwards, and that controversy went into the

courts, and there was an injunction issued, the effect of which was that the Short Line retained the existing grade—the then existing grade which had been graded some ten or fifteen years before—twelve years before, and built its line down to Calientes, on that grade, having bought the intervening section between Milford and the State line.

Mr. KELLOGG: That is some years before the Short Line Company had projected a road substantially along the same line through Nevada that the San Pedro road afterwards constructed on?

Mr. CORNISH: As far as Calientes?

Mr. KELLOGG: As far as Calientes?

Mr. CORNISH: But in an entirely different route, but towards the same section of California.

Mr. KELLOGG: Yes, toward the same section of California, and the Short Line Company had constructed a grade part of the distance?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Through a cañon?

Mr. CORNISH: Partly—about forty miles through a controlled, because it disappeared afterwards, and that controversy went into the courts, and there was an injunction issued, the effect of which was that the Short Line retained the existing grade—the then existing grade which has been graded some ten or fifteen years before—twelve years before, and before, and built its line down to Calientes, on that grade, having bought the intervening section between Milford and the State line.

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Mr. KELLOGG: As far as Calientes?

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Mr. KELLOGG: Yes, toward the same section of California, and the Short Line Company had constructed a grade part of the distance?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Through a cañon?

Mr. CORNISH: Partly—about forty miles through a cañon.

Mr. KELLOGG: Now, that grade came—the protection of that grade and the Short Line came under the Act of Congress for the possession of cañons on Government lands, did it not?

Mr. CORNISH: That question did not arise. I don't know whether it is under it or not.

Mr. KELLOGG: Wasn't that question in that case?

Mr. CORNISH: No, not as to that portion.

Mr. KELLOGG: There was not room for two railroads through that cañon, was there?

Mr. CORNISH: Yes.

Mr. KELLOGG: Still, both companies——

Mr. CORNISH: Not 200 feet right of way each, but there was room.

Mr. KELLOGG: Both companies were struggling for that right of way?

Mr. CORNISH: Yes, sir, particularly, because it had been con-

structed and the grade was nearly perfect, and there were five tunnels there, and it was worth something. There was another route over the hills.

Mr. KELLOGG: After the Short Line got or retained possession by permanent injunction, there was a settlement, was there, between Mr. Harriman and Mr. Clarke, of this difficulty?

Mr. CORNISH: The contract that has been offered in evidence, dated in 1902, was the result of about a year's negotiations that were had.

Mr. KELLOGG: Prior to that contract, there was about a year's negotiation between Mr. Harriman, representing the Short Line, and yourself, representing the Short Line, and Mr. Clarke, was there not?

Mr. CORNISH: Yes.

242 Mr. KELLOGG: You finally reached a settlement with Mr. Clarke?

Mr. CORNISH: Yes.

Mr. KELLOGG: That settlement contemplated the conveyance to the San Pedro Company of 512 miles of the railway of the Short Line Company, did it not?

Mr. CORNISH: Yes, about that.

Mr. KELLOGG: West, south and southwest from Salt Lake City towards California?

Mr. CORNISH: From the neighborhood of Salt Lake City, yes.

Mr. KELLOGG: And those lines were conveyed by the deeds that you have furnished?

Mr. CORNISH: Yes.

Mr. KELLOGG: That settlement also contemplated the construction of the San Pedro Line to California—to Los Angeles?

Mr. CORNISH: Except as to such trackage as it might obtain that was contemplated in the contract.

Mr. KELLOGG: I mean it contemplated the construction of the line to about San Bernardino and leasing certain track rights into Los Angeles?

Mr. CORNISH: I have forgotten the terms of the contract. They were building a line down to Riverside and completed it, and contemplated trackage over the Southern Pacific to San Bernardino and over to Daggett.

Mr. KELLOGG: Well, that contract contemplated the construction of a line of railway and the acquisition of trackage rights so the San Pedro would have and control a complete line from Salt Lake to Los Angeles.

Mr. CORNISH: Yes, and to San Pedro and Pasadena.

Mr. KELLOGG: Pasadena and where?

Mr. CORNISH: San Pedro and Pasadena.

Mr. KELLOGG: San Pedro is the seaport beyond Los Angeles, is it not?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Over what tracks does the San Pedro run from Los Angeles to San Pedro, the seaport?

Mr. CORNISH: It runs over its own tracks.

243 Mr. KELLOGG: At what place does the Southern Pacific reach the coast?

Mr. CORNISH: At San Pedro; that is, in that vicinity and other points nearby.

Mr. KELLOGG: And Santa Monica, does it not?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: That is, near Los Angeles, I mean.

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Mr. W. A. Clark is President of the San Pedro Line, is he not?

Mr. CORNISH: He is.

Mr. KELLOGG: W. H. Bancroft is First Vice President?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Mr. Bancroft is the manager of the Union Pacific Lines and the Short Line—the Union Pacific Lines west of Green River and east of Huntington, is he not?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Living at Salt Lake?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: He has direct control of the operation of the San Pedro Line, has he not?

Mr. CORNISH: No, sir.

Mr. KELLOGG: Who is J. Ross Clark?

Mr. CORNISH: A brother of Senator Clark.

Mr. KELLOGG: He is Second Vice President.

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Who is R. E. Wells?

Mr. CORNISH: General Manager of the San Pedro Line.

Mr. KELLOGG: From what Line of road did Mr. Wells come to the San Pedro?

Mr. CORNISH: From the Santa Fe or one of its subsidiary lines.

Mr. KELLOGG: Who are the directors of the San Pedro Line?

Mr. CORNISH: Senator W. A. Clark, J. Ross Clark—I cannot give the initials of all of them.

Mr. KELLOGG: E. H. Harriman?

244 Mr. CORNISH: Yes. I will try to give them all to you. (Referring to book handed to witness.) Did not you have a letter with the lists?

Mr. KELLOGG (after examining papers on his table): Oh, yes, I think we did—yes, I think they are in. They are the directors elected pursuant to these letters signed by Mr. Clark and Mr. Harriman.

Mr. CORNISH: Yes, sir; February——

Mr. KELLOGG: 1906?

Mr. CORNISH: No——

Mr. KELLOGG: The directors elected in 1906 were W. H. Bancroft, whom you have just described.

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: H. I. Bettis (referring to paper), who is he?

Mr. CORNISH: The auditor of the company.

Mr. KELLOGG: Is he also an officer of the Short Line?
Mr. CORNISH: No, that is his sole duty.
Mr. KELLOGG: Was he ever in the employ of the Union Pacific?
Mr. CORNISH: He was.
Mr. KELLOGG: When?
Mr. CORNISH: Well, until about 1903 he was chief clerk in the Omaha office.
Mr. KELLOGG: Chief Clerk in the auditor's office?
Mr. CORNISH: Yes, sir.
Mr. KELLOGG: He went from the Union Pacific to the San Pedro Line about 1903?
Mr. CORNISH: I think so.
Mr. KELLOGG (referring to paper): W. D. Cornish and E. H. Harriman, I see, are also directors.
Mr. CORNISH: Yes, sir.
Mr. KELLOGG (referring to paper): W. R. Kelly at that time was general solicitor of the Union Pacific?
Mr. CORNISH: Mr. Kelley has just gone into the Board this Fall. He was formerly general solicitor of the Union Pacific but left a year ago on account of his health, but having recovered, he took up this work.
Mr. KELLOGG: He is now solicitor for the San Pedro Line?
245 Mr. CORNISH: General counsel, yes, sir.
Mr. KELLOGG: Did not you get Mr. Kelly elected or suggest his election to the Board and his appointment as attorney?
Mr. CORNISH: I think I am a very good friend of Judge Kelly. I tried to get him something to do, yes, when he recovered his health, but I did not have control of it.
Mr. KELLOGG: Who did, Mr. Harriman?
Mr. CORNISH: Mutual suggestions—suggestions came to me really from W. A. Clarke.
Mr. KELLOGG: Agreed to by both parties?
Mr. CORNISH: Yes, sir.
Mr. KELLOGG (referring to paper): Who is W. G. Kerckhoff?
Mr. CORNISH: A citizen of Los Angeles, not connected with the Southern Pacific or Union Pacific, so far as I know.
Mr. KELLOGG: What is his business, do you know?
Mr. CORNISH: He is a business man. I have forgotten what his business is.
Mr. KELLOGG: R. C. Kerens is of St. Louis, is he not?
Mr. CORNISH: Yes, sir.
Mr. KELLOGG: And Thomas Kerens?
Mr. CORNISH: Of Salt Lake.
Mr. KELLOGG: T. F. Miller?
Mr. CORNISH: He is a citizen of Los Angeles. I do not know his business.
Mr. KELLOGG: W. H. Comstock?
Mr. CORNISH: He is Secretary of the Company.
Mr. KELLOGG: Where did he come from—what company? Do you know?
Mr. CORNISH: No, I do not. He was with the company before I knew anything about him.

Mr. KELLOGG: Judge Cornish, the Union Pacific and Southern Pacific organized an express company within the last few years, have they not?

Mr. CORNISH: What companies?

Mr. KELLOGG: The Union Pacific and Southern Pacific—the Union Express?

246 Mr. CORNISH: No, sir; that company existed before the receivership.

Mr. KELLOGG: Before the receivership?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: What is the Pacific Express Company?

Mr. CORNISH: It is a commercial express company operating over the so-called Gould system and over the Union Pacific system.

Mr. KELLOGG: What company owns it?

Mr. CORNISH: The Union Pacific owns 40%, the Wabash 20%, and the Missouri Pacific 40%.

Mr. KELLOGG: Does the Southern Pacific own any of that?

Mr. CORNISH: No, sir; not to my knowledge.

Mr. KELLOGG: Look at Page 242, of Vol. 3, Executive minutes—I mean the Pacific Fruit Express.

Mr. CORNISH: I do not know anything about that.

Mr. KELLOGG: You do not know anything about that?

Mr. CORNISH: No, sir.

Mr. KELLOGG: Do you recollect such a company having been organized?

Mr. CORNISH: I think I remember it. Judge Lovett spoke of having such a matter on his desk, but I did know it was organized.

Mr. KELLOGG: It appears that the Union Pacific and Southern Pacific organized a Fruit Express. Who is there in the Union Pacific that would know about that?

Mr. CORNISH: Counsel, I guess.

Mr. LOVETT: I expect I know more about that than anybody here, Mr. Kellogg.

Mr. KELLOGG: I do not want to make you a witness, Judge Lovett.

Mr. LOVETT: I will give you the papers in reference to it.

Mr. KELLOGG (addressing witness): Well, do you know the Los Angeles Street Railway Company?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: I will offer in evidence Page 107, Vol. 2, of the Executive Committee meeting records of the Southern Pacific

247 meeting of July 23, 1906, so much of it as bears on the acquisition of the stock of the Los Angeles Street Railway, which reads as follows:

"Purchase of Los Angeles Street Railway Company stock. The Chairman submitted telegraphic correspondence between William F. Herrin and himself, on file with the Secretary in reference to the purchase of 45% of the capital stock of the Los Angeles Street Railway Company, from which it appears that in order to acquire the stock and prevent its purchase by other interests, it was necessary to close it on the 19th instant, and Mr. Harriman stated that he had on that day authorized Mr. Herrin to purchase it for

$4,750,000, to be paid as follows: $375,000 cash; $1,125,000 payable August 18, 1906; $500,000, January 20, 1907; $500,000, July 20, 1907; $500,000 Jan. 20, 1908; $590,000, July 20, *1898*; $500,000, January 20, 1909; $750,000, July 20, 1909; all deferred payments to bear interest at the rate of 4% from July 23, 1906."

It was unanimously resolved "that the action of the Chairman in purchasing 45,000 shares of *shares of* the Los Angeles Street Railway under the terms and conditions above set forth, be and the same is hereby ratified and approved."

What property did the Los Angeles Street Railway Company own?

Mr. CORNISH: I cannot give you an accurate and intelligent description of the property. It is the Street Railway Company in Los Angeles. I do not know whether I am on that Company Line or on the Interurban.

Com'r LANE: These are the Lines owned by H. E. Huntington, are they not?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Is this Mr. Huntington's interest, do you know?

Mr. CORNISH: I do not know.

Mr. KELLOGG: Did this company own a line of railway from Los Angeles to the Seaport?

Mr. CORNISH: I cannot tell you.

Mr. KELLOGG: You do not know about that?

248 Mr. CORNISH: No, sir.

Mr. KELLOGG: Who would know about this—anybody but Mr. Harriman?

Mr. CORNISH: I do not know. I cannot think of anyone here that is familiar with physical situation at Los Angeles. He would have to use a map. Perhaps Mr. Kirker could tell.

Com'r LANE: Do they own a line of railroad to the coast?

Mr. KELLOGG: They own a line, a commercial line to the coast, I understand. Can you tell? (addressing Judge Lovett.)

Mr. LOVETT: I do not know of their owning a commercial line, unless a street railway line is a commercial line.

Mr. SEVERANCE: They do an express business?

Mr. LOVETT: Not that I have heard of.

Com'r HARLAN: Does it appear that line was bought by the Southern Pacific?

Mr. KELLOGG: The Southern Pacific, to prevent it falling into the hands of other interests,—to prevent its purchase by other interests.

Mr. SEVERANCE: If they have a line running to the coast, it might be useful in bringing passengers to Los Angeles to the railroad.

Mr. CORNISH: What is the date of that meeting?

Mr. KELLOGG: July 23, 1906.

Mr. LOVETT: I suppose the members of the Executive Committee know about it. I am fairly familiar with it and have no objection to giving the Commission the information.

Mr. CHAIRMAN: I beg pardon?

Mr. LOVETT: I am a member of the Executive Committee and was present when that action was taken.

Mr. KELLOGG: I would be very glad to have Judge Lovett make a statement.

Mr. CORNISH: I wish to explain here my inability to discuss this resolution. I was in the West at the time and was not a member of that Committee. I did not know anything about it until after I returned and it was an accomplished fact.

249 Mr. KELLOGG (referring to book): I offer in evidence also a resolution of the Executive Committee of the Southern Pacific, Vol. 2, Page 125, of October 11, 1906, as follows:

"Purchase of Utah Light & Railway Company stock. The Chairman submitted an agreement, dated September 28, 1906, made in his name, but for and on behalf of this company, with Le Grand Young, for the purchase of three-fifths or more of the common and preferred stock of the Utah Light & Railway Company, and in consideration of same it was unanimously resolved, that the agreement dated September 28, 1906, between E. H. Harriman and Le Grand Young for the purchase by said Harriman for the account of this company of three-fifths of the common and preferred stock of the Utah Light & Railway Company at the price and on the conditions set forth in said agreement, be and the same is hereby ratified and approved."

What property did the Utah Light & Railway Company own, do you know, Mr. Cornish?

Mr. CORNISH: A general railway street system in Salt Lake and an electric power plant and a line of service from Ogden to Salt Lake; perhaps other properties.

Com'r HARLAN: What is the distance?

Mr. CORNISH: 37½ miles.

Mr. KELLOGG: Is that a street railway?

Mr. CORNISH: I think it is a power line. There is no street railway between Salt Lake and Ogden.

Mr. KELLOGG: It is a line of electric wires?

Mr. CORNISH: Conveying power to Salt Lake.

Com'r HARLAN: Do you know what policy the road was trying to work out in making that purchase?

Mr. CORNISH: I had nothing personally to do with the purchase, but my understanding is that it was known in a general way that this property was for sale, and we were very much interested as a railroad in Salt Lake with the Union Pacific and the Short Line, and it was deemed an advantageous purchase for the com-

250 pany to make, whichever company made it. I do not remember now which company made that.

Mr. KELLOGG: The Southern Pacific Company?

Mr. CORNISH: Well, they all get into Salt Lake by the Oregon Short Line.

Com'r LANE: Was it for the same reason that you bought the Los Angeles Street Railway stock?

Mr. CORNISH: That I have no reason for knowing. I do not know the reason.

Com'r LANE: Do you know whether that purchase was made in

pursuit of a policy to get control of street railways and Interurban Roads in Southern California?

Mr. CORNISH: I do not know.

Com'r LANE: Do they own any other street railway lines in Southern California?

Mr. CORNISH: As I remember, some three years ago, I think, the Southern Pacific bought an interest in the Interurban Line in Southern California that operates outside of California, and it was controlled by Mr. Huntington.

Com'r LANE: Do you understand that Mr. Huntington no longer has an interest in the Los Angeles Street Railway?

Mr. CORNISH: I do not know how that is.

Com'r LANE: It was not Mr. Huntington's interest that this corporation bought?

Mr. CORNISH: I do not know anything about that.

Mr. LOVETT: Probably I better make a statement.

Mr. KELLOGG: I am perfectly willing, if the gentleman desires to.

Mr. LOVETT: I have no desire to make a statement, but if the Commission want the information, I shall be glad to give it.

Mr. SEVERANCE: He is familiar with it.

Mr. KELLOGG: Let us go on. You say that some time ago the Southern Pacific also bought an interest in the Interurban Line?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: Where are those Lines?

Mr. CORNISH: They run from Los Angeles through and
251 out of the town into the surrounding country. Just where, I do not know.

Mr. KELLOGG: Just how many miles of railway are there, do you know?

Mr. CORNISH: No, sir.

Mr. KELLOGG: Do they run to Santa Monica and San Pedro?

Mr. CORNISH: There are lines running there but I do not know what lines.

Mr. KELLOGG: What interest has the Southern Pacific in the Interurban Line?

Mr. CORNISH: I cannot recall it.

Mr. KELLOGG: Do you know whether it has a controlling interest or a minority interest?

Mr. CORNISH: No, sir; I do not.

Mr. KELLOGG: You do not know?

Mr. CORNISH: No, sir.

Mr. KELLOGG: Can you find out about that between now and two o'clock?

Mr. CORNISH: I think so.

Mr. KELLOGG: Then I will ask you now about another matter. What interest had the Southern Pacific in buying a street railway line in Salt Lake? Its lines of railway do not run into Salt Lake.

Mr. CORNISH: No, but it does business in and out of Salt Lake, and this property is in Ogden as well as Salt Lake, and the Southern Pacific takes care of that country west—takes care of the Salt Lake Basin, the Salt Lake Valley.

Mr. KELLOGG: That is through the Central Pacific Line and the San Pedro Line.

Mr. CORNISH: No, through the Central Pacific. I say the property is partly in Ogden and partly in Salt Lake.

Mr. KELLOGG: It has no line of railway—the Central Pacific or Southern Pacific—from Ogden to Salt Lake City?

Mr. CORNISH: No, sir.

Mr. KELLOGG: That is 38 miles?

Mr. CORNISH: Yes, sir.

252 Mr. KELLOGG: That line belongs to the Short Line Company?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: But the Southern Pacific thought it should acquire a street railway in Salt Lake City?

Mr. CORNISH: It seems so.

Mr. KELLOGG: You do not know the reason for that?

Mr. CORNISH: No.

Mr. KELLOGG: Now, about March 23, 1901, I notice that the Union Pacific was authorized to issue one hundred millions of common stock—I will show you the statement. (Handing paper to witness.) That was authorized about March, 1901.

Mr. CORNISH: I believe so.

Mr. KELLOGG: About that time one hundred million dollars of convertible bonds were issued by the Union Pacific, were they not?

Mr. CORNISH: I believe so.

Mr. KELLOGG: These bonds were convertible into that common stock, were they not, at par?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: And those bonds were sold?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: And about one hundred million dollars was realized?

Mr. CORNISH: I do not remember the amount. I do not keep the books.

Mr. KELLOGG: Do you know whether they were sold at less than par?

Mr. CORNISH: I presume so. I do not remember now.

Mr. KELLOGG: Sold through Kuhn, Loeb & Co.?

Mr. CORNISH: I do not remember.

Mr. KELLOGG: Those bonds have been converted into the common stock of the Union Pacific Company, have they not, with the exception of about $500,000?

Mr. CORNISH: So I understand.

Mr. KELLOGG: So, about $99,450.00 of those bonds have been converted into $99,450.00 of common stock of the Union Pacific Railway.

253 Mr. CORNISH: Something like that; I cannot verify your figures.

Mr. KELLOGG: Which we will practically call $100,000,000. That $100,000,000, which is represented by the issued and outstanding common stock of the Union Pacific is the money the Union Pacific has used in speculating in stocks, is it not?

Mr. MILBURN: I do not think that is a proper question.
Mr. SEVERANCE: Why not?
Mr. MILBURN: Ask what it was used for.
Mr. KELLOGG: I want to know that generally.
Mr. MILBURN: I do not think it is up to the dignity of the examination as it has been conducted. It is a question with animus.
Mr. KELLOGG: Not a bit.
Mr. MILBURN: Yes, it is.
Mr. KELLOGG: Well, to buy and sell stocks.
Mr. CORNISH: What is the question?
Mr. KELLOGG: That $100,000,000, realized from the issue of the Union Pacific common stock is the money that has been used for acquiring stocks of various railway lines, is it not?
Mr. MILBURN: We sold them.
Mr. CORNISH: I do not know how I could trace that. The money came into the treasury and property has been bought and Lines have been constructed and grades changed and improvements of every kind made and money paid out of the treasury, and at the same time stocks have been bought and sold—and I do not know.
Mr. KELLOGG: About 1901, about the time that stock issue was authorized, the Union Pacific Company bought over $80,000,000, par value, of the stock of the Northern Pacific Railroad, did it not?
Mr. CORNISH: I cannot remember.
Mr. KELLOGG: Well, you remember that in 1901, it bought over 400,000 shares of the preferred stock and over 370,000 shares of the common stock, don't you?
Mr. CORNISH: If I say "Yes," Mr. Kellogg, I would verify
254 the figures. I have not thought of that for years.
Mr. KELLOGG: Well, you know there was $155,000,000 of Northern Pacific stock, don't you?
Mr. CORNISH: I know there was a large quantity of it, yes, sir.
Mr. KELLOGG: About $155,000,000 was it not?
Mr. CORNISH: About that, yes, sir.
Mr. KELLOGG: And you know that the Union Pacific acquired about the time that stock was issued, the majority of the stock, preferred and common, together.
Mr. CORNISH: I so understood; yes, sir.
Mr. KELLOGG: Well, now, the Union Pacific did not have the money in the Treasury from operation of its lines to buy any such amount of stock.
Mr. CORNISH: I assume not.
Mr. KELLOGG: And that issue of convertible bonds and that issue of stock of $100,000,000 was primarily made to enable the Union Pacific to buy such stocks, was it not?
Mr. CORNISH: I think not. I did not understand it so.
Mr. KELLOGG: Well, was not that the real purpose?
Mr. CORNISH: I think not.
Mr. KELLOGG: That is what it was used for, was it not?
Mr. CORNISH: As I have explained, money must have gone into the Treasury and money must have been used out of the Treasury, but my recollection is the contrary as to that, that that was the purpose of it.

Mr. KELLOGG: There was not money enough in the Treasury to buy it but for that bond issue, was there?

Mr. CORNISH: No, but my recollection, Mr. Kellogg, is, that the Northern Pacific purchase had nothing to do with the issue of the bonds or the purpose of issuing the bonds at the time the bonds were issued. It was something that came a little later.

Mr. KELLOGG: Let us see about that. The Northern Pacific purchase was made about March, 1901, was it not?

Mr. CORNISH: I cannot remember the dates.

255 Mr. KELLOGG: Between March 1st and the 8th of May, 1901, the Union Pacific bought that stock, did it not?

Mr. CORNISH: I do not remember the dates.

Mr. KELLOGG: What?

Mr. CORNISH: I do not remember the dates. It was along in that spring.

Mr. KELLOGG: They did not buy anything after the day of the panic, did they?

Mr. CORNISH: I did not buy any, and had nothing to do with the purchase. I do not know what they did.

Mr. KELLOGG: Who did that?

Mr. CORNISH: It must have been done under Mr. Harriman's direction, I suppose, or the Executive Committee. I had nothing to do with it.

Mr. KELLOGG: Have you had anything to do with the purchase and sale of these various stocks?

Mr. CORNISH: No, sir.

Mr. LOVETT: Mr. Kellogg, here is the resolution under which the convertible bonds were issued by the Southern Pacific (presenting book to Mr. Kellogg), and here is a copy of the circular (presenting paper).

Mr. SEVERANCE: You mean the Union Pacific?

Mr. LOVETT: Yes, sir. This is a copy of the circular I referred to yesterday as probably explaining somewhat the purpose. It refers only to forty millions applied to the purchase of the Southern Pacific stock.

Mr. SEVERANCE: The resolution was put in yesterday.

Mr. LOVETT: That goes on in that connection, that at the same meeting when the issue of a hundred millions of convertible bonds was authorized, it was found necessary to increase the authorized capital stock of the company to a like amount, so that as the bonds were offered for conversion, stock could be issued. That proceeding is explained in the resolution. As to the details—as to what was done with the rest of the money, I have not got that information yet. I suppose the resolution states it in a general way.

The CHAIRMAN: Judge Lovett, do the minutes of the

256 Board of Directors or the Executive Committee, authorizing the issue of those securities, and the circular issued at that time, purport to show the purpose of their issue?

Mr. LOVETT: Yes, Mr. Chairman. Of course, you understand that in the form of resolution authorizing the issue of bonds of that sort, general terms are used.

The CHAIRMAN: Of course.

Mr. LOVETT: Quite general terms are used in the resolution. The circular then states that the proceeds of forty millions of bonds are to be applied to the purchase of Southern Pacific stock or to the paying for Southern Pacific stock that has been bought.

Mr. SEVERANCE: That is forty millions.

Mr. LOVETT: Yes, forty millions. As to what appropriation was made of the rest of it I do not know. That will appear from the books.

The CHAIRMAN: Does a circular or other announcement issued at that time purport to show for what purpose the other sixty millions of securities were issued.

Mr. LOVETT: Only the resolution. It may have been to replenish the treasury for expenditures already made in the improvement of the road and purchase of equipment. We will get that up, but cannot do it overnight.

Mr. SEVERANCE: You can have that made up?

Mr. LOVETT: If the books show it. As Mr. Mahl explained yesterday, the money is not ear marked in any way. Just what the books show I do not know. It will take some time to get that up, but we will furnish the information.

Mr. KELLOGG: In a general way, Mr. Cornish, it was not necessary to borrow one hundred millions on convertible bonds and issue one hundred millions of stock at that time to finance the road unless it was going to buy or did buy some stock, was it?

Mr. CORNISH: My recollection is that the company was quite heavily in debt on account of purchases of road and betterments. Extraordinary betterments had accumulated and they had not been financed, as the phrase is, and the purchase of the Southern
257 Pacific being in contemplation, the subject of financing for the advances, as they call them, and the purchase of the Southern Pacific was considered, and they made up this form of bond, providing for one hundred million dollars of bonds, and I think it states there (referring to circular) that bonds not required in that purchase be used for corporate purposes, or left it open to the Board of Directors to make disposition of the bonds as occasion might arise. I cannot recall the items, but I remember such items as the purchase of the Julesburg Cut-off, and other large sums had not been taken care of.

Mr. KELLOGG: The first circular issued in reference to the one hundred million dollars of bonds states that forty millions are now offered for subscription for the purpose of buying the Southern Pacific stock?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG (referring to circular): That is the first circular?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: I will have that marked. (Same is marked Exhibit 1, Cornish.) Is there anything said there about financing the road and paying for improvements?

(Handing circular to witness.)

Mr. CORNISH: No, I think not, in this (referring to circular).

Mr. LOVETT: I can furnish a copy of the mortgage also.

Mr. CORNISH: I think it will be found in the mortgage.

Com'r LANE: Did you state that the Union Pacific was in debt at that time a large sum, approximating forty million dollars?

Mr. CORNISH: That is my recollection—no, not approximating forty millions, but a large sum.

Com'r LANE: How much?

Mr. CORNISH: I cannot recall.

Com'r LANE: It had no surplus of any kind?

258 Mr. CORNISH: Technically, and by the books it might have an operating surplus, but a treasury surplus, no.

Com'r LANE: State the distinction, please.

Mr. CORNISH: They keep accounts of operation by themselves for Interstate Commerce Commission purposes and general purposes of keeping check on the operation of the road. From that, is derived the account of the earnings from operation. It works out finally to a question of profit or loss. The other accounts, the general accounts of the company, the general expenses outside of operation and purchases and sales go into the general account, and they are only handled in connection with the operation account and state a final balance of the condition of the company.

Com'r LANE: You mean by that the purchase and sale of property, or the purchase and sale of stock or securities?

Mr. CORNISH: Yes, sir.

Com'r LANE: Might it be that you might not have a treasury surplus owing to your investments outside of your railroad, and yet be entitled to an operating surplus?

Mr. CORNISH: Yes, sir.

Com'r LANE: From the income of the road?

Mr. CORNISH: We might not have the cash in the treasury on account of it being paid out for corporate purposes.

Com'r LANE: Do you recollect just what the condition of the operating surplus was at the time of the issue of this circular?

Mr. CORNISH: No, sir; I have not had my attention called to it and do not recollect.

Com'r LANE: Could you incorporate that in the statement you make, please, just what the condition of your operating surplus was—whether you had, as a railroad, a surplus or not?

Mr. LOVETT: We can furnish, of course, and will furnish, if the Commission desires it, a copy of the general balance sheet at that time, exhibiting the condition of the company. I under-

259 stand from what Mr. Cornish says of the operating surplus, that what may appear from the books as a surplus does not necessarily mean a surplus in cash; it may be investments and other property. We will furnish a copy of the balance sheet which I suppose is what you want, at that time.

Com'r LANE: I want to be clear about it. As I understand the statement, it is this: that in operating Union Pacific Railroad, you might have made a profit, which profit would appear as an operating surplus, but that that profit might be transferred to another account, which would be an investment account—that you could take the money that ordinarily would be credited to the surplus account, and invest it in stocks and outside investments so that there would

be an actual deficit in the treasury, and yet a real operating surplus. Is that right?

Mr. MILBURN: You might buy ten millions of rolling stock with five millions of surplus, and go in debt five million dollars.

Com'r LANE: I do not understand that that would be an investment outside of the railroad.

Mr. MILBURN: But it could be used that way.

Mr. CORNISH: My understanding is that the operating surplus was not being carried into any other account and disposed of that way. You say an account is carried into profit and loss and disappears. The fact might be that the company would by its operation be making money, and yet be a borrower of cash for other purposes, and in the summary of accounts altogether, it would appear that it had a floating debt.

Com'r LANE: That is what I meant.

Mr. KELLOGG: Then Mr. Cornish, if you will have made up a statement showing the time of issue and the amount realized from the one hundred millions of convertible bonds and the dates they were severally issued and converted into common stock——

Mr. LOVETT (interrupting): Mr. Kellogg, if you will allow me right there, you are asking a good deal. You are asking the date when these bonds were converted. Every day, Mr. Chairman—I suppose there was not a business day for the last four or five
260 years, or three or four years, that some of these bonds were not converted into stock.

Com'r LANE: Let it be by years—the total amount in years.

Mr. KELLOGG: This will satisfy us; when the bonds were sold, I understand they commenced converting them at a certain time. Were they convertible all the time?

Mr. LOVETT: A few were converted at first after the stock increased in market value to par or above. They then began converting the bonds into stock. Of course, the one hundred millions was not issued at one time, but only as the bonds were converted at the option of the holder. That right to convert expired May 1st, last. It was extended a few months and practically all the one hundred millions had been converted at that time. Those that were not converted, five hundred and odd thousand dollars, I think, were subsequently called for the redemption of the mortgage.

Mr. KELLOGG: I will start over again. The amount and dates of the sale of the bonds, the amount received, and to whom sold; a general statement of about how many were converted each year, if conveniently made; the purchase and date of purchase and amount paid for all stocks after the date of that circular, which is in February, 1901, and the sale of all stocks thereafter and the date and the amount received and from whom stocks were purchased and to whom they were sold, if you can show it. That will show about the transaction under the convertible bonds, will it not, Judge Cornish?

Mr. CORNISH: It will show what occurred.

Mr. KELLOGG: Yes. Well, that is all we want. Now there are one or two other questions I may want to ask Judge Cornish after

lunch, but he wants to consult records and so forth. That is all now.

Mr. LOVETT: Do you expect to recall him?

Mr. KELLOGG: I may want to recall him, but I may not recall him to-day, so if you want to ask him any questions, you may do so.

261 Mr. LOVETT: I have no questions now. I may have some later.

The CHAIRMAN: Have you concluded your examination?

Mr. KELLOGG: Yes.

The CHAIRMAN: I want to ask you one or two questions myself to clear up a matter. When did this new line from Salt Lake City to Los Angeles go into operation?

Mr. CORNISH: The line was completed about May, 1905.

The CHAIRMAN: It has been in operation for a year or more?

Mr. CORNISH: The through line, yes, sir; the line operated as a road in California and in Utah and Nevada; and the delay was in connecting the two ends. That was concluded, so that the line was put into full operations about May, 1905.

The CHAIRMAN: When did it become available in connection with the Union Pacific as a through line for freight and passenger travel to Southern California?

Mr. CORNISH: They commenced shipping freight in a very small way about May, 1905, and the business has grown up from that time, both passenger and freight.

The CHAIRMAN: When were through passenger trains first operated, or about when?

Mr. CORNISH: I think about the time I stated; I should say about the 1st of June, 1905.

The CHAIRMAN: About what is the distance from Salt Lake City to Los Angeles?

Mr. CORNISH: About 780 miles.

The CHAIRMAN: Less than from Salt Lake City to San Francisco.

Mr. CORNISH: Yes, sir.

The CHAIRMAN: And about what is the distance from Salt Lake City to Ogden to Portland, Oregon?

Mr. CORNISH: I don't remember just off hand; I will furnish that for the record; I don't remember.

262 The CHAIRMAN: Probably about the same as from San Francisco?

Mr. CORNISH: About; I should think about 800 miles.

The CHAIRMAN: If there are no further questions to be asked Judge Cornish at this time he may be excused.

Mr. MILBURN: I would like to ask one question. Judge Cornish, in a contract or traffic agreement that was referred to yesterday, a provision was called attention to which referred to the rates, tariffs, and charges of this San Pedro Road for any local business which might be the subject of competition between it and the Southern Pacific Railway Company. What is the territorial region of any such possible competition in local business?

Mr. CORNISH: It is all in Southern California below Mojave, prac-

tically confined to the lines from San Pedro, Los Angeles and Pasadena and then from there over to San Bernardino.

Mr. MILBURN: All confined to traffic in that region which you have mentioned, of Southern California?

Mr. CORNISH: Yes, sir.

Com'r LANE: And that is the practical interpretation which you have given to that clause?

Mr. CORNISH: Always, yes, sir, that is our understanding of the contract.

Mr. MILBURN: It says local business in the agreement, which may be the subject of competition between these two roads.

Com'r LANE: Yes. I suppose the word local is a word of various meanings, as applied to railroads?

Mr. MILBURN: Yes, but it would be confined to that region.

Com'r LANE: It might be a narrow region or more extensive. What is the difference between your rates on the Southern Pacific to Ogden and over the Clark line.

Mr. CORNISH: Really, sir, I cannot answer that.

Com'r LANE: Do you know if there is any difference or not?

263 Mr. CORNISH: I don't know anything about the rates.

Mr. MILBURN: Mr. Stubbs will answer all that.

Com'r LANE: Well, the witness does not know?

Mr. CORNISH: No.

Com'r LANE: I was wondering if this word local might not extend through Nevada?

Mr. CORNISH: I always understood not.

Mr. MILBURN: A large construction of local.

The CHAIRMAN: Is that all?

Mr. MILBURN: Yes.

Mr. KELLOGG: You know nothing about the traffic end of it?

Mr. CORNISH: No, I don't know anything about the rates, but I hear a good deal of discussion and have a good deal to do at times about traffic matters.

Mr. KELLOGG: Local business is a matter of business which might be entirely done on the rails of the San Pedro Company, is it not?

Mr. CORNISH: Not in that case with reference to that contract, no.

Com'r LANE: It is any business which you choose to call local, is it not?

Mr. CORNISH: I think I would always have a reason and the reason in this case with reference to this contract, Mr. Commissioner, is that there was an effort here to harmonize the handling of the territory of Southern California in the Los Angeles district, and the San Pedro Company wanted to get in on the Southern Pacific lines so as to handle business in and out, and it only went as far north as Los Angeles, and it was conceded in this contract by the Southern Pacific that it should do business as far as the parallel of Mojave, giving it a right into the Southern Pacific territory below that; and as a concession on the part of the—not a concession but a part of the understanding and consideration of that, the San Pedro undertook as far as this territory and this business was concerned to not

interfere unduly with the Southern Pacific's own business on its own lines, or in competitive territory.

264 Com'r LANE: Does the Santa Fe run over Southern Pacific Lines in Southern California?

Mr. CORNISH: From Mojave to Needles, yes sir.

Com'r LANE: In consideration, or for the same considerations, did you enter into a similar arrangement with the Santa Fe?

Mr. CORNISH: Who entered it, the Southern Pacific?

Com'r LANE: Yes, the Southern Pacific.

Mr. CORNISH: It is so long since I have read the contract I don't remember.

Com'r LANE: You have a contract, however.

Mr. CORNISH: Yes, there is a contract; it is very old.

Com'r LANE: You do not recall now whether in that contract you agreed that local rates shall be the same between the Southern Pacific and Santa Fe?

Mr. CORNISH: No, sir; I don't recall the terms of the contract at all.

Mr. LOVETT: We will furnish a copy of the contract.

Mr. KELLOGG: Who has that contract?

Com'r LANE: I suppose that is filed with the Commission, isn't it?

Mr. LOVETT: I think not.

Com'r LANE: It is a contract relating to traffic, is it not?

Mr. LOVETT: No, it is a contract by which the Southern Pacific leases until 1979 to the Atchison that portion of its line between Mojave and Needles. It involves no traffic at all. We would have sold them the lines, if it had not been for several mortgages. We have leased it to them. It is an old document.

Com'r LANE: Do I understand, Judge, in that contract, relating to that piece of road there is nothing whatever said as to any kind of agreement between the Southern Pacific and the Santa Fe as to local rates in Southern California?

Mr. LOVETT: I am quite sure of that; we have printed copies of that, and I will furnish you copies this afternoon. It is very old.

Com'r LANE: Is there any other contract between yourself and the Santa Fe?

265 Mr. LOVETT: Not so far as I know.

Com'r LANE: Referring to rates in Southern California?

Mr. LOVETT: Not so far as I know. I never heard of it.

Com'r LANE: If there is such a contract, would you kindly produce it?

Mr. CORNISH: I will try to find it. I know of none.

Mr. KELLOGG: I see the San Pedro leases some trackage from the Santa Fe also.

Mr. CORNISH: From a point between Colton and San Bernardino over to Daggett, or over the hill.

Mr. KELLOGG: Is there a contract between the San Pedro and Santa Fe under which they shall maintain rates?

Mr. CORNISH: Not that I know of.

Mr. KELLOGG: Prior to the construction of the San Pedro line the only way from Southern California to Ogden or Salt Lake was via Sacramento, was it not?

Mr. CORNISH: Yes, sir.

Mr. KELLOGG: And now there are two lines, one via Sacramento and one via the San Pedro line.

Mr. CORNISH: Yes.

Mr. KELLOGG: And business going from Southern California to Salt Lake entirely over the lines of the San Pedro is local business, is it not, ordinarily local business?

Mr. CORNISH: No, I should call that through business.

Mr. KELLOGG: Well, it is local to their line, is it not?

Mr. CORNISH: It is their line of business, yes sir.

Mr. KELLOGG: It is local to that line, isn't it?

Mr. CORNISH: I should not use that phrase, no.

Mr. KELLOGG: It does not go on any other line?

Mr. CORNISH: No.

Mr. KELLOGG: Ordinarily in railroading local business is business that is local to the particular line, isn't it?

Mr. MILBURN: It says local business which is competitive.

266 Mr. CORNISH: I do not understand it so.

Mr. KELLOGG: It is business from Salt Lake, and is competitive.

Mr. CORNISH: Yes.

Mr. KELLOGG: It is local business that is competitive that they agree to maintain under that contract?

Mr. CORNISH: No, the Southern Pacific has no business to Salt Lake.

The CHAIRMAN: Does that finish the examination of Judge Cornish?

Mr. KELLOGG: Yes.

The CHAIRMAN: Then he is excused?

Mr. KELLOGG: Until two o'clock.

The CHAIRMAN: Are you going to call another witness before lunch?

Mr. MILBURN: I would like very much if the recess could be taken at this moment instead of at one o'clock to enable me to do something I have to do in the meantime.

At 12:40 P. M. recess was taken until 2:00 P. M.

After Recess.

2 P. M.

The CHAIRMAN: Gentlemen, you may proceed.

W. V. S. THORNE, called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Thorne?

Mr. THORNE: New York City.

Mr. SEVERANCE: What is your business?

Mr. THORNE: I am director of purchases of the Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company, and the Southern Pacific Company.

Mr. SEVERANCE: Will you kindly state what your functions and duties are as director of purchases of these various lines?

267 Mr. THORNE: Well, they are to purchase locomotives, cars, rails, bridges or any other material which the railroad companies use in large quantities and where it is advantageous to make an agreement direct with the manufacturer where *he* can concentrate our business with one manufacturer.

Mr. SEVERANCE: Well, now, do you have on the various lines of the system purchasing agents, also?

Mr. THORNE: We have local purchasing agents.

Mr. SEVERANCE: And where are these local purchasing agents located, and who are they?

Mr. THORNE: Mr. J. W. Griffith is local purchasing agent of the Union Pacific at Omaha. Mr. Hutchinson is purchasing agent of the Oregon Short Line at Salt Lake City. Mr. Koehler is purchasing agent of the Oregon Railroad & Navigation Company. Mr. I. O. Rhoades is purchasing agent of the Southern Pacific Company at San Francisco; and Mr. N. P. Randolph is purchasing agent of the Morgan's Louisiana & Texas Railroad and Steamship Company at New Orleans.

Mr. SEVERANCE: Is the Pacific Mail Steamship Company under your jurisdiction?

Mr. THORNE: No, sir.

Mr. SEVERANCE: You don't have anything to do with the purchases for the ships?

Mr. THORNE: In some of the contracts which I make, which cover material used by the Pacific Mail & Steamship Company, I add a clause, if I think it desirable, whereby the manufacturer agrees to furnish the material covered by the agreement to the Pacific Mail Company, the Pacific Mail Steamship Company, at the price that they quote to the railroad companies, if the steamship company desires to buy it, and then I send a copy of that agreement to the general manager of the steamship company, and he can make use of it or not, as he pleases. In some cases he does, and in some cases he does not. I do not make any agreement that will bind the steamship company; and I am not an officer of that company.

268 Mr. SEVERANCE: Now, Mr. Thorne, you named these various gentlemen who are purchasing agents of the different lines of roads, do they make reports to you of their action?

Mr. THORNE: Not unless I ask them particularly about something.

Mr. SEVERANCE: They do not?

Mr. THORNE: No.

Mr. SEVERANCE: But you do call on them for information?

Mr. THORNE: Oh, yes.

Mr. SEVERANCE: And that is sent to you?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: Now, do you make contracts with manufacturers in which you act for more than one of these lines at the same time?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: That is, I suppose you buy a lot of cars or locomotives, do you sign, as director of purchases, say, the Southern

Pacific and the Union Pacific, or the Southern Pacific and the Oregon Short Line?

Mr. THORNE: Well, in buying locomotives we generally buy them in large lots; say 250 at a time. And the contract would then be made in the name of the Union Pacific Company, and later when the locomotive builders get these locomotives under construction the information is then sent to them as to which part of the different lines they are to be assigned to, and at that time, after they have that information, they make their bills against whatever railroads the locomotives are assigned to. At the time the locomotives are originally ordered we don't know where they are going, and we don't furnish that information to the locomotive builders sometimes until six months after the locomotives are ordered.

Mr. SEVERANCE: So that in the first instance you make a contract for an entire assignment of locomotives in the name of the Union Pacific Railroad?

Mr. THORNE: Yes, sir.

269 Mr. SEVERANCE: And then afterwards distribute them as may be determined?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: And the invoices are made against the particular line to which they are assigned?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: How is it with cars, freight cars?

Mr. THORNE: The same way.

Mr. SEVERANCE: And with passenger cars?

Mr. THORNE: The same way.

Mr. SEVERANCE: The same way? What official of the allied lines determines what number of these locomotives or cars shall go to one system or the other?

Mr. THORNE: Well, Mr. Kruttschnitt, the director of maintenance and operation.

Mr. SEVERANCE: He distributes them?

Mr. THORNE: He gives me information as to what is wanted, and then that request goes to the Executive Committee for approval, and then comes to me.

Mr. SEVERANCE: You say, "Goes to the executive committee": you mean the executive committee of the Union Pacific?

Mr. THORNE: Well, the executive committee of the Company concerned, I suppose. I don't know where Mr. Kruttschnitt gets authority from.

Mr. SEVERANCE: Well, now, Judge Lovett suggests how this is done; see if that is your understanding. That you will, for instance, give an order for 250 locomotives. Now, when these locomotives are completed, or a substantial number of them completed, Mr. Kruttschnitt determines how many he will send up to one line, or another line, and then he makes up, signing on behalf of the Southern Pacific, we will say, or the Union Pacific, as the case may be, a requisition for so many locomotives.

Mr. THORNE: Yes sir.

Mr. SEVERANCE: He sends these requisitions into Mr. Harriman,

who is the chairman of the executive committee of all the lines, and Mr. Kruttschnitt's requisitions are voted by the executive committee of the particular line to which Mr. Harriman refers these requisitions—is that right?

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Mr. THORNE: Yes sir.

Mr. SEVERANCE: That is the *modus operandi* of distributing these locomotive-.

Mr. THORNE: Yes sir.

Mr. SEVERANCE: So you don't remember of any case, do you, where Mr. Kruttschnitt's recommendations or requests were disapproved?

Mr. THORNE: I have no means of knowing whether they are disapproved or not, until approved and come to me approved.

Mr. SEVERANCE: You haven't known of any such case where he has made a distribution which has been disapproved?

Mr. THORNE: I do not get the distribution until after it is approved.

Mr. SEVERANCE: You get the distribution after it has gone through the Executive Committee?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: You say that is the same method employed in the case of cars, both freight and passenger?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: Now, do you buy other supplies, aside from locomotives and cars?

Mr. THORNE: I make contracts covering various other supplies, copies of which are sent to the local purchasing agents, and they buy under those agreements direct from the manufacturers.

Mr. SEVERANCE: That means then doesn't it—take the case of steel rails?

Mr. THORNE: I buy rails direct.

Mr. SEVERANCE: You buy rails from the manufacturer?

Mr. THORNE: Yes.

Mr. SEVERANCE: You buy them on requisition for them, or do you buy a certain number that seems to you advisable to contract for?

Mr. THORNE: That is handled about the same way that locomotives are. There is a requisition made out early in the summer as to what the requirements will be for the following calendar year.

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Mr. SEVERANCE: For each line?

Mr. THORNE: No, the aggregate requirements.

Mr. SEVERANCE: Who makes that out?

Mr. THORNE: Mr. Kruttschnitt.

Mr. SEVERANCE: Mr. Kruttschnitt makes that out and in that requisition he does not state for which line those rails are needed?

Mr. THORNE: No sir; he don't know at that time.

Mr. SEVERANCE: He don't know?

Mr. THORNE: No.

Mr. SEVERANCE: But he estimates as best he can the number of tons of rails that will be needed by the different lines during the year?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: And he notifies you of that aggregate?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: And then you make a contract?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: Then, how are these rails distributed, on requisitions the same as the cars and locomotives?

Mr. THORNE: The same way.

Mr. SEVERANCE: You spoke a moment ago of certain material you would contract for, and of which contracts you notified the local purchasing agent—what class of materials are those?

Mr. THORNE: Those are kinds of materials which they are constantly ordering from time to time.

Mr. SEVERANCE: Lumber?

Mr. THORNE: For which they have requisitions every week or every month.

Mr. SEVERANCE: Lumber, you mean?

Mr. THORNE: No, not lumber, but things like car wheels, car couplers, brake-beams, axles, springs, or any other parts of cars, and locomotives or supplies for general use.

Mr. SEVERANCE: Now, in the case of such articles you make a contract with the manufacturer or dealer?

272 Mr. THORNE: I make it with the manufacturers direct.

Mr. SEVERANCE: Manufacturers direct?

Mr. THORNE: I make it with the manufacturers direct in almost every case.

Mr. SEVERANCE: Do you make a contract for all that may be needed for the lines, or do you make a contract for a specific number?

Mr. THORNE: All that may be needed, as a rule, if it is advantageous to do so. It varies. Some manufacturers could not supply all we need, and other manufacturers, on account of location, would not be in position to take care of the requirements on all parts of the system. Some manufacturers agreed to furnish all we used for all lines.

Mr. SEVERANCE: That is to say as to these very small articles, you make contracts in the case of a manufacturer who is able to supply all you may need for all of the articles of that type that may be needed by any part of the system, and then you notify your local purchasing agents, and they may call on them for the deliveries when they are needed?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: That is the case with a great deal of your purchasing?

Mr. THORNE: Yes sir, that covers a large part of our purchases.

Mr. SEVERANCE: And they fix a price—you fix the price by contract with the manufacturer?

Mr. THORNE: Yes sir.

Mr. SEVERANCE: And the amount that will be taken up under that contract will be determined from time to time as the needs of the line demands?

Mr. THORNE: In some agreements a maximum and a minimum

amount is stated, but in most of them they furnish whatever we will require in that line; they agree to furnish whatever we will require in that line.

Mr. SEVERANCE: How is it with lumber?

Mr. THORNE: Purchasers of lumber are made entirely by
273 the local purchasing agent. They come from local sources. There is no one central point from which we could buy lumber to advantage.

Mr. SEVERANCE: You have more than one purchasing agent on any one of the several lines making up your system, take the Southern Pacific, for instance, running from Portland to New Orleans, do you have more than one purchasing agent?

Mr. THORNE: The purchasing agent at Portland purchases for the lines in Oregon of the Southern Pacific Company. The purchasing agent at Salt Lake of the Oregon Short Line, also purchases for the Southern Pacific line east of Sparks, Nevada.

Mr. SEVERANCE: By whom were you appointed, Mr. Thorne, as purchasing agent of these lines?

Mr. THORNE: By Mr. Harriman.

Mr. SEVERANCE: Were you appointed for the various lines at the same time?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: As director of purchases?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: Your position was created, was it not, after the acquisition of the Southern Pacific stock by the Union Pacific?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: Judge Lovett suggests when was your position created?

Mr. THORNE: I think about three years ago.

Mr. SEVERANCE: You have your office in New York?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: And your salary is distributed over the Southern Pacific, the Union Pacific, the Oregon Short Line, and the Oregon Railroad & Navigation Company?

Mr. THORNE: I don't know how it is distributed. The accounting department does that, and I have no knowledge how it is distributed.

Mr. SEVERANCE: All you are interested in is to get the money?

The CHAIRMAN: From whom do you get the money?

Mr. THORNE: I get the money by check from the treasurer.
274 The CHAIRMAN: Treasurer of what?

Mr. THORNE: Treasurer of the Union Pacific.

Mr. SEVERANCE: It comes to you from the Union Pacific?

Mr. THORNE: Yes, sir.

Mr. SEVERANCE: Any questions, Mr. Milburn?

Mr. MILBURN: No sir.

The CHAIRMAN: That seems to be all, Mr. Thorne. You may be excused.

Witness excused.

ALEXANDER MILLAR recalled:

Mr. KELLOGG: Will you please turn to page 288 of the meeting of March 31st, 1903, of the Short Line Company?

Mr. MILLAR: Board or committee?

Mr. KELLOGG: I think it is the executive committee.

Mr. MILLAR: Give me the page again.

Mr. KELLOGG: 288, March 31st, 1903.

Mr. MILLAR: Yes.

Mr. SEVERANCE: Is that about three hundred thousand shares of Southern Pacific stock for sale?

Mr. MILLAR: No. Yes.

Mr. SEVERANCE: That is right, that is the resolution.

Mr. MILLAR: That is it.

Mr. KELLOGG: Now, will you please—that is a resolution of the executive committee of the Oregon Short Line Railway, is it?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Will you please read that resolution?

The CHAIRMAN: Adopted on what day?

Mr. MILLAR: March 31, 1903.

Mr. KELLOGG: March what?

Mr. MILLAR: 31, 1903.

Mr. KELLOGG: Yes.

Mr. MILLAR (reading): "The chairman said that pursuant to authority conferred upon him by the executive committee he had sold three hundred thousand shares of Southern Pacific stock at 57½ payable $6,000,000 in cash and the balance,
275 $11,250,000, on or at the option of the purchaser at any time before April 30, 1904, with interest at the rate of 6% per annum; the deferred payment to be secured by the deposit of satisfactory collateral, the market value of which shall be maintained at $1,000,000 in excess of such deferred payment. Whereupon, on motion duly seconded, the action of the chairman was ratified and confirmed."

Mr. KELLOGG: Now, there was no previous resolution of the board, stockholders, or executive committee or the Short Line for the sale of that stock, that you know of, was there?

Mr. MILLAR: I would hardly answer that one way or the other without examination. I haven't looked for that for the purpose of ascertaining.

Mr. KELLOGG: Well, you don't know of any such resolution do you?

Mr. MILLAR: I don't remember it, no sir.

Mr. KELLOGG: March 31, 1903. It says "Pursuant to authority." Will you look at the index and see if you see any other resolution, or if he refers to his general authority as chairman of the executive committee?

Mr. SEVERANCE: You have an index there, haven't you?

Mr. MILLAR: I do not find any reference in the index, Mr. Kellogg, but I do not want to be understood that that is conclusive, because the vote which I have just read is not indexed.

Mr. KELLOGG: You don't know of any such resolution, do you?
Mr. MILLAR: No, sir.
Mr. KELLOGG: Of course, your answer in relation to that is subject to correction.
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: If you find any such resolution?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Now, that resolution was authorizing the sale of 300,000 shares of Southern Pacific stock owned by the Oregon Short Line, passed March 31, 1903, wasn't it?
Mr. MILLAR: Yes, sir.
276 Mr. KELLOGG: Now, it appears by Exhibit No. 3 offered in evidence, that on April 8, 1903, nine days later—eight days later, the Oregon Short Line still owned 900,000 shares of the common stock, does it not?
Mr. MILLAR: The statement shows that, sir. I did not prepare that statement, however; I cannot testify to it.
Mr. KELLOGG: Well, so far as you know, you don't know it to be incorrect?
Mr. MILLAR: I don't know it to be correct.
Mr. KELLOGG: Well, you don't know it to be incorrect either, do you?
Mr. MILLAR: I don't know, no, sir.
Mr. KELLOGG: Well, it is admitted that it is correct.
Mr. MILLAR: By whom?
Mr. KELLOGG: By Mr. Lovett.
Mr. MILLAR: Well——
Mr. KELLOGG: It is admitted on April 8, 1903, the Oregon Short Line owned 900,000 shares Southern Pacific common stock. Assuming that is correct, where did the Short Line get that 300,000 shares? Do you know anything about it?
Mr. MILLAR: No, sir, I do not.
Mr. KELLOGG: Well, now, that stock was bought back again on the 12th day of November, 1903, as appears from the stockholders' and directors' records of the Short Line Company, of November 12, 1903. It was bought back from William Rockefeller, wasn't it?
Mr. MILLAR: Yes, sir.
Mr. KELLOGG: Will you please turn to that resolution?
Mr. MILLAR: Just the date again, please?
Mr. KELLOGG: November 12, 1903.
Mr. MILLAR: Yes, we have it, Mr. Kellogg.
Mr. KELLOGG: Please read that resolution in evidence.
Mr. MILLAR: "A meeting of the Board of Directors of the Oregon Short Line Railroad Company, November 12, 1903. The chairman reported that in pursuance of a letter received from Mr.
277 William Rockefeller, dated November 5, 1903, and submitted to the Board, he had closed the transaction in respect of the 300,000 shares of the capital stock of the Southern Pacific Company, and that the officers of the company had paid the principal amount involved, together with interest and commissions; and whereupon, on due consideration and discussion, and on motion

duly made and seconded, it was resolved that the action of the chairman in the transactions with Mr. Rockefeller relating to said stock of the Southern Pacific Company, be in all things adopted, ratified and approved."

Mr. KELLOGG: Have you the letter referred to therein from Mr. Rockefeller?

Mr. MILLAR: Beg your pardon?

Mr. KELLOGG: Have you the letter referred to therein from Mr. Rockefeller?

Mr. MILLAR: I have.

Mr. KELLOGG: Will you let me see it?

Mr. MILLAR: I have a copy in my possession.

Mr. KELLOGG: Well, a copy.

Letter marked Exhibit 82, to Mr. Millar's testimony.

Mr. KELLOGG: I show you the letter, Exhibit 82, and ask you if that is a correct copy of the letter from William Rockefeller referred to in the resolution you have read?

Mr. MILLAR: It is.

Mr. KELLOGG: I offer this in evidence and desire to read it:

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(Copy)

Standard Oil Co., 26 Broadway, New York.

Nov. 5, 1903.

E. H. Harriman, Esq., Chairman Executive Committee, Oregon Short Line R. R. Co.

DEAR SIR: Referring to the agreement entered into between you and me on March 30, 1903, in respect to the 300,000 shares of the capital stock of the Southern Pacific Company, I beg to state that I should be glad to have you to take over the stock now, instead of waiting until the 1st of May, 1904, as originally contemplated. If you are prepared to do this, I am willing to reduce the commission agreed upon to five-eighths of one per cent., viz., $187,500, and shall be ready to close the matter upon receipt of your check for the principal amount involved, with interest at 6%, together with the amount of said commission.

Yours very truly,

(Sgn.) WM. ROCKEFELLER.

Mr. KELLOGG: Do you know what commission was agreed upon?

Mr. MILLAR: I do not, no, sir.

Mr. KELLOGG: Were you present at the Board of Directors when that meeting—or the Executive Committee meeting when that agreement was made between Mr. Harriman and Mr. Rockefeller, for the sale of that stock?

Mr. MILLAR: The first resolution to which I have testified?

Mr. KELLOGG: Yes; were you present?

Mr. MILLAR: Yes.

Mr. KELLOGG: Do you remember any agreement between Mr. Harriman and Mr. Rockefeller as to the sale of that stock?

279 Mr. MILLAR: I do not.

Mr. KELLOGG: Or any discussion?

Mr. MILLAR: I don't remember.

Mr. KELLOGG: Will you tell me any reason why, in March, 1903, the Short Line Company would sell Mr. Rockefeller 300,000 shares of that stock, amounting to $30,000,000, and buy it back the following November under an agreement, and pay him $187,500 commission for it?

Mr. MILLAR: I never knew the reason, no, sir.

Mr KELLOGG: You never knew the reason?

Mr. MILLAR: No, sir.

Mr. KELLOGG: You know nothing more about it than what appears there?

Mr. MILLAR: I know the transaction was carried out.

Mr. KELLOGG: That is, you know that this stock was sold to Mr. William Rockefeller in March, 1903, under an agreement that they would take it back within a year?

Mr. MILLAR: I don't recall the terms of the agreement, but I remember the transaction.

Mr. KELLOGG: What do you remember about the transaction? Tell us all you remember about it?

Mr. MILLAR: I remember distinctly delivering the stock and getting the check.

Mr. KELLOGG: Do you remember what happened at the meeting?

Mr. MILLAR: No, sir; I do not recall any of the particulars of that meeting whatever.

Mr. KELLOGG: Did you get the stock back?

Mr. MILLAR: I do not recall whether I took the delivery of the stock; I rather think not—my recollection is I did not.

Mr. KELLOGG: But it was bought back the following November?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Well, did the Union Pacific pay the same price when they bought it back that it got when it sold it—or the Oregon Short Line rather?

Mr. MILLAR: I don't know about that.

Mr. KELLOGG: Didn't they take it back at the same price
280 they sold it, with 6% interest, and pay him a commission beside?

Mr. MILLAR: I don't recall anything about that part of it, except as stated in the record, a copy of which you have.

Mr. KELLOGG: A copy of the letter you mean?

Mr. MILLAR: In the letter and the original record.

Mr. KELLOGG: Well, now, do you know of any other securities belonging to the Short Line or the Union Pacific that was sold to any of the directors of the company and bought back again at a profit?

Mr. MILLAR: No, sir.

Mr. KELLOGG: This is the only transaction you know?

Mr. MILLAR: The only transaction I know about, yes, sir.

Mr. KELLOGG: And you don't know the reason for that?

Mr. MILLAR: No, I do not.

Mr. KELLOGG: Do you know whether Mr. Rockefeller had any

duties to perform with refernce to this stock, as a reason why it was sold to him?

Mr. MILLAR: I do not, no, sir.

Mr. KELLOGG: Or as a reason why he should get a commission out of it?

Mr. MILLAR: I do not.

Mr. KELLOGG: Do you know of any of the Southern Pacific stock or Southern Pacific properties, or stocks belonging to the Southern Pacific that has been sold to any of its directors and bought back?

Mr. MILLAR: I do not. I never heard of any such sale.

Mr. KELLOGG: Then, will you turn to the meeting March 26, 1903—Oregon Short Line Executive Committee?

Mr. MILLAR: March 26?

Mr. KELLOGG: Look at a resolution where the chairman reported that he had purchased two steamships from the Atlantic Transport Company for $2,200,000 each, and read it, please.

Mr. MILLAR: "Executive Committee of the Oregon Short
281 Line Railroad Company, March 26, 1903. The chairman reported that pursuant to authority conferred upon him at the meeting of the Executive Committee on February 19, 1903, he had purchased from the Atlantic Transport Company two ocean steamers known in the contract as numbers 5 and 6, now under construction at the New York Shipbuilding yard at Camden, N. J., at an approximate cost of $2,200,000 each, the delivery of which is expected about the end of the present year. Whereupon, on motion duly seconded, the action of the chairman was ratified and confirmed."

Mr. KELLOGG: Please look at the Executive meeting of the Oregon Short Line, page 290, and read the resolution in evidence; will you, please?

Mr. MILLAR: This was a meeting of the Executive Committee of the Oregon Short Line Railroad Company, held April 6, 1903, at which the following preamble and resolution were on motion duly seconded, unanimously adopted:

Whereas, this company is the owner of certain shares of the capital stock of the Southern Pacific Company, which shares are registered on the books of said Southern Pacific Company in the following names, namely, E. H. Harriman, 456,950 shares; J. P. Adams, 100 shares; C. B. Haines, 400 shares; J. J. Hanauer, 5,000 shares; Siegfried Hayman, 20 shares; Kuhn, Loeb & Co., 111,430 shares; S. Sigman, 9,600 shares E. S. Steinam, 15,200 shares; Rich"—probably Richard E.—"Pestel, 100 shares; and

Whereas the persons above mentioned in whose names said stock is registered, have executed and delivered proxies in respect thereof to E. H. Harriman, Alexander P. Humphrey and Maxwell Evarts to vote upon said shares at the annual meeting of the stockholders of the Southern Pacific Company, to be held on April 8, 1903, and at any and at all adjournments thereof;

Resolved that the actions of the persons above mentioned in whose names certain shares of the capital stock of the Southern
282 Pacific Company owned by this company are registered, in executing and delivering proxies in respect of said shares to

E. H. Harriman, Alexander P. Humphreys and Maxwell Evarts, for use at the annual meeting of the stockholders of the Southern Pacific Company, to be held on April 8, 1903, and at any and all adjournments thereof, be and the same is hereby in all respects authorized, approved and ratified."

That is April 19, 1903.

Mr. KELLOGG: Will you turn to the Southern Pacific Executive Committee, volume 1, page 13.

Mr. MILLAR: June 20, 1901?

Mr. KELLOGG: Yes, establishing traffic headquarters at Chicago; Mr. Harriman's letter to Mr. Hays, of the Southern Pacific. Read that please.

Mr. SEVERANCE: He had better read the whole entry. Something precedes the letter.

Mr. KELLOGG: Yes, read the whole entry.

Mr. MILLAR: At a meeting of the Executive Committee of the Southern Pacific Company held June 30, 1901, the chairman reported that, pursuant to authority given him by the Board of Directors June 6, 1901, he had arranged to establish traffic headquarters of the company at Chicago in connection with the Union Pacific, Oregon Short Line, and Oregon Railroad & Navigation Company, in charge of Mr. J. C. Stubbs, and that he had addressed a letter to President Hays in relation thereto, of which the following is a copy:

"NEW YORK, *June* 18, 1901.

Mr. Charles M. Hays, President, San Francisco, Cal.

DEAR SIR: Effective July 1st, next, the supervision of the traffic of the Southern Pacific Company has been committed to Mr. J. C. Stubbs, who will be responsible directly to the Executive Committee.

Please instruct the several traffic officials to report to Mr.
283 Stubbs. On and after the above date the headquarters of the Traffic Department will be in Chicago, Ill.

Yours truly, E. H. HARRIMAN,
Chairman Executive Committee.

Mr. KELLOGG: Read the rest. Is that all there is of it.

Mr. MILLAR: That is all there is.

Mr. KELLOGG: Mr. Hays was president of the Southern Pacific Company at that time, wasn't he?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Turn to page 16. Read the proceedings submitted to the board and the report of the correspondence with President Hays on the subject of reorganization. State the date of the meeting.

Mr. MILLAR: Have you the heading of it?

Mr. SEVERANCE (indicating): That is it right there.

Mr. MILLAR: Meeting of the Executive Committee of the Southern Pacific Company held July 18, 1901. Mr. Tweed, chairman of the Board of Directors, made a verbal report upon the correspondence which had heretofore passed between himself and President Hays in relation to the appointment of the officers by the President and

its bearing upon the whole subject of reorganization, and submitted his letter to the meeting of July 17, in reference to the appointment of Mr. Fitzhugh and a telegram from President Hays dated July 18, all the details of which Mr. Tweed stated fully to the Committee. Whereupon, on motion duly seconded, the action of the chairman of the Board of Directors as reported to the committee was unanimously approved.

Mr. KELLOGG: Have you the correspondence referred to therein?

Mr. MILLAR: I do not feel sure about that. This was a part of Mr. Tweed's record, and——

Mr. KELLOGG: Will you make a memorandum and see if you can furnish it some time later. Mr. Chase, please make a memo-
284 randum of the correspondence referred to on page 16, volume 1 of the Executive Committee reports of the Southern Pacific Company in relation to the reorganization of the Southern Pacific. Ask for the correspondence. Mr. Millar can look it up at some subsequent date as we have not time to-day. Mr. Millar, were you present at that meeting?

Mr. MILLAR: I was.

Mr. KELLOGG: What was the verbal discussion and report?

Mr. MILLAR: I do not recall very distinctly, but I got the impression and have the impression now, that the eastern officers were unable to agree with Mr. Hays as to the organization in San Francisco, and that he had appointed an officer, either without consultation with the eastern office, or a man who was not satisfactory to them; that is my recollection.

Mr. KELLOGG: The eastern officer was Mr. Harriman?

Mr. MILLAR: Mr. Tweed and Mr. Harriman.

Mr. KELLOGG: That was after the purchase of the Southern Pacific stock by the Union Pacific.

Mr. MILLAR: Yes, sir, the report was made by Mr. Tweed.

Mr. KELLOGG: What?

Mr. MILLAR: The report was made by Mr. Tweed.

Mr. KELLOGG: Mr. Tweed was at that time chairman of the Boar-?

Mr. MILLAR: Yes.

Mr. KELLOGG: But that was after the Union Pacific acquisition, was it not?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Mr. Harriman was active at that time?

Mr. MILLAR: He was chairman of the Executive Committee.

Mr. KELLOGG: He was chairman of the Executive Committee?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Page- 31 and 32 of the same book.

Mr. MILLAR: In relation to appointments?

Mr. KELLOGG: In relation to the appointment of comp-
285 troller, general auditor, and assistant comptroller.

Mr. MILLAR: This was a meeting of the Executive Committee of the Southern Pacific Company November 27, 1901. On recommendation of the chairman, the following resolutions were unanimously adopted:

"*Resolved*, that the duties of Mr. William Mahl, as comptroller of

this company, shall be such as may be fixed and determined from time to time by the Board of Directors, Executive Committee or chairman thereof.

"*Resolved*, further, that the office of assistant comptroller of this company, be and is hereby created, and that H. S. Bradt be and he is hereby appointed such assistant comptroller, with such powers and duties as may be fixed and determined by the Board of Directors, Executive Committee, chairman thereof, or comptroller, from time to time.

"*Resolved*, further, that Erastus Young be and he is hereby appointed general auditor of this company, with such powers and duties as may be fixed and determined by the Board of Directors, Executive Committee, or chairman thereof from time to time.

"*Resolved*, further, that the secretary be and is hereby relieved from the work and authority assigned to the comptroller or general auditor.

"*Resolved*, further, that the title of G. T. Klink be and is hereby changed from general auditor, Pacific system, to auditor, Pacific system."

Mr. KELLOGG: Mr. Erastus Young was at that time general auditor of the Union Pacific?

Mr. MILLAR: Either auditor or general auditor; I forget the distinction in title.

Mr. KELLOGG: One or the other?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Meeting of June 9, 1904, same volume, I believe.

Mr. MILLAR: Of the Executive Committee?

Mr. KELLOGG: Of the Executive Committee, in relation to the lease of the Chicago office for Mr. Kruttschnitt.

286 Com'r LANE: Is that not already in evidence?

Mr. KELLOGG: No, I believe not.

Mr. SEVERANCE: That was the other company.

Mr. KELLOGG: That was the other company, yes.

Mr. MILLAR: At a meeting of the Executive Committee of the Southern Pacific Company, June 9, 1904, the following action was had: The chairman submitted a lease for floor space in the Merchants Loan & Trust Building, Chicago, for the office of Mr. Kruttschnitt, director of maintenance and operation, for use jointly by the Union Pacific, Southern Pacific, Oregon Short Line and Oregon Railroad & Navigation Company, for a term of three years, at an annual rental of $11,400, payable monthly in advance. Whereupon, on motion duly seconded, it was resolved that the above lease, now submitted, be and the same is hereby approved and confirmed.

Mr. KELLOGG: Page 67, volume 2, Southern Pacific Executive Committee.

Mr. MILLAR: About advertising, Mr. Kellogg?

Mr. KELLOGG: Yes, page 67.

Mr. MILLAR: Southern Pacific Executive Committee meeting of March 1, 1906. The chairman submitted a letter from Mr. J. C. Stubbs, traffic director, dated February 23, 1906, enclosing a memorandum showing estimated advertising expenses for system lines for

the fiscal year ending June 30, 1907, of which this company's proportion is $128,500. Whereupon, on motion duly seconded, it was Resolved that the expenditure of $128,500 on advertising for the fiscal year ending June 30, 1907, be and the same is hereby approved and the chairman's action in authorizing the same was ratified and confirmed.

Mr. KELLOGG: Page 107 of the same volume; meeting of July 23, 1906.

Mr. MILLAR: In relation to what?

Mr. KELLOGG: The purchase of the Coos Bay, Roseberg & Eastern Railroad & Navigation Company.

Mr. MILLAR: At that time the chairman stated he had authorized the purchase from J. D. Spreckles & Bros. Co. for the sum of
287 $1,300,000, all of the property of the Coos Bay, Roseberg & Eastern Railroad & Navigation Company; the Coos Bay & Coquille Valley Railroad Company, including coal lands in Fibre Hill Coal Company and Alluvial Hill Coal Company, with their machinery, buildings, dockage, coal bunkers at San Francisco, and docks, coal bunkers, waterfront property, terminal grounds and town lots at Marshfield, and all property complete in that company which belongs to J. D. Spreckles & Bros. Co., and the entire property, including all bonds to be delivered under the guarantee of J. D. Spreckles & Bros. Co. as free and clear of all incumbrances and liabilities. Whereupon, on motion duly seconded, it was Resolved that the action of the president in authorizing the purchase of the property above described be and the same is hereby approved and confirmed.

Com'r LANE: Does that include any steamships?

Mr. KELLOGG: Did that include the steamships, the Commissioner asks?

Mr. MILLAR: They are not recited in the preamble.

Com'r LANE: Do you know whether any steamships were included?

Mr. MILLAR: I do not. I am not acquainted with that property.

Mr. SEVERANCE: Judge Cornish, do you know whether any steamships were included?

Mr. CORNISH: I understand there were one or two small boats which were included.

Com'r LANE: Running from where to where?

Mr. CORNISH: Running up and down the coast from Coos Bay to San Francisco.

Mr. KELLOGG: Volume 2, page 125—no, that is already in. Page 131.

Mr. MILLAR: Advertising, Mr. Kellogg?

Mr. KELLOGG: Yes, that is the other letter in relation to advertising.

Mr. MILLAR: Shall I read it?

Mr. KELLOGG: Joint expenses, yes.

Mr. MILLAR: Meeting of the Executive Committee of the
288 Southern Pacific Company, October 25, 1906. The chairman submitted a letter from Mr. J. C. Stubbs, dated October 17,

1906, enclosing a memorandum showing additional estimated advertising expenses for system lines for the fiscal year ending June 30, 1907, of which this company's proportion is $316,260.33. Whereupon, on motion duly seconded, it was Resolved that the expenditure of $316,260.33 on additional advertising for the fiscal year ending June 30, 1907, be and the same is hereby approved.

Mr. KELLOGG: Now will you turn to the Union Pacific stockholders' and directors' meetings, volume 2.

Mr. MILLAR: Is there a page or date?

Mr. KELLOGG: January 7, 1904. It is the meeting where Mr. Harriman was elected president and resolutions were passed with reference to the powers of the president.

Mr. MILLAR: Do you want the resolution?

Mr. KELLOGG: Yes.

Mr. MILLAR: A meeting of the board of directors of the Union Pacific Railroad Company January 7, 1904. The following resolutions were adopted:

Resolved that the by-laws of this company be amended in the following particular: Amend Section 1 of Article 6 to read as follows:

The president shall have general care, supervision and control of the company's business in all its departments under control of the board of directors and executive committee.

"The offices of president and chairman of the executive committee may be held by the same person."

Further resolved, that the chairman of the Executive Committee be and he is hereby authorized to call a meeting of the board of directors for the purpose of acting on said amendment, in accordance with the provision of the by-laws.

Mr. KELLOGG: The amendment was adopted by the board of directors at a meeting on April 11, 1905, was it not?

Mr. MILLAR: I should have to look at that.

289 Mr. KELLOGG: Look and see.

Mr. MILLAR: What is the date?

Mr. KELLOGG: April 11, 1905.

Mr. MILLAR: I think that cannot be the date, Mr. Kellogg.

Mr. KELLOGG: A special meeting was held to vote on this amendment. It was April 11th, 1904, maybe.

Mr. MILLAR: Oh, 1904?

Mr. KELLOGG: Possibly.

Mr. MILLAR: I thought you said 1905?

Mr. KELLOGG: I did say that. I may have been mistaken. Maybe it was the stockholders' meeting. I have on my memorandum April 11, 1905.

Mr. MILLAR: April 11, 1905. A special meeting of the board of directors held April 11, 1905. The chairman stated that pursuant to the action of the Board of Directors taken January 7, 1904, the meeting had been called for the purpose of acting on a proposition to amend Section 1, Article 6 of the By-laws. Whereupon, on motion duly seconded, it was:

Resolved that the By-laws of the Union Pacific Railroad Company be amended so that Section 1 of Article 6 shall read as follows:

"SECTION 1: The president shall have general care, supervision and control of the company's business in all of its departments, under control of the board of directors and executive committee.

"The offices of president and chairman of the executive committee may be held by the same person.

Mr. KELLOGG: Now, if you will look at page 174 of the meeting of August 15, 1906, of the Union Pacific Company, in relation to the semi-annual dividends of $5 on the common stock, and a statement with reference to the deferring of the announcement.

Mr. MILLAR: Meeting of the board of directors of the Union Pacific Railroad Company, August 15, 1906. The following action was taken.

The chairman submitted a statement showing the operations of the company, partly estimated, for the fiscal year ending
290 June 30, 1906, and the financial condition of the company.

Whereupon, after full consideration, upon motion duly made and seconded, the following resolutions were unanimously adopted, namely:

"*Resolved* (1) That a semi-annual dividend of $2 per share be and such dividend is hereby declared on the preferred capital stock of this company, payable October 1, 1906, to stockholders of record at 12 o'clock m. on the 15th day of September, 1906.

"*Resolved* (2) That a semi-annual dividend of $5 per share upon the common capital stock of this company be and such dividend is hereby declared, payable October 1, 1906, to stockholders of record at 12 o'clock m. on the 15th day of September, 1906.

Mr. KELLOGG: Turn to volume 3 of the Executive Committee—is that all.

Mr. MILLAR: There is a vote further regarding the——

Mr. KELLOGG: Read the rest of it.

Mr. MILLAR: Regarding the authority to the committee.

Mr. KELLOGG: Yes, read the rest, please.

Mr. MILLAR: The following action was also taken.

"The chairman stated that, as a number of the directors were unable to attend the meeting, it seemed proper that announcement of the dividend should be deferred until they could be informed of the action taken at the meeting. And he suggested therefore, that the announcement and publication of the dividend, provision for the closing of the transfer books, and also the question which had been discussed as to the particular revenues against which portions of the dividend should be charged, be referred to the executive committee. Whereupon, upon motion duly made and seconded, it was unanimously Resolved that the executive committee is hereby authorized and empowered to announce and publish the declaration of such dividend at such time as it may deem proper, and to authorize and provide for the closing of the transfer books for the purpose of said dividend, and for the purpose of the annual meeting of the stockholders to be held Tuesday, October 9, 1906, and to specify the income or other fund against which such dividend shall be
291 charged, and to take such other action in connection with the declaration, payment and notice of such dividend as said committee may deem necessary or advisable."

Mr. KELLOGG: Now turn to volume 3 of the executive committee records of the Union Pacific Company, page 210, and read the action of the executive committee on that dividend.

Mr. MILLAR: Meeting of the executive committee of the Union Pacific Company, August 16, 1906. The action of the board of directors at its meeting held August 15, 1906, in respect of dividends payable on the capital stock of this company was considered. Whereupon, upon motion duly made and seconded, it was unanimously *Resolved:*

1. That for the purpose of such dividend and of the annual meeting of the stockholders to be held Tuesday, October 9, 1906, the stock transfer books of this company shall be closed at 12 o'clock m. on the 15th day of September, 1906, and reopened at 10 o'clock a. m. on the 10th day of October, 1906.

Resolved (2) That the secretary of this company be and he is hereby authorized and directed to notify the secretary of the New York Stock Exchange on the 17th inst., and before the hour fixed for the opening of said Exchange on said date of the declaration of said dividends, and the treasurer of this company be and he is hereby authorized and directed to furnish notice of said dividends by publication of an advertisement in the usual form in papers published in the city of New York, as the chairman of the executive committee shall direct.

Mr. KELLOGG: Was there submitted at either one of those meetings a statement showing out of what revenues the dividend was to be paid, the net earnings of the Union Pacific and the balance left after the payment of the 5% semi-annual dividend of the common stock and 2% on the preferred.

Mr. MILLAR: I was away from the city at that time, and I cannot testify of my own knowledge beyond what is stated in the minutes read.

292 Mr. KELLOGG: You have not got such a statement?

Mr. MILLAR: No.

Mr. KELLOGG: You don't know what the surplus was?

Mr. MILLAR: No.

Com'r LANE: Do I understand that the books do not show from what accounts these dividends were paid?

Mr. KELLOGG: His books do not.

Mr. LOVETT: His books do not.

Mr. KELLOGG: Your books do not show from what account they were taken?

Mr. MILLAR: These minute books do not show.

Mr. KELLOGG: Do the books in your office, or are they in the Comptroller's Office?

Mr. MILLAR: The Comptroller's Office would have a statement.

Mr. MAHL: Knows about that, I suppose.

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: If you will look at the Southern Pacific directors' meeting Vol. 5, Page 188. Please read the record there as to the declaration of dividends by the Southern Pacific directors.

Mr. MILLER: August 15, 1906. At a meeting of the Board of Directors of the Southern Pacific Company, the Chairman submitted

a statement showing the operations of the company, partly estimated, for the fiscal year ending June 30, 1906, and the financial condition of the company. Whereupon, after full consideration, upon motion duly seconded, the following resolution was unanimously adopted, namely;

Resolved, that a semi-annual dividend of $2.50 per share to be known as first dividend be and such dividend is hereby declared on the common capital stock of this company payable Oct. 1, 1906, to bearers of dividend warrants No. 1, annexed to certificates representing such stock, upon presentation and surrender of such warrants to the assistant treasurer of this company at his office at No. 120 Broadway, New York.

The Chairman stated that, as a number of the directors were unable to attend the meeting, it seemed proper that announcement of the dividend should be deferred until they could be informed
293 of the action taken at the meeting. And he suggested therefore, that the announcement and publication of the dividend and any other action deemed necessary, be referred to the Executive Committee. Whereupon, on motion duly made and seconded, it was unanimously resolved, that the Executive Committee be and it is hereby empowered to announce and publish the declaration of such dividend at such time and make such provision for the payment thereof as said committee may deem appropriate.

Mr. KELLOGG: Have you got the statement that the Chairman submitted, showing the revenues and so forth, of the Southern Pacific Company.

Mr. MILLAR: It may possibly be in my files; I cannot speak from knowledge.

Mr. KELLOGG: Make a memorandum to get that at future time, will you, please. That meeting was held on what day?

Mr. MILLAR: August 15, 1906.

Mr. KELLOGG: The same date as the Union Pacific meeting?

Mr. MILLAR: Yes.

Mr. KELLOGG: Will you please state what directors were present at that meeting of the Southern Pacific? At what hour was that?

Mr. MILLAR: At one thirty in the afternoon.

Mr. KELLOGG: Aug. 15, 1906?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: What directors were present?

Mr. MILLAR: Directors De Forest, Evarts, Goelet, Harriman, Lovett, Mills, Stillman, Thorne and Vandeventer.

Com'r LANE: May I ask who were absent?

Mr. KELLOGG: Who were absent, do you remember?

Mr. MILLAR: I can very readily ascertain.

Mr. KELLOGG: Well, that is the Southern Pacific.

Mr. MILLAR: Yes.

Mr. KELLOGG: If you will read those names off I will check them from this list you gave us.

Mr. MILLAR: De Forest, Evarts, Goelet, Harriman, Lovett,
294 Mills—I don't know which Mills—Stillman, Thorne and Vandeventer; nine out of fifteen.

Mr. KELLOGG: Now the absent directors according to that, of the Southern Pacific, were W. D. Cornish——

Mr. MILLAR: He was one of them.

Mr. KELLOGG: H. E. Huntington.

Mr. MILLAR: Yes.

Mr. KELLOGG: He lives in Los Angeles, does he?

Mr. MILLAR: I don't know where he lives.

Mr. KELLOGG: He does not live in New York that you know of, does he?

Mr. MILLAR: Part of the time, I guess, in Ossining.

Mr. KELLOGG: Marvin Hughitt?

Mr. MILLAR: Yes, sir

Mr. KELLOGG: C. H. Mackay?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And David Willcox?

Mr. MILLAR: Yes, sir. That would only make fourteen, wouldn't it?

Mr. KELLOGG: And D. O. Mills or Ogden Mills, you don't remember which one was present at the meeting?

Mr. MILLAR: Yes; I was not present at the meeting; I don't know which one was present.

Mr. KELLOGG: Will you turn to the record book of the Union Pacific, Page 174, and see what directors were present at that meeting which you just read, and check them to see the absent ones.

Mr. MILLAR: At the Board meeting of Aug. 15, 1906, there were present——

The CHAIRMAN: At what hour was that meeting held?

Mr. MILLAR: One o'clock, sir.

Mr. KELLOGG: Go ahead.

Mr. MILLAR: Sterling, Frick, Harriman, Lovett, Peabody, Rockefeller, Rogers, Stillman and Goelet.

Mr. KELLOGG: There were absent who?

Mr. MILLAR: Directors Oliver Ames——

Mr. KELLOGG: Of Boston.

Mr. MILLAR: Yes, sir. W. D. Cornish.

Mr. KELLOGG: Marvin Hughitt?

Mr. MILLAR: Marvin Hughitt.

295 Mr. KELLOGG: David Willcox?

Mr. MILLAR: David Willcox.

Mr. KELLOGG: P. A. Valentine?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Of New York.

Mr. MILLAR: I understand he lives in Chicago part of the time.

Mr. KELLOGG: And Joseph F. Smith, of Salt Lake City?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: Now, if you will read the minutes of the Executive Committee of the Southern Pacific Co. in Vol. 2, Page 114, Aug. 16, 1906.

The CHAIRMAN: Before answering that question, Mr. Millar, kindly tell us what notice is given of a meeting of directors?

Mr. MILLAR: At the time of these meetings the by-laws provided for five days notice, either by letter or telegram.

Mr. KELLOGG: Was that notice given in these two cases?

Mr. MILLAR: I cannot testify as to that because I happened to be away at the time; personally I have no doubt it was.

Mr. KELLOGG: Read the minutes of the Executive Committee?

Mr. MILLAR: Of the Southern Pacific?

Mr. KELLOGG: Southern Pacific, Page 114, Vol. 2.

Mr. MILLAR: August 16, 1906. The action of the Board of Directors at its meeting held on August 15, 1906, in respect of dividends upon the capital stock of this company was considered. Whereupon, upon motion duly made and seconded, it was unanimously resolved that the secretary of this company be and he is hereby authorized and directed to notify the secretary of the New York Stock Exchange on the 17th instant and before the hour fixed for the opening of said exchange upon said date of the declaration of said dividends; and the assistant treasurer of this company be and he is hereby authorized and directed to give notice of
296 said dividend, by publication of advertisement in the usual form, in papers published in the city of New York, as the Chairman of the Executive Committee shall direct."

Mr. KELLOGG: What directors were present at that Executive meeting?

Mr. MILLAR: De Forest, Harriman, Lovett and Stillman.

Mr. KELLOGG: What directors were present at the Union Pacific Executive meeting?

The CHAIRMAN: Mr. Millar, do the by-laws provide for the notice of a meeting of the Executive Committee?

Mr. MILLAR: No, sir; their meetings. That is a stated meeting held weekly, and this was the—well, in answering you, I was speaking then of the Union Pacific. The last record I read was the Southern Pacific. They have stated meetings held bi-weekly, and these ——

The CHAIRMAN: And these meetings all occurred at the stated times?

Mr. MILLAR: Yes, sir. These Executive Committee meetings were stated meetings.

Mr. KELLOGG: Was this a stated meeting?

Mr. MILLAR: This was the regular bi-weekly meeting of the Executive Committee.

Mr. KELLOGG: Where was it held, at the office, 120 Broadway?

Mr. MILLAR: Yes, sir.

The CHAIRMAN: Were meetings of the Executive Committee of either company held at other times than the stated dates, under the by-laws.

Mr. MILLAR: Occasionally, provision being made for special meetings, yes, sir.

The CHAIRMAN: How, by adjournment, or by call?

Mr. MILLAR: I should say more frequently by adjournment and occasionally by call; but always by notice.

The CHAIRMAN: And what would the notice be in case of a special meeting by call?

Mr. MILLAR: If an adjourned meeting, the fact that it was an

adjourned meeting is stated in our form of call; if it was a
297 special meeting it would be so stated, but no other detail.

Mr. CHAIRMAN: Anything prescribed in making the notice?

Mr. MILLAR: I don't recall precisely, but I think there is three days' notice on the Executive Committee meetings at this time.

Mr. LOVETT: The provision of the by-laws of the Southern Pacific, is as follows:

"Regular meetings of such Executive Committee shall be held at such times as the Committee shall from time to time determine. Special meetings may be called at any time by the Chairman or any three members of the Committee."

The CHAIRMAN: Not providing how they shall be called or upon what notice, I suppose you could call them up by telephone and have them present in a few minutes.

Mr. LOVETT: Yes, actual notice I think is all that is required.

Mr. KELLOGG: What directors were present at the Executive Committee meetings?

Mr. MILLAR: Of the Southern Pacific?

Mr. KELLOGG: Yes. Did you read that?

Mr. MILLAR: Yes.

Mr. KELLOGG: Well, what directors were present at the Union Pacific meeting, Page 310, Vol. 3?

Mr. MILLAR: At the meeting on Aug. 16, 1906, of the Union Pacific Executive Committee, there were present directors Harriman, Lovett and Stillman.

Mr. KELLOGG: Now, will you turn to Vol. 3 of the records of the Executive Com. of the Union Pacific, Pages 242 and 243?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: And read the resolution in relation to the ownership of the Fruit Express that we got mixed up on this morning.

Mr. MILLAR: A meeting of the Executive Committee of the Union Pacific directors held Dec. 13, 1906. The Chairman stated
298 that the contract between this company and the Armour Car Lines with reference to the transportation of fruit and other perishable freight contained a provision authorizing the termination thereof upon six months' notice from either party, and that the latter had given notice of its intention to terminate such contract. That he was advised that under the Interstate Commerce Act as amended, railroad companies are required to provide refrigerator cars and to show the charges for such cars and for the service of refrigeration, ventilation, etc in their tariffs and to include such charges in their freight bills.

That under the circumstances it seemed advisable for this company and the Southern Pacific Company to provide for the incorporation of a company whose stock shall be taken by them and acquired to furnish them and their allied lines the refrigerator cars required by them and to take over and carry on the business of furnishing cars for traffic originating upon their lines which requires refrigeration and ventilation, and of attending to the icing and ventilation of such cars. And that pursuant to this plan he had here-

tofore caused a corporation known as the Pacific Fruit Express Company to be organized under the laws of the State of Utah, with an authorized capital of $12,000,000 and had arranged with W. H. Bancroft to subscribe for 11,996 shares and P. L. Williams, D. E. Burley, J. A. Reeves and F. H. Knickerbocker, each to subscribe for one share of such capital stock, and that subscriptions had been made for account of Union Pacific Railroad Company and Southern Pacific Co., each to take one-half of the shares so subscribed for.

He further stated that under the laws of the State of Utah it was necessary that ten per cent. of the authorized capital stock should be paid in in cash at the time of the organization of the company, and that he had directed the treasurer of the Union Pacific R. R. Co. to pay that amount, one-half of it to be repaid to said company by the Southern Pacific Co.

The Chairman further stated that in furtherance of this plan he had some time ago authorized the purchase for account of said Pacific Fruit Express Co. of 6,000 refrigerator cars at a cost
299 of $1700 each, amount- in the aggregate to $10,200,000, some of which cars were about ready for delivery, and it was hoped that the others would be delivered by the time or very soon after the expiration of the contract with the Armour Car Lines Company under the notice heretofore given. And he further stated in order to provide the Pacific Fruit Express Co. with the funds necessary to pay for such cars, it should issue its stock from time to time to the Southern Pacific Co. and Union Pacific R. R. Co. and each should take one-half of such stock when and as issued at par.

The Chairman further stated it might be necessary or advisable to admit some other railroad companies as stockholders of said Pacific Fruit Express Co., but that this could be done later by the sale by the Southern Pacific and Union Pacific R. R. Co. of portions of the stock so taken by them to such other railroad companies.

On motion duly made and seconded, it was unanimously resolved:

1. That the action of the president of this company in causing the incorporation and organization of the Pacific Fruit Express Co. under the laws of the State of Utah with an organized capital stock of $12,000,000, and an arrangement for the subscription on account of this company for 6,000 shares of such capital stock and for payment into the treasury of said company of ten per cent. of the authorized capital stock, be and such action is hereby ratified and approved.

2. That the president of this company be and he is hereby authorized to pay and receive or arrange for the subscription and for the payment for and receipt of one-half of the remaining capital stock of said Pacific Fruit Express Co. from time to time as issued by said company pursuant to the recommendation of the Chairman as above set forth.

3. Resolved that this company as a subscriber to the capital stock of said Pacific Fruit Express Co. hereby assents to the purchase by said company of 6,000 refrigerator cars at a cost of $1,700
300 each, amounting in the aggregate to $10,200,000, as above stated by the Chairman of this Committee.

Mr. KELLOGG: Will you turn to Pages 294 and 295 of the same volume, in relation to the Equipment Association?

Mr. MILLAR: Isn't it Page 244, the same date?

Mr. KELLOGG: Perhaps it is.

Mr. MILLAR: The Equipment Association organization?

Mr. KELLOGG: Yes, I guess that is right.

Mr. MILLAR: At the same meeting the following action was taken. The Chairman stated that in his opinion it was advisable to have a corporation formed for the purchase of equipment to be used by this company and its allied lines, the intention being that the Equipment Co. should take title to the rolling stock and then lease it to the various associated companies, or at all events to hold the title thereto until such rolling stock should be distributed among the said companies. That pursuant to such plan he had heretofore caused a corporation to be organized under the laws of the State of Utah, known as Union Pacific Equipment Association, with an authorized capital stock of $100,000, and had caused the entire amount of this stock to be subscribed for on account of Union Pacific Railroad Co. as follows: W. H. Bancroft, 996 shares, P. L. Williams, W. S. McCormick, E. Buckingham, and C. H. McNitt, one share each. That under the Laws of the State of Utah it was necessary that 10% of the authorized capital stock of this corporation should be paid in in cash at the time of the organization of the company, and he had directed the treasurer of the Union Pacific to pay this sum, namely $10,000 into the Treasury of the Union Pacific Equipment Association, which had been done. On motion, duly made and seconded it was unanimously resolved that the action of the Chairman of the Executive Committee, in causing the organization of Union Pacific Equipment Association under the laws of the State of Utah, with a capital stock of $100,000,
and in causing the said stock to be subscribed for account
301 of the company, and in directing that ten per cent. of the
capital stock be paid in cash, and the action of the treasurer in paying $10,080 into the treasury of the State of Utah upon such subscription be and the same is hereby ratified and approved and confirmed.

Further resolved, that the treasurer of this company be and he is directed and authorized to pay into the treasury of the Pacific Equipment Association the remainder of such subscription, namely the sum of $90,000 when and as the same shall be called by the Board of Directors of said Union Pacific Equipment Association.

Mr. KELLOGG: Is the Southern Pacific included in that as an allied line.

Mr. MILLER: It does not state the companies meant by "allied lines" and I don't know what it did mean.

Mr. KELLOGG: Do you know whether equipment has been acquired and leased to the Southern Pacific under that?

Mr. MILLAR: I do not; no sir.

Mr. KELLOGG: You don't know anything about that?

Mr. MILLAR: No, sir. This action was taken Dec. 13th, last.

Mr. KELLOGG: I think that is all I wish to ask Mr. Millar. One moment, here are some resolutions I will have marked Exhibits.

Papers marked Exhibits 66, 67, 68, 69 & 70 Mr. Millar's Testimony.

Mr. KELLOGG: I show you Exhibits 66, 67, 68, 69 and 70 and ask you if those are certified transcripts from the books of the Union Pacific and of the meetings of its stockholders and directors?

Mr. MILLAR: Not the stockholders.

Com'r LANE: You had better state the general purport of those.

Mr. MILLAR: Excuse me, I would like to see the last one.

Exhibit No. 70 passed to witness.

302 Mr. MILLAR: Exhibit No. 70 was prepared by me but unlike the others it is not a certified copy.

Mr. KELLOGG: It is a copy?

Mr. MILLAR: Yes, sir.

Mr. KELLOGG: I offer this in evidence.

Exhibit No. 70 is a supplemental agreement in reference to the election of officers of the Chicago & Alton Railroad. It is dated the 31st of January, 1906, and signed by E. H. Harriman, Jacob H. Schiff, and R. S. Lovett, parties of the first part, and W. H. Moore, D. G. Reid, and J. H. Moore, parties of the second part, and the Central Trust Company, trustee. The other main agreement was introduced yesterday.

Exhibit No. 69 is an amendment to the pension rules beginning with the Southern Pacific Road, which was offered yesterday, and a copy was not furnished at that time.

Exhibit No. 67 is a resolution authorizing the purchase of the Baltimore & Ohio Railroad stock. (Reading:) "The agreement made by the president of the Oregon Short Line Railroad Company with Messrs. Kuhn, Loeb & Company, for the purchase of 323,342 shares of the common stock and 72,064 shares of the preferred stock of the Baltimore & Ohio Railroad Company, and the resolution adopted by the executive committee of said Oregon Short Line Railroad Company, approving such agreement."

Exhibit No. 66 is a statement of loans made to and by the Union Pacific Railroad Company and the collaterals securing them, and the resolution approving them. That was called for yesterday. Does the Commission wish it read in detail?

The CHAIRMAN: Oh, no. That concludes your examination of Mr. Millar?

Mr. KELLOGG: Yes sir.

The CHAIRMAN: Mr. Milburn; Do you desire to ask any questions?

Mr. MILBURN: No sir.

The CHAIRMAN: Mr. Millar, you may be excused.

Mr. MILLAR: I would like to explain about that pension roll. If I gave the impression in my testimony in reference to that
303 matter, or if counsel did that, that was to take in the Southern Pacific, that was not the object of the amendment, but to give the man working in the different companies the right to count the years when they changed into another company?

Mr. KELLOGG: Certainly, we understood that. The Southern Pacific service was included?

Mr. MILLAR: It has a pension service of its own.

Mr. KELLOGG: That is all.

Mr. SEVERANCE: Mr. Mahl, will you resume the stand.

WILLIAM MAHL recalled.

Mr. SEVERANCE: Mr. Mahl, have you since you left the stand been able to make up some of the statements we asked for yesterday?

Mr. MAHL: Yes sir.

Mr. SEVERANCE: I show you an exhibit marked "5-Mahl." Was that made up by you, Mr. Mahl?

Mr. MAHL: Under my direction.

Mr. SEVERANCE: It is a correct statement of what it purports to show is it not?

Mr. MAHL: Yes sir.

Mr. SEVERANCE (referring to Exhibit No. 5): This is "Oregon Railroad Navigation Company; statement showing holdings of Portland & Asiatic Steamship Company stock;" 993 shares in the name of E. H. Harriman, Chairman, and one share each in the names of W. W. Cotton, Wm. Crooks, W. D. Cornish, R. P. Schwerin, H. F. Conner, R. S. Lovett, W. R. Litzenberg, making a thousand shares in all.

Com'r LANE: Those are the individuals?

Mr. SEVERANCE: Yes sir, 993 shares in the name of Mr. Harriman as chairman. That thousand shares of stock in the Portland & Asiatic Steamship Company all belongs to the Oregon Railroad & Navigation Company?

Mr. MAHL: Yes sir.

Mr. SEVERANCE: I now show you exhibit marked "6-Mahl," consisting of two sheets. Was that prepared under your direction?

304 Mr. MAHL: It was.

Mr. SEVERANCE: And is a correct statement of what it purports to show?

Mr. MAHL: It is.

Mr. SEVERANCE: This is a statement (referring to Exhibit No. 6) which shows the names of the persons in whom there is registered the Southern Pacific common stock and Southern Pacific preferred stock that belongs to the Oregon Short Line Railroad Company? Is that true?

Mr. MAHL: That is right.

Mr. SEVERANCE: Aggregating 900,000 shares of common and 180,000 shares of preferred?

Mr. MAHL: That is correct.

Mr. SEVERANCE: Now *is it* a fact, is it not, that all this stock is under a mortgage of the Oregon Short Line?

Mr. MAHL: It is.

Mr. SEVERANCE: What company is the trustee under that mortgage?

Mr. MAHL: The Equitable.

Mr. SEVERANCE: The Equitable Trust Company?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Can you give the date when that stock was deposited with the Trust Company as collateral security?

Mr. MAHL: I cannot.

Mr. SEVERANCE: Can you state by reference to your report there what the date of the deposit of that stock was?

Mr. MAHL: December 1st, 1904——

Com'r LANE: I cannot hear you.

Mr. MAHL (referring to book): The mortgage is dated December 1st, 1904. The securities must have been deposited 30 days preceding that.

Mr. SEVERANCE: What is that date?

Mr. MAHL: December 1st, 1904.

Mr. SEVERANCE: So that these shares have been deposited with the Eqitable Trust Company from some time prior to December 1st, 1904?

Mr. MAHL: Probably.

305 Mr. LOVETT: Will you allow me to interrupt there?

Mr. SEVERANCE: Yes, sir.

Mr. LOVETT: I think Mr. Mahl must be mistaken. The securities could not be deposited before the date of the mortgage. It was some date after the date of the mortgage.

Mr. SEVERANCE: When were they deposited, about when? Tell me within a month.

Mr. MAHL: The mortgage is dated December 1st.

Mr. LOVETT: The reason I interrupt you, I prepared the mortgage and know that it was some time after that the stock was deposited.

Mr. SEVERANCE: Before the annual meeting of 1905?

Mr. LOVETT: I know it was some time after the date of the mortgage.

Mr. MAHL: I have at the office the exact date the securities were deposited.

Mr. SEVERANCE: I wish you would furnish that. They were deposited shortly after the mortgage was dated—within a few months?

Mr. MAHL: Undoubtedly.

Mr. SEVERANCE: Is the holding of the Oregon Short Line of 180,000 shares of preferred stock also under that mortgage?

Mr. MAHL: It is.

Mr. SEVERANCE: When was that deposited?

Mr. MAHL: About the same time.

Mr. SEVERANCE: How many bonds were issued against that deposited stock?

Mr. MAHL: One hundred million—not only against that, but against some other stocks.

Mr. SEVERANCE: How is that?

Mr. MAHL: One hundred million were issued against the stocks now referred to and other stocks.

Mr. SEVERANCE: The one hundred million of stock was Oregon Short Line stock?

Mr. MAHL: Bonds.

Mr. SEVERANCE: What were the other stocks put under that mortgage aside from the Southern Pacific stock?

Mr. MAHL (referring to papers): $2,564,000, face value,
306 Oregon Short Line Railroad Company, income A, 5% bonds; $23,907,300 Oregon Railroad & Navigation Company common stock; $10,866,800 Oregon Railroad & Navigation Company preferred stock.

Mr. SEVERANCE: That is all, is it?

Mr. MAHL: Yes, and the Southern Pacific stock referred to.

Mr. SEVERANCE: Now, Mr. Mahl, when were the one hundred million dollars of bonds that are secured by the Southern Pacific stock and the other stocks and bonds you mentioned issued and sold?

Mr. MAHL: I cannot give you the dates. I can furnish the dates. I do not recall them now.

Mr. SEVERANCE: Was the whole issue put out?

Mr. MAHL: The whole issue was put out and sold.

Mr. SEVERANCE: Will you make up a statement, please, giving the dates of such sales, the amounts received for the bonds, and the persons to whom they were sold?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Can you tell what was done with the proceeds of that large bond issue?

Mr. MAHL: I believe that part of that was used to retire the $82,000,000 of participating bonds that were outstanding.

Mr. SEVERANCE: What was that $82,000,000 of participating bonds issued for? What was the purpose; was it to take up Northern Pacific stock?

Mr. MAHL: I do not recall now; that was before my time. I will have to look at the Annual Reports and find out.

Mr. SEVERANCE: Can you find that out from your books.

Mr. MAHL: I can.

Mr. SEVERANCE: Will you kindly make up a statement showing the issue of that $82,000,000 bonds?

Mr. MAHL: 4% and participating bonds?

Mr. SEVERANCE: The 4% and participating bonds. State the purpose for which they were issued, and the persons to whom they were sold, and the amounts received for same.

307 Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Do you have any recollection of any other purpose that was subserved by the making of this one hundred million dollar mortgage?

Mr. MAHL: I don't now recall.

Mr. SEVERANCE: You have included that in your statement?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Very well; that will all show. I show you, Mr. Mahl, Exhibit No. 7. Was that made up under your direction?

Mr. MAHL: It was.

Mr. SEVERANCE: That is a correct statement of what it purports to show?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And is taken from other items picked out of your last annual report?

Mr. MAHL: Yes, sir.

(Same is hereto annexed and marked Exhibit No. 7 to Mr. Mahl's testimony.)

Mr. SEVERANCE: Now, Mr. Mahl, this statement shows that on the 30th of June, 1905, the credits to profit and loss on the Union Pacific R. R. Co. was $34,943,194.42, and that same item on the 30th of June, 1906, one year later, was $42,796,026.39, or a gain during the year of $7,852,831.97. Now, out of what kind of items are those credits made up?

Mr. MAHL: I think they are mentioned there in your statement.

Mr. SEVERANCE: Well, I understand an increase is shown here?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: But what I want to get at is this: does this credit to profit and loss—that is the surplus account?

Mr. MAHL: That is the gain between the two years.

Mr. SEVERANCE: This is called "credit to profit and loss." That shows a surplus of $42,000,000?

Mr. MAHL: Yes, sir.

308 Mr. SEVERANCE: That is what you call "operating surplus?" what was called here yesterday "operating surplus?"

Mr. MAHL: Not altogether. A profit and loss balance takes in all transactions of every kind and character.

Mr. SEVERANCE: Let me see if it does. This does not take in any profits you make by buying and selling stocks and securities?

Mr. MAHL: Not in this instance.

Mr. SEVERANCE: That is what I mean.

Mr. MAHL: No.

Mr. SEVERANCE: So that this surplus, or the increase in the surplus during the year of $7,852,831 was made up in this way, wasn't it—first, you took your gross receipts from traffic, and you substracted from that the operating expenses and struck the balance; you took out of that your dividends and your interests and rentals and other things of that kind; then you added to rentals so obtained your income by way of interest on investments or dividends or stock investments, and in that way you got this increase in surplus—isn't that true?

Mr. MAHL: Not entirely.

Mr. SEVERANCE: Just state how you did do it?

Mr. MAHL: For instance, we received during the year $1,463,000 from sale of lands.

Mr. SEVERANCE: That went in?

Mr. MAHL: Which, under the various provisions of the mortgage we were required to again apply in the purchase of other lands; but, on the other hand, we expended, mind you, on these betterments and additions, $6,263,000. Now, this money which we apply here, we really used that to write off our betterment account. A part of the betterment account which is not written off in that way comes out of the earnings, and increases the profit and loss; and in that

seven million dollars there is a certain sum of money for betterments, and I think that is shown on that statement.

Mr. SEVERANCE: This statement shows, "Expended for
309 extensions, $506,903.56. Expended for betterments and additions (after deducting amount appropriated from income and proceeds of lands and other properties sold which was applied to betterments and additions), $1,593,224.30. Increase in assets, $8,861,239.02. Total, $10,961,366.88;" and from that you decrease—that sum was decreased by an increase in capital of $2,174,836.00 and an increase in contingent liabilities of $933,698.91, leaving a net balance that I have stated, a gain during the year?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: That did not include any profits whatever that you made in handling securities, did it; that is, buying and selling?

Mr. MAHL: No; there was none charged at all.

Mr. SEVERANCE: Now, I show you Exhibit No. 8. I will ask you if this is the statement submitted to the Board of Directors of the Union Pacific at their meeting on August 15, 1906, at the time they voted the dividend of 5%?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: That was prepared under your direction?

Mr. MAHL: That is a copy of it.

Mr. SEVERANCE: That is a copy of the statement submitted?

(Same is hereto annexed and marked Exhibit No. 8, to Mr. Mahl's testimony.)

Mr. SEVERANCE: Now, Mr. Mahl, this statement shows that your gross receipts in 1906, were $67,281,542.60, an increase of $7,956,593.94 over the preceding year. Your operating expenses were $35,261,170.84, or an increase of $7,008,468.80, leaving a net profit in 1906 of $32,020,371.76; out of which you took your taxes, leaving a surplus for the year of $30,317,769.44. Now that is surplus arising from operation, isn't it?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Traffic?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And that does not include any money you have received from handling securities, does it?

310 Mr. MAHL: Investments and interests.

Mr. SEVERANCE: What?

Mr. MAHL: Is the interests on investments stated in there?

Mr. SEVERANCE: But that is afterwards: That is receipts from traffic over and above operating expenses and taxes?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: That is, you had applicable to dividends and bond interests solely from your business as a railroad company, aside from your business, as an investment company, thirty millions, and a fraction over as the proceeds of the year's business ended June 30, 1906?

Mr. MAHL: That is right.

Mr. SEVERANCE: Now, you also received from rentals and other sources $7,767,491.42, didn't you?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Does that include the interest on bonds that you own, and dividends on stock that you own?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: How is that?

Mr. MAHL: Yes, sir; it does. It is stated here in that report.

Mr. SEVERANCE: Now that made an aggregate income then, of $38,085,260.86. Now, the next item in this statement is "Less fixed charges, including rentals, $8,883,416.03. Now, these fixed charges include the interest on your outstanding bonds?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: And any rentals that you have to pay?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: So that that left a net surplus of $29,201,844.83 applicable to dividends on your stock?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Without including any income whatever from the profits you may have made by buying securities at one price and selling them at a higher price.

311 Mr. MAHL: That is correct.

Mr. SEVERANCE: They didn't include profits made by buying securities at one price and selling them at a higher price?

Mr. MAHL: No, sir.

Mr. SEVERANCE: Now, the next item is "4% dividend on preferred stock, $3,982,032.00, and that leaves a balance of $25,219,812.83 applicable to dividends on your common stock?

Mr. MAHL: That is right.

Mr. SEVERANCE: That is right, is it?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Your common stock outstanding amount to about $195,000,000, doesn't it?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: Is that right?

Mr. MAHL: A little over.

Mr. SEVERANCE: It is not a million over?

Mr. MAHL: No, sir.

Mr. SEVERANCE: And that would—putting it out on a 10% basis would take $19,500,000 to pay the dividend, wouldn't it, for the year?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: That would leave you, assuming that your business for 1906 and 1907, up to June 30, 1907, is no greater than up to June 30, 1906, would leave you about six million dollars over and above paying this 10% dividend, without counting in any profits that the Union Pacific would have made by buying securities or bonds or stocks at one price and selling them at a higher price?

Mr. LOVETT: And without including the dividends on Southern Pacific stock?

Mr. MAHL: I was just going to call attention to that. This state-

ment when it was made up did not include the dividends which we received, of $2,250,000 of the Southern Pacific common stock.

Mr. SEVERANCE: That is, the dividends you are to receive beginning last July?

Mr. MAHL: That were received last July.

Mr. SEVERANCE: And that dividend is not shown?

312 Mr. MAHL: No, at that time it had not been declared.

Mr. SEVERANCE: But you are able to earn from the sources that have been detailed here, have you, the amounts that I have stated, without including any profits from these stock investments?

Mr. MAHL: Yes, sir.

Com'r LANE: Has Mr. Mahl given you a list of those profits?

Mr. SEVERANCE: No. That statement has not been made up yet.

Mr. LANE: It will be; you have called for it?

Mr. SEVERANCE: Yes, sir; we have.

Mr. MAHL: It is in preparation now.

Mr. LOVETT: We have furnished everything that we have been able to in the limited time at our disposal.

Mr. SEVERANCE: Yes; you have done very well.

Now, Mr. Mahl, I see on the bottom of this statement, a memorandum of $6,657,305.36 expended for betterments and additions. Out of what funds were those expended and what were they charged to?

Mr. MAHL: They were expended out of current funds, or any moneys that came in; those were expenditures, really, of what you might call a capital account. They were simply put there as a memorandum to show what has been expended on capital account.

Mr. SEVERANCE: You mean that that was expended out of capital account already acquired by the sale of securities, or out of capital account to be hereafter reimbursed out of the sale of additional securities?

Mr. MAHL: I cannot tell. We are going right along spending money for betterments and additions, and we take it from any of those which are in the treasury.

Mr. SEVERANCE: You would even take it from the profits on stock, if you happen to have it on hand?

Mr. MAHL: Take it from any fund we might happen to have.

Mr. SEVERANCE: The next item in this memorandum is $17,230,940 expenditures for construction of new lines and

313 equipment for twelve months ending June 30, 1906, dealt with as a free asset estimated: now, will you state what that expression means—dealt with as a free asset?

Mr. MAHL: Property against which no securities of any kind have been issued.

Mr. SEVERANCE: That is no securities specifically issued against that property, but you don't know but what there still remain in your treasury money realized from the sale of securities heretofore put out by your company which will be sufficient to cover that?

Mr. MAHL: That would not be taken in.

Mr. SEVERANCE: Then, this is in the nature of a suspense account to be hereafter dealt with?

Mr. MAHL: Yes, securities issued against it.

Mr. SEVERANCE: Here is another memorandum: there is charged in the above expenses and taxes carried to the reserve fund for betterments equipment and general extraordinary affairs subject to the action of the Board of Directors the sum of $2,206,610.39. Now, that amount of $2,200,000 is included in the $35,000,000 of operating expenses, isn't it?

Mr. MAHL: Yes, sir.

Mr. SEVERANCE: So that you have, in figuring up the operating expenses to be set over against your gross receipt included an item of $2,200,000, that may properly be charged to capital account, except that you deemed it wise to absorb that much as part of operation?

Mr. MAHL: No.

Mr. SEVERANCE: Will you explain what that item means?

Mr. MAHL: That money has not been expended but has been charged against the year's income, and a fund created, against which hereafter any extraordinary expenses, such as washouts, damages, etc., which would ordinarily have to be charged to operating expenses will be charged against that reserve.

Mr. SEVERANCE: If that is the case, why do you say betterments and extraordinary affairs?

Mr. MAHL: Yes; it might be used for that.

314 Mr. SEVERANCE: Consequently your operating expense for the year are $2,206,000 really less than shown in the aggregate of $35,000,000, because you have taken out from your receipts this $2,200,000 extra money and put it in a reserve fund to be used in the future?

Mr. MAHL: Yes, sir.

Com'r LANE: Is that the beginning of that, or have you had such a fund before?

Mr. MAHL: We have had such a fund before.

Mr. SEVERANCE: What is the amount of it altogether?

Mr. MAHL: Something like $4,000,000.

Mr. SEVERANCE: Can you make up a statement of that account showing the amounts that were put into it, and the charges against it?

Mr. MAHL: There have been no charges against it.

Mr. KELLOGG: He has got the amount right there.

Mr. MAHL: $4,774,610.39 to the good of that account at the close of the year.

Mr. SEVERANCE: And up to this time there have been no charges against it whatever.

Com'r LANE: Is that in the treasury of the company?

Mr. MAHL: It is more in the nature of a book account; the money is there in the common treasury.

Mr. LANE: All of the funds went in the treasury and you draw on them indiscriminately, and you keep these common accounts as matter of segregation?

Mr. MAHL: Yes, sir.

Mr. KELLOGG: Did you make up exhibit No. 3, or is that made up by the secretary?

Mr. MAHL: Made up by the secretary.

Mr. KELLOGG: Your books show, do they not, the amount of Southern Pacific stock owned by the Oregon Short Line Company from and after its acquisition, or the commencement of its acquisition of Southern Pacific stock, don't they, at all times?

Mr. MAHL: Yes, sir.

Mr. KELLOGG: Well, now, can you state from memory how much Southern Pacific stock the Short Line owned during the entire year of 1903 and 1904, and since?

315 Mr. MAHL: No.

Mr. KELLOGG: You cannot state?

Mr. MAHL: No. I can state how much they owned June 30, 1906.

Mr. KELLOGG: Well, June 30, 1906, they owned $108,000,000 didn't they, of the Southern Pacific stock—$90,000,000 and $18,000,000—common and preferred I mean?

Mr. MAHL: That is correct.

Mr. KELLOGG: Have you got the annual report so that you can tell me the amount the Short Line owned at all times?

Mr. MAHL: No; I can only show it to June 30th. I can show it at the end of each year.

Mr. KELLOGG: Of each year?

Mr. MAHL: Yes.

Mr. LOVETT: Mr. Kellogg, we can have a statement made out at any particular day. Do you want the date of the annual meeting?

Mr. KELLOGG: This statement shows this, Mr. Lovett: That the Oregon Short Line Company voted 900,000 shares of stock at a meeting at an adjournment of a meeting of the Southern Pacific Company held on April 8th, 1903, the books closed on April 3rd, 1903, and I would like to know the amount of stock that the Short Line Company did actually own in the Southern Pacific Company on April 8th, 1903, and April 3rd, 1903, and at all times thereafter, until December 1st, 1903?

Mr. MAHL: I can furnish that from the books.

Mr. LOVETT: Your books will show that?

Mr. MAHL: They show that.

Mr. KELLOGG: And I suppose after that time the amount has not been changed?

Mr. LOVETT: Except by the preferred stock.

Mr. KELLOGG: Now, do you recollect a transaction that is shown in the minute book of the Short Line Company, the sale of 300,000 shares of Southern Pacific stock to William Rockefeller on March 31, 1903?

Mr. MAHL: I do not now recollect it.

316 Mr. KELLOGG: You have no recollection of it whatever?

Mr. MAHL: No.

Mr. SEVERANCE: Have you any questions, Mr. Lovett?

Mr. LOVETT: No.

Comm'r LANE: Is that all. You may be excused, Mr. Mahl.

Mr. KELLOGG: We have no other witnesses to-day, that is all at this time, but we have other witnesses that we will call when Mr. Harriman is examined. I suppose the commission cannot fix a date at present.

Com'r LANE: That depends on Mr. Harriman's condition, and I understand from his counsel that they do not know just when he can appear. Is there some stipulation you want to enter into?

Mr. SEVERANCE: Well, we are just talking about it. We want the various directors subpœnaed to appear here at the adjourned day. Mr. Lovett says if we let him know he will get them to appear.

Mr. KELLOGG: In addition to those who have been subpœnaed I would like Mr. William Rockefeller, who is a director, and for whom a subpœna is issued, but Mr. Rockefeller, as I understand, is ill and out of the city.

Com'r LANE: Mr. Rockefeller is ill?

Mr. KELLOGG: I understood so, but I may be mistaken as to that. William Rockefeller is the man we want. The marshal reported he was out of the city, and I believe he is unwell.

Com'r LANE: You do not wish him subpœnaed for Chicago?

Mr. KELLOGG: I hardly think so.

Com'r LANE: No further testimony.? If not this hearing will stand adjourned until next Tuesday, at 10:00 o'clock in Chicago.

At this point an adjournment was taken until Tuesday, January 8th, 1907, at 10:00 o'clock A. M. in Chicago, Ill.

317 In the Matter of the Consolidation and Combination of Carriers, Relations Between Such Carriers, and Communion of Interest Therein, Their Rates, Facilities, and Practices.

JANUARY 8TH, 1907.

Continuation of hearing in above matter at Chicago, the same having been adjourned from New York City.

The CHAIRMAN: Gentlemen, we will now take up the proceeding in the matter of the Combination of certain carriers subject to the Act to regulate commerce, their relations, rates and practices, which was adjourned from New York to this time and place, for further hearing here at Chicago to-day. Mr. Kellogg, are you ready to proceed?

Mr. KELLOGG: We are.

The CHAIRMAN: Who will you call?

Mr. KELLOGG: We will call Mr. Ripley.

E. P. RIPLEY, called and sworn as a witness, was examined by Mr. Kellogg in chief, and testified as follows:

Q. Are you President of the Atchison, Topeka & Santa Fe Railroad?

A. Yes, sir.

Q. How long have you been such?

A. Eleven years.

Q. Generally speaking, the Atchison Company has a line
318 of railroad from Chicago to Kansas City, New Mexico, Southern California and San Francisco?

A. Yes, sir.

Q. And with its connections a line leading into Texas and other places?

A. Yes, sir.

Q. It is known as the Santa Fe system?

A. Yes, sir.

Q. Previous to your presidency of the Santa Fe Company, with what company were you associated?

A. With the Chicago, Milwaukee & St. Paul.

Q. In what capacity?

A. Vice President.

Q. In charge of traffic?

A. Yes, sir.

Q. How long did you occupy that position?

A. Five years.

Q. Previous to that time, you were with what company?

A. The Chicago, Burlington & Quincy.

Q. In what capacity?

A. In various capacities from clerk to General Manager.

Q. Did you ever have charge of the traffic of the Burlington system?

A. Yes, sir.

Q. For a number of years?

A. Yes, sir.

Q. When did you commence to have charge of the traffic on the Chicago, Burlington & Quincy line?

A. I became general freight agent in 1878.

Q. From the time until you became president of the Santa Fe Company you were connected with various traffic departments?

A. Yes, sir.

Q. Now Mr. Ripley what companies are competitive with the Santa Fe Company for transcontinental business?

A. Almost all of the lines leading west from Chicago, in fact all of them more or less.

Q. And the Southern Pacific and the Union Pacific?

A. Yes, sir.

Q. The Northern Pacific and the Great Northern?

A. To a limited extent.

Q. Did you notice in the papers—I just want to call your attention to it, or rather I will state that it appeared in the hearing in New York that the Union Pacific Railroad owned ten millions of the stock of the Santa Fe Company. Did you know of that ownership?

A. I did not.

Q. You saw it in the papers?

A. Yes, sir.

319 Q. Now will you tell me whether any other Union Pacific interests or parties connected with the Union Pacific own any stock in the Santa Fe Company or have representation on your Board that you know about?

A. My first knowledge that the Union Pacific held any stock, the first intimation that I ever had that the Union Pacific held any stock in the Atchison was contained in the press despatches from

New York last week wherein it appeared that that had transpired in the evidence. My first knowledge that certain parties who were interested in the Union Pacific were stockholders in our road, came to me in the summer two years ago, the summer of 1904.

Q. What took place at that time, and from whom did you get your information?

A. My first information came from Mr. Harriman, who, being here at that time, asked me some questions about our property, and incidentally mentioned that he and some of his friends had been buying stock because they believed that it was a good investment.

Q. Well, was there anything said about a representation on the Board?

A. At that time, no, but later we were approached by some parties in New York; I think first by Mr. Shiff of Kuhn, Loeb & Company, saying that they had accumulated some stock and would like a representation on the Board. Various interviews were held on that subject between some of our directors and Mr. Harriman and Mr. Frick and Mr. Shiff, I think, at some of which I was present, and at some of which I was not. We said to them that the amount of stock which they were supposed to hold, which they said they had accumulated, and which we had reason to believe they had, would justify them in asking for a representation; that under our cumulative system of voting, whether we liked it or not, they could elect two directors and that we would make room for two directors on our Board without any friction or without any contest, providing always that the parties serving in that capacity should not be identified with or officers of any competing corporation.

Q. And you referred to competing corporations such as
320 the Southern Pacific, the Union Pacific or any other?

A. Or any other.

Q. Why didn't you want officers of competing lines?

A. Well, it is not a very satisfactory proposition to have officers of competing lines sitting on the Board of Directors and hearing discussions about subjects which might be inimical to their interests.

Q. You do not think it is proper?

A. We did not think we wanted it.

Q. Well, now what amount of stock did they claim to own at that time?

A. I do not know that they made any claims. We understood that they owned an amount of shares variously estimated at from one-eighth to one-seventh of the capital stock.

Q. Of the Atchison Company?

A. Yes, sir, about two hundred thirty thousand shares perhaps, or something like that.

Q. That would be twenty-three million dollars?

A. Yes, sir.

Q. What is the capital stock of the Atchison Company, or what was it at that time?

A. Roundly speaking—well I will be exact.

The CHAIRMAN: You are speaking now of what date?

Mr. RIPLEY: Two years ago. It was Two hundred fifteen million dollars in round numbers.

Mr. KELLOGG:

Q. Two hundred fifteen million dollars?
A. Yes, sir.
Q. That would make about thirty million of that ownership?
A. Yes, sir.
Q. Then did you investigate to see whether the gentlemen controlled that amount of stock?
A. No.
Q. You took their statement for it?
A. Yes, but we had some corroborative evidence in the transfer books although that amount of stock did not show as belonging to them.
Q. It is true, is it not, that stock is not always transferred to the owner?
A. A very large proportion—not a very large proportion, but a very large aggregate amount of our stock stands in the names of brokers.
321 Q. Well, now, what representation did they demand, one or two directors?
A. I don't think that they made any demands. They suggested that they were fairly entitled to two directors.
Q. Whom did they ask to be elected?
A. Mr. Rogers and Mr. Frick.
Q. They were elected?
A. They were elected.
Q. And are still directors?
A. Yes, sir.
The CHAIRMAN: When did their election take place?
A. It took place in the Fall of 1904 I think.
The CHAIRMAN: At the regular annual meeting?
A. At the regular annual meeting, yes, sir, that is my recollection, but I will not be certain about it.

Mr. KELLOGG:

Q. Mr. Henry H. Rogers, is it?
A. H. H. Rogers, yes, sir.
Q. Of the Standard Oil Company. And Mr. Henry C. Frick?
A. Yes, sir.
Q. Are they both directors of the Union Pacific?
A. I think so.
Q. And were at that time?
A. Yes, sir.
Q. You understand that fact?
A. Oh, yes.
Q. Did you have any talk with Mr. Harriman about these gentlemen in New York, other than the talk you spoke of?
A. Yes, sir.
Q. Well what did you say about their representation?
A. I told him that Mr. Frick and Mr. Rogers would be entirely satisfactory to us.

Q. Did he say they were representatives on the Board of the Union and Southern Pacific?

A. Not at all. I distinctly told him that they could not be admitted, and that they should not be——

Q. And on the Union Pacific?

A. Oh, yes. No. I don't know that I understood your question. I thought you asked me if they were to represent the Union Pacific on the Atchison Board?

Q. Oh, no, not at all. I asked you if he said anything about their being directors on the Union Pacific.

A. No, I don't think that was discussed. I knew it and he knew it.

322 Q. Do you believe that their interest continues, or do you know anything about it?

A. I have no knowledge on that subject. I have no reason to suppose that it does not.

Q. This acquisition of stock by the Union Pacific Company direct, you know nothing of whatever?

A. Nothing whatever.

Q. Mr. Ripley did your company lease to the San Pedro Company—you know the Company I mean, the San Pedro road?

A. Yes, sir.

Q. Any trackage rights?

A. Yes, sir.

Q. What trackage rights?

A. We leased them the right to run their trains over that portion of our line between Daggett, California and Colton, California, 110 miles over the mountain.

Q. Over the mountain?

A. Over the Colton pass.

Q. You have a written contract with them for that?

A. Yes, sir.

Q. Does it contain any traffic agreement?

A. None whatever.

Q. No reference to traffic whatever?

A. No.

Q. Or rates?

A. No.

Q. Or the rates to be charged?

A. No.

Q. Are you willing to furnish us a copy of the lease?

A. Yes.

Q. Has the Santa Fe Company any contract for the division of traffic or maintenance of rates or in reference to the rates to be charged, with the San Pedro Company at all?

A. No, sir, except the ordinary traffic arrangement for division of rates?

Q. You mean the tariffs?

A. Yes.

Q. The joint tariffs?

A. Yes.

Q. On file?

A. Yes.

Q. Is there any agreement or understanding between the Santa Fe Company and the Union or Southern Pacific for the division of any traffic whatever?

A. No, sir.

Q. Or for the maintenance of any rates?

A. No, sir.

Q. Or for any pooling?

A. No, sir.

Q. Mr. Ripley, you know about the time that the Union
323 Pacific bought stock in the Southern Pacific, about 1901?

A. Well, I know of it as others know of it; it was common report only.

Q. Well, about the time they took over the management of the Southern Pacific line, about 1901 or the summer of 1901?

A. It always seemed to me as if it was the other way. I thought the Southern Pacific took over the management of the Union Pacific.

Q. Well, the Union Pacific was the company, you understood that was the company that acquired the stock?

A. I believe so, yes.

Q. Prior to that time, Mr. Ripley, were the Union Pacific and Southern Pacific competing lines for transcontinental traffic?

A. In a certain sense and to a certain extent, yes.

Q. Well, take the traffic from the Atlantic seaboard as far West as Pittsburg, was it not a fact that that traffic could go by the Sunset route, Southern Pacific or the Union Pacific and its connections?

A. Oh, yes, it could go by a variety of lines, but it all had to reach California over the Southern Pacific route.

Q. From Ogden?

A. Or else over the Atchison. There are only two lines into California.

Q. That is from Ogden?

A. Yes.

Q. But the Union Pacific was a link in the competing line, was it not?

A. Yes.

Q. Was it not the fact that in the traffic meetings prior to that time, the contest between the Southern Pacific and all the rest of the roads — as to those rates?

A. Well, I don't know. There was no more contest between those two than between any other two. The Texas Pacific was also interested.

Q. There was a contest between them, was there not?

A. Well I do not know that I would say that there was a contest. The Union Pacific was a connection of the Southern Pacific, and it was obliged to and did turn over its business to the Southern Pacific at Ogden. The Union Pacific had certain interests in the traffic from the east that were opposed to the interests of the Southern Pacific New Orleans' line. To that extent I would say yes.

324 Q. Now, traffic from all eastern points practically could and did go by both lines to California, did it not?

A. That depends on your definition of "eastern points."
Q. Well, east of Pittsburgh?
A. Yes.
Q. Traffic from the middle western states, Cincinnati, St. Louis, southern Illinois, Kentucky, and Tennessee could and did go to the Pacific coast via the Union Pacific and its connections, and via the Sunset route by rail, and its connections.
A. I suppose so.
Q. On Oriental traffic, by steamship lines to Pacific coast ports and from there to the east, that traffic could and did go over the Union Pacific from Portland and over the Southern Pacific from San Francisco, did it not?
A. Yes, sir.
Q. The Union Pacific controlled the Oregon Short Line and the Oregon Railway and Navigation Company.
A. I suppose so.
Q. And had a through line from Council Bluffs and Kansas City to Portland?
A. Yes, sir.
Q. And the Southern Pacific had a through line from New York via its Morgan Steamship Line and rail to Portland?
A. Yes, sir.
Q. And for that International traffic——
A. Pardon me. I don't think the Southern Pacific line from the east by way of New Orleans and Portland was used to any extent. It was too circuitous.
Q. Well, it was to San Francisco?
A. It was to San Francisco, yes.
Q. So that the Union Pacific over its own rails was, for the Oriental traffic coming to the east, a competitor with the Southern Pacific over its own rails?
A. To some extent, yes.
Q. And traffic can and does move that way to-day, does it not?
A. I presume so.
Q. Now what was true of freight was also true of passenger business, was it not?
A. Yes, I presume so. There never was any passenger business via New Orleans of any consequence.
Q. Is it not a fact that from all points east of the Missouri River the passenger rates to California and North Pacific coast
325 points have been practically the same over the Southern Pacific and its rail connections, as over the Union Pacific and its rail connections?
A. To North Pacific coast points?
Q. To California and North Pacific coast points.
A. I am not sure about that. I think there have been at times, if not always, differences; that is a higher rate to Portland by way of San Francisco, and a higher rate to San Francisco by way of Portland. I am not sure about that.
Q. Generally speaking the rates are the same?
A. I am not prepared to say that.

Q. The Rock Island connects with the Southern Pacific at El Paso?

A. Yes, so does the Texas Pacific.

Q. Freight and passengers from the middle western states to San Francisco and north to California are competitive with those lines, the Southern Pacific and with the Union Pacific and its line to Portland?

A. I should hardly say that there was any real competition to Portland.

Q. Do you know that freight was not shipped via. both those lines?

A. I do not know that it was not.

Q. Well, freight business to and from the Orient would be competitive that way, would it not?

A. Yes, sir.

Q. Now is it not true that cotton, grain and various other products from the Southern states are competitors over the Southern Pacific and the Union Pacific as far north as the Great Northern?

A. Not grain—cotton. I never heard of any grain being moved from the Southern States up.

Q. Of cotton you have, haven't you?

A. Yes.

Q. And freight from the Orient to the East is competitive over those lines?

A. It can be moved either way, yes.

Q. Then you would say, would you not, that prior to that acquisition, the Union Pacific and the Southern Pacific were competing lines for certain classes of traffic?

A. To a very limited amount, yes, sir.

Q. Well, do you know the amount?

A. No.

326 Q. You do not?

A. No.

Q. The amount of traffic from the Eastern States to the Pacific Coast via those lines, is very large, isn't it?

A. Yes, in the aggregate.

Q. That can either go by rail, Union Pacific and its connections, or by the Southern Pacific, can it not?

A. Yes.

Q. And does go by both?

A. Yes.

Q. Now, taking the Central Pacific, in connection with the Union Pacific, you would say that the Union Pacific is a link in a very large competitive business between the East and the West, would you not?

A. Yes.

Q. So that as a link in the transcontinental traffic, the Union and Southern would be very largely competitive, would they not?

A. Yes, the Union Pacific would be competitive so far as the Atlantic seaboard business is concerned, with that portion of the Southern Pacific which lies east of the Meridian of Ogden.

Q. There are other lines connected with the Central Pacific at Ogden, are there not?

A. Yes.

Q. What lines are they?

A. The Denver & Rio Grande interest is the only one I know of.

Q. And the Rio Grande Western? Well, you call that the Denver & Rio Grande interest. At Denver, or Pueblo, they connect with the Burlington, and the Rock Island, and with your line, do they not?

A. Yes.

Q. So that on all business over those lines to and from the Pacific coast, in connection with the Central Pacific, the Union Pacific is competitive, is it not?

A. The Union Pacific is competitive with those lines, yes.

Com'r HARLAN: What is the term of office of your directors?

Mr. RIPLEY: Four directors go out every year; the term is three years.

Com'r HARLAN: For what term are Mr. Rogers and Mr. Frick elected?

Mr. RIPLEY: Mr. Rogers and Mr. Frick were I think
327 elected for an unexpired term and then re-elected. Mr. Frick's term expires in 1908, Mr. Rogers' in 1908.

Com'r HARLAN: When were they re-elected?

Mr. RIPLEY: They were re-elected in 1906 as to Mr. Rogers, in 1905, as to Mr. Frick.

Com'r HARLAN: Have you any knowledge as to what stock it was that voted for them on the occasion of their re-election?

Mr. RIPLEY: All the stock. Practically all the stock, that is all the stock that was voted. Our stockholders unfortunately never come to our meetings. They send their proxies and I practically vote this stock myself.

Mr. KELLOGG:

Q. It is a fact, is it not, that under your cumulative voting thirty millions of stock could have elected two directors?

A. They could, yes.

Q. And forty millions of stock could elect more than that?

A. Well I have not figured that out, possibly that is so.

Mr. MILBURN: How many directors have you Mr. Ripley?

Mr. RIPLEY: Fifteen.

Mr. SEVERANCE: How much stock is usually present?

Mr. RIPLEY: From two-thirds to three-quarters is represented.

Commissioner PROUTY: How many different stockholders?

Mr. RIPLEY: The last I knew, about nineteen thousand.

Commissioner PROUTY: I am not talking about the entire number of your stockholders, but I ask you how many stockholders would be represented at a meeting by proxies sent to you and voted by you?

Mr. RIPLEY: I can only answer that as a matter of judgment. We never had got any figures like that but of the eighteen thousand stockholders I should say that probably twelve thousand or thirteen thousand voted.

The response from the smaller stockholders, their response
328 in the way of proxies, is usually larger than it is from the larger stockholders. A good deal of the stock is held in the hands of brokers and they are very apt to be very remiss about sending the proxies, but the smaller stockholders send their proxies in.

Mr. SEVERANCE:

Q. You make up a form of proxy do you not?

A. Yes.

Q. And send it out beforehand?

A. Yes, we send it out sixty days before election, and ask them to send their proxies to a Proxy Committee if they cannot be present themselves. The fact that our meetings, under our charter are necessarily held in Kansas, and the fact that our stockholders almost all live east of the Allegheny mountains, or east of the Mississippi River at least, makes it difficult for them to get there.

Mr. MILBURN:

Q. I think you said that you had fifteen directors?

A. Yes.

Q. And that these questions arose between certain individuals who own stock and you and your associates?

A. Yes.

Q. And that the position was that you would not have anybody on your Board as a representative of some other railroad interest?

A. Yes.

Q. And you understood these gentlemen, Mr. Rogers and Mr. Frick to represent those individual interests in your stockholders?

A. Yes.

Q. And since their advent into your Board, have you found them loyal directors to the Atchison interests?

A. I think they are two as good directors as we have ever had and while I have perhaps been rather on the watch for something in the nature of interests in other institutions, I have failed to detect anything of the kind. On the contrary, I think that they have been absolutely loyal to our interests.

329 Q. You have never noticed any effort on their part to, as I might say, favor some other railroad interest rather than your own?

A. No, never.

Q. The Union Pacific proper, Mr. Ripley, runs from Kansas City and Omaha, to Ogden?

A. Yes.

Q. For a line from the Atlantic seaboard to San Francisco and that part of the coast, it has to have connections with some eastern trunk line and middle states trunk line and then the Southern Pacific?

A. Yes.

Q. The Atchison Road extends from Chicago to San Francisco?

A. Yes.

Q. By way of Kansas City?

A. Yes.

Q. And then to the Southwest?

A. Yes.

Q. And the Union Pacific proper is not a link in your line, or a connection?

A. No, sir.

Q. The Southern Pacific is also a link in the transcontinental line which I first described?

A. Yes.

Q. So that in making a through rate on that transcontinental line, the Southern Pacific is an indispensable factor?

A. Yes.

Q. There is a transcontinental line by the Morgan line of Steamships from New York to New Orleans and then via the Southern Pacific (the Sunset route as they call it) to San Francisco.

A. Yes, New York & Galveston I think now, rather than New Orleans.

Q. And the competitors for the business, the transcontinental business on the Atlantic seaboard are they all rail lines to the Pacific coast, and the Southern Pacific with its steamship line and Sunset route?

A. Yes.

Q. Would you speak of a line extending from Kansas City and Omaha to Ogden, as a competitive line between the Atlantic seaboard and the Pacific coast, with a line from the Atlantic Coast to the Pacific coast?

A. Well, the word competitive, is not perhaps exact. The Union Pacific between Omaha and Ogden and between Kansas City
330 and Ogden, may form part of a competitive line, roughly speaking, 800 miles out of 2,300 miles, the lines from New York to Ogden, composed of the so-called trunk lines, five or six of them, and the lines between Chicago and the Missouri River, six or seven of them, and the Union Pacific, cover a distance, roughly speaking, of 2,300 or 2,400 miles. All of those lines are in competition, more or less, for the business, which is also competed for by the lines of the Sunset route via Galveston. The Union Pacific is no more a competitor of that line than is the Northwestern or Burlington, or the Milwaukee & St. Paul, or the Erie, or the Pennsylvania, or the New York Central, or the Grand Trunk. They are all more or less remotely competitors of that line for certain business.

Q. They are connecting lines in which the Southern Pacific is an essential link?

A. Yes, the Southern Pacific, otherwise, the western one thousand miles or eight hundred miles of that line.

Commissioner PROUTY: Before this combination, the Union Pacific and the Santa Fe and the Southern Pacific were all competing for business east of the Mississippi River to the Pacific coast and San Francisco?

A. No more so than now.

Commissioner PROUTY: I was going to ask you that very question. Do you notice any difference between then and now?

Mr. RIPLEY: No, I do not.

Commissioner PROUTY: You said you would not have a representative of the Union Pacific on your board, but that you would have a representative of Mr. Harriman. Just what is the difference in your mind between those two things?

Mr. RIPLEY: Excuse me. I did not say that at all. What I said

was that these gentlemen jointly, Mr. Harriman being one of the number of four or five or five or six, had stock enough to entitle them to representation. They united on two men that were unobjectionable to us, and we agreed to give them seats on our Board. I conceive that there is a great difference between that and con-
331 ceding to Mr. Harriman himself, or to any personal representative of Mr. Harriman as an officer of the Union Pacific or Southern Pacific, such a thing.

Commissioner PROUTY: You did not give much when you simply conceded to a man what he can take. If these gentlemen could take those two seats, you did not concede very much when you agreed to it.

Mr. RIPLEY: We did not in that sense concede very much, but if they had undertaken to force themselves in by election, it would have taken them six years to get two men into the Board. I thought we did concede something.

Mr. MILBURN:

Q. Mr. Ripley, as to Portland, you would scarcely as a practical railroad proposition, consider a line made up of the Morgan line of steamships to New Orleans and then from New Orleans by rail to Portland, as competitive with an all rail line to Portland?

A. It might be considered remotely competitive.

Q. Very remotely would it not be?

A. My notion about that is that it has never been actively a competing line.

Q. When you spoke of Pittsburg freight, originating at Pittsburg, or in that vicinity, being accessible to the southern route, what line would it take?

A. It could be floated down the Ohio River or Mississippi River or be taken by the Southwestern lines to New Orleans, or taken by rail to New York.

Q. How far west should it be, should you say Mr. Ripley, if it had gone by rail from Pittsburg, west, by the time it had reached New Orleans?

A. How far west?

Q. How far west would it have been if it had gone by the direct routes, how far west would it have been by the time it had got to New Orleans by the other route?

A. If we went down the Ohio River, it ought to have arrived very nearly on the Pacific coast by the time it got to New Orleans.

Q. And when it got to New Orleans it would have still to
332 go to San Francisco?

A. It would still be about as far away——

Q. As when it started?

A. Well not quite that, but about as far away as Chicago.

Q. When you spoke *to* the Union Pacific proper being a competitive line for Oriental traffic, you merely meant as a link of this transcontinental line which you mentioned?

A. A link in the transcontinental line.

Q. A link in the transcontinental line of which the Southern Pacific is also a link?

A. No. The Southern Pacific would not be a link in that case. The question as put to me was on the assumption that the Oregon Short line was a part of or controlled by the Union Pacific.

Q. Then it would be a link to San Francisco and to the Orient via San Francisco?

A. Yes.

Q. And it could go on the Oregon line to Portland?

A. Yes.

Q. And then from Portland by ship to the Orient?

A. Yes.

Q. Have you any knowledge of the past experience of an Oriental line from Portland, as compared with an Oriental line from Puget Sound and San Francisco?

A. No, I have not.

Q. You do not know what the experience has been?

A. No.

Q. In endeavoring to work trans-continental traffic via Portland to the Orient?

A. No, I do not. I know what the experience has been in trying to work it via a point south of San Francisco.

Q. Was that unfavorable?

A. That was disastrous.

Q. You do not know how disastrous it has been trying to work the Oriental business via Portland?

A. I do not.

Q. In comparison with Puget Sound and San Francisco?

A. No.

Mr. KELLOGG:

333 Q. You say that the Union Pacific was a factor, a link in the trans-continental line the same as the Milwaukee, the Northwestern the Rock Island and other lines? You do not mean to the same extent, because there are more lines east of the Missouri River than west?

A. Yes.

Q. So that the Union Pacific was a very important link was it not as to a very large traffic which was competitive with the Southern Pacific. I am speaking of it as a link as far as Ogden.

A. For the San Francisco business?

Q. Yes.

A. As far as Ogden, yes.

Q. That is a very large business?

A. Yes.

Q. A much larger business than the Milwaukee, the Northwestern, the Rock Island, the Burlington and the other lines all centered at Omaha, because there it was divided up, isn't that true?

A. Yes. The Union Pacific has all the business which those lines brought to it, and each one of them had their share.

Q. Is it not a fact that in the pool which existed prior to the Interstate Commerce law, the Union Pacific had thirty per cent. of the business for many years?

A. I do not know.
Q. You do not remember? It had a very large percentage?
A. I had no interest in it and never knew of it.
Q. The Atchison Company you considered a competitor for the San Francisco business with the Southern Pacific?
A. I think so, yes.
Q. And with the Union Pacific?
A. Yes.
Q. For the business from the Eastern States?
A. Yes.
Q. And yet it does not run to New York?
A. No.
Q. It has to be taken in connection with the lines connecting with the Atchison at Chicago?
A. Yes.
Q. And yet the Atchison is an important competitor, isn't it?
A. Yes. The business does not originate mostly east of here.
Q. What is that?
A. The seaboard eastern business is not a very large proportion of the total.
Q. But it is quite a large business?
A. Quite a large business.
334 Q. And you have soliciting agents in the East, do you not?
A. Yes.
Q. In all the large cities?
A. Yes.
Q. Now you certainly would object, as you said, to an officer of the Union Pacific being an officer of your Company?
A. Yes.
Q. Because it is a competing line?
A. Yes.
Q. And the only reason you draw a distinction between Mr. Harriman and these gentlemen who are directors on your Board, Mr. Rogers and Mr. Frick, is that they are not in the active management of the Union Pacific, but merely directors?
A. They represent their investments and those of their friends, that is all.
Q. You do not know how big an investment they represent in the Union Pacific?
A. I do not.
Q. It may be much larger?
A. Maybe.
Q. It is understood, is it not, that Kuhn, Loeb & Company were bankers of the Union Pacific road?
A. I have heard it so stated?
Q. When this project was proposed to you, you objected to it didn't you, Mr. Ripley?
A. What project?
Q. Of having those interests name any men on your Board?
A. No, I don't think I objected.
Q. What is that?

A. I don't think I objected to it. I said if they had the necessary amount of stock, had stock enough to warrant it, it was only fair that they should have representation.

Q. Why did you make the condition that they should not be representatives of another company?

A. Well because I thought it was essential for the welfare of the stockholders I represented that there should not be any representative of a rival company on our Board.

Q. You said you had watched with some fear. Was not that because you suspected that Kuhn, Loeb & Company and those gentlemen wanted representation on your Board for that reason?

A. I knew nothing about their having accumulated stock except what I saw in the newspaper. I watched it with some interest.

335 Mr. MILBURN: You watched the two fifteenths.

Mr. RIPLEY: Yes.

Mr. KELLOGG:

Q. Who were the five or six men that you understood had acquired such an amount of stock in the Union Pacific road as they represented?

A. Mr. Frick and Mr. Rogers, Mr. Harriman and Mr. Schiff. I don't remember now, I think William Rockefeller was among them, although I never talked with him, or never knew definitely that he was interested.

Mr. MILBURN:

Q. Mr. Ripley, Mr. Kellogg compared your line with the Union Pacific proper. There is a great distinction between them in the fact, is there not, that you go to California, and you go to San Francisco and they do not?

A. Oh, yes, and we are competitive with the Southern Pacific, not only for the Trans-continental business, which is a very small part of the total but also in New Mexico, Arizona and California locally. They are our principal competitors.

Q. The Southern Pacific?

A. Yes, sir.

Q. As between yourself and the Union Pacific proper, the difference between you as competitors in the trans-continental business and California, and the Union Pacific proper, is that your line runs right to California?

A. Yes.

Q. And theirs stops at Ogden?

A. Yes.

Q. For a great deal of business originating say in Kansas City, you and the Union Pacific proper are active competitors?

A. Yes, and this business for Colorado and for points in Kansas.

Q. Both your lines are right there?

A. Yes.

Q. Running to the same terminal?

A. Yes.

Mr. KELLOGG:

Q. Just a word. The business from Kansas City, from the packhouses, can go at the same rate via the Union Pacific as the
336 initial carrier or via the Southern Pacific with its connections from Kansas City, can't it?

A. I don't think so.

Q. The rates are the same from Kansas City to California via the Southern Pacific as via the Union Pacific?

A. I don't think so. By way of New Orleans?

Q. No, no, by way of El Paso?

A. Oh, I presume so.

Q. So that for all the Mississippi Valley the rates are identically the same for all products to and from California via the Southern Pacific and via the Union Pacific?

A. Yes.

Q. Do you mean to say that that is a small business to and from California?

A. I do not think I said that.

Q. It is a large business, isn't it?

A. Yes, it is a considerable business. What I said was a small business by comparison was the Atlantic seaboard business.

Q. Now the business that goes to and from California from the Central Mississippi states and east of there which may go either via Southern Pacific or Union Pacific, is very large, isn't it?

A. That is a relative term. I do not know how large it is. It is quite considerable.

Q. What percentage of your business is through business from California as far as Kansas City and east of there?

A. I think possibly fifteen per cent.

Q. That is a very large business, you would call it so wouldn't you? What are your total gross earnings per year?

A. About eighty million.

Q. That is twelve million dollars on your line alone?

A. No.

Q. Fifteen per cent.?

A. Oh, yes, but of that eighty million you have there your passenger earnings, your mail earnings, and express earnings.

Mr. MILBURN: And your local earnings?

Mr. KELLOGG:

Q. What percentage of your business is through passenger
337 business from points as far east as Kansas City?

A. Our entire passenger business is about twenty-five per cent. of our gross earnings. I suppose that our through business is perhaps twenty-five or thirty per cent. of that.

Q. Now, all passenger business from the middle states east of the Missouri River to the Atlantic seaboard, or a large proportion of it is competitive between the Union Pacific, your line, and the Southern Pacific, isn't it?

A. Yes, in that sense.

Q. It may go either way at the same rates?

A. Yes.

Com'r PROUTY: On that business would it make any difference to the Southern Pacific whether it went one way or the other?

Mr. RIPLEY: Well, a little I suppose. It would earn a little more money. I do not know just what the divisions are, but presumably they would earn a little more money west of El Paso than they would west of Ogden.

Mr. KELLOGG:

Q. It would make a difference to the Union Pacific, wouldn't it?
A. If they did not get it, yes.

Whereupon the further hearing of said matter was adjourned to ten o'clock the following day, January 9th, 1907.

CHICAGO, ILLINOIS, *January 9th*, 1907,
10 o'clock A. M.

Present: Commissioners Knapp, (Chairman), Lane and Harlan.

The CHAIRMAN: Mr. Kellogg, are you ready to proceed?

Mr. KELLOGG: I will have Mr. Severance examine Mr. Markham.

M. C. MARKHAM, called as a witness, being duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Markham, where do you live?

338 Mr. MARKHAM: In St. Louis.

Mr. SEVERANCE: What is your business?

Mr. MARKHAM: Assistant to the Vice President of the Missouri Pacific Railway.

Mr. SEVERANCE: What are your functions in that position? What do you have to deal with?

Mr. MARKHAM: I review and direct under the advice of the Vice President, the traffic and operation of the Railroad, excepting the road department; that is the traffic operation of the company.

Mr. SEVERANCE: You have to do with all the traffic of the System?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: How long have you occupied that position, Mr. Markham?

Mr. MARKHAM: Over a year.

Mr. SEVERANCE: Prior to that time what was your position?

Mr. MARKHAM: I have been engaged in railroading some 30 years.

Mr. SEVERANCE: With what railroad were you connected immediately before going to the Missouri Pacific?

Mr. MARKHAM: I was Assistant to the President of the Western Pacific, and prior to that with the Illinois Central.

Mr. SEVERANCE: Prior to that, with the Illinois Central. In what department of the Illinois Central were you engaged?

Mr. MARKHAM: From clerk to Assistant General Manager and Assistant Traffic Manager. That position I occupied for fifteen years.

Mr. SEVERANCE: Now, during the time you were on the Illinois

Central and since you have been with the Missouri Pacific, have you been informed as to traffic conditions throughout the country?

Mr. MARKHAM: Generally.

Mr. SEVERANCE: And particularly with reference to trans-continental business or business to the Orient, originating in this country, or coming from the Orient or the Pacific Coast to the East?

339 Mr. MARKHAM: Not to any great extent with business from the Orient or to the Orient, but with business to the Coast generally.

Mr. SEVERANCE: The railroads with which you have been connected have made it essential that you keep in touch with those traffic situations?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Now, prior to the time that the Southern Pacific management was taken over by Mr. Harriman and his associates, or the Union Pacific, that is, in the Spring of 1901, will you state whether or not the Union Pacific and the Southern Pacific, known as the Sunset Route, were competitors for Pacific Coast business?

Mr. MARKHAM: They were competitors.

Mr. SEVERANCE: They were? You say they were competitors?

Mr. MARKHAM: They were competitors.

Mr. SEVERANCE: For what class of business and in what territory were they competing?

Mr. MARKHAM: For all classes of business east of the Missouri River.

Mr. SEVERANCE: Now, Mr. Markham, how were the rates adjusted by way of the Sunset Route as compared with the all-rail lines of which the Union Pacific formed a part?

Mr. MARKHAM: The rates were the same, as I understand, via New Orleans and via Omaha and Ogden.

Mr. SEVERANCE: In what territory?

Mr. MARKHAM: In the territory east of the Mississippi River.

Mr. SEVERANCE: Now, take the Illinois Central. That Company—its lines reach Omaha and a connection with the Union Pacific and also reach New Orleans and a connection with the Southern Pacific at that point, did they not, while you were with them?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Will you state whether or not there was active competition between the Union Pacific on the one hand and

340 the Southern Pacific on the other for business originating on the line of the Illinois Central?

Mr. MARKHAM: We generally found it.

Mr. SEVERANCE: You generally found it?

Mr. MARKHAM: In soliciting the business for the Southern Pacific, which, as a general thing, gave us the longest haul.

Mr. SEVERANCE: That is, it was for the interest of the Illinois Central to take the stuff by way of New Orleans because they got a longer haul?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: And you did find that the two roads were competing to get that business from you, did you?

Mr. MARKHAM: Yes, sir; that was the general understanding. Of course, we worked with them both.

Mr. SEVERANCE: Worked with them both?

Mr. MARKHAM: Worked with them both.

Mr. SEVERANCE: During those days, did you know Mr. Neemyer?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: What was his position here in Chicago?

Mr. MARKHAM: I think he represented the Southern Pacific.

Mr. SEVERANCE: Did the Union Pacific have a representative here then?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Not Mr. Neemyer, was it?

Mr. MARKHAM: No, sir.

Mr. SEVERANCE: Mr. Knight represented them?

Mr. MARKHAM: Mr. Knight, I think. I did not know Mr. Knight, at least I have met him too. Knight was the name I recollect now.

Mr. SEVERANCE: You know they had a separate representative?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: And these gentlemen were each trying to get all the business they could off your line for their respective lines, were they not?

341 Mr. MARKHAM: That was the general understanding.

Mr. SEVERANCE: They were the two men that were general agents of the respective companies here in Chicago and solicitors of traffic?

Mr. MARKHAM: They were the General Agents and supervised the soliciting.

Mr. SEVERANCE: That is what I mean. They had charge of the solicitors that were soliciting the traffic?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: After the Spring of 1901, Mr. Neemyer became the representative of both lines here, did he not?

Mr. MARKHAM: I do not know what year.

Mr. SEVERANCE: But you remember the fact?

Mr. MARKHAM: I remember the fact. It was somewhere along about that time.

Mr. SEVERANCE: Now, did you know the fact that at other points from which a large amount of tonnage originated, the Union Pacific and Southern Pacific commenced to be represented by the same man after—well, after Mr. Stubbs was placed in charge of the traffic of the whole system?

Mr. MARKHAM: Yes, I know it at Cincinnati, where we had an office. I did not know of other places of my own knowledge.

Mr. SEVERANCE: You did not know except as to Cincinnati?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Did there come to you from your subordinates, or did you ascertain otherwise, whether there was any lessening of competition between the two systems, the Union Pacific and the Southern Pacific for trans-continental business after this consolidation of officers?

Mr. MARKHAM: Well, I do not know but such thing had been reported. It was generally understood that such was the case.

Mr. SEVERANCE: You do not know that it was officially reported, but it was understood?

342 Mr. MARKHAM: In the general conversation, we all took it for granted.

Mr. SEVERANCE: Can you see any way, from your knowledge of traffic and the business of soliciting the routing of traffic, can you see any way that Mr. Neemyer here in Chicago, for instance, could carry on a very active competition with himself, if he represented both lines?

Mr. MARKHAM: No, I do not see how it could be done. I can see how he could make a division of the business as against the Southern route and as against the Ogden route, for possibly reasons of his own.

Mr. MILBURN: I did not catch that?

Mr. SEVERANCE (addressing stenographer): Read the answer.

The answer was read by the stenographer as follows:

"No, I do not see how it could be done. I can see how he could make a division of the business as against the Southern route and as against the Ogden route for possibly reasons of his own."

Mr. SEVERANCE: That would not be competition, would it?

Mr. MARKHAM: Not in the sense that I understand competition.

Mr. SEVERANCE: If he was acting for the Southern route, diverting business that way, there would be no representative of the Union Pacific to compete with, and *vice versa*. Is not that so?

Mr. MARKHAM: That is so.

Mr. SEVERANCE: Now, Mr. Markham, when Mr. Ripley was on the stand yesterday, Mr. Milburn brought out the fact that the Union Pacific was not—endeavored to bring out the fact that the Union Pacific was not a trans-continental line having control of business from the Missouri River to the Coast by reason of the fact that at Ogden it had to turn over its business, the San Francisco business, to the Southern Pacific, its competitor. What have you to say as to that, taking into account the fact that the Union Pacific control the Oregon Short Line and the Oregon Railroad & Navigation

343 Company, and the latter had a line of ships from Portland to San Francisco.

Mr. MARKHAM: I would say the link was completed right straight through.

Mr. SEVERANCE: Now, as a practical matter, practical railroading, was it feasible or practical or even possible for the Southern Pacific to control the Union Pacific situation by reason of owning the line from Ogden to San Francisco, so long as the Portland gateway was open to the Union Pacific?

Mr. MARKHAM: I should not think so.

Mr. SEVERANCE: The Union Pacific was in position, was it not, by reason of the traffic that was moving out there, to demand and receive fair divisions from the Southern Pacific over the line from Ogden to San Francisco?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Now, for what territory on the Pacific Coast was

the Union Pacific a competitor to the Southern Pacific—I mean the Union Pacific with its connections?

Mr. MARKHAM: I should think all the way from Seattle to San Diego.

Mr. MILBURN: I did not catch that.

Mr. SEVERANCE: He said all the way from Seattle to San Diego.

Mr. MARKHAM: It would also include Vancouver, I suppose, by steamship.

Mr. SEVERANCE: Now, Mr. Markham, was this competitive business a large business, or was it a comparatively trifling business? Was it a large traffic, this trans-continental business which Mr. Markham has testified was competitive between these two systems?

Mr. MARKHAM: I could not say as to how large it was. It was always considered important in amount.

Mr. SEVERANCE: That is, you cannot say in dollars and cents?

Mr. MARKHAM: No, sir.

Mr. SEVERANCE: But among traffic men that was considered a large item of traffic, was it not?

344 Mr. MARKHAM: It was considered of sufficient importance to make a very great effort to get it.

Mr. SEVERANCE: What way did the fruit of California, dried fruit and fresh fruit, come to the Chicago market, for instance? Did any of that come by the Southern Pacific and New Orleans?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Brought up over the Illinois Central?

Mr. MARKHAM: Brought up over the Illinois Central.

Mr. SEVERANCE: Did it also come by way of the Union Pacific?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: And the Santa Fe?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: How is it about the passenger business, particularly the winter tourist business? Were the Union Pacific and Southern Pacific competitors for that business?

Mr. MARKHAM: We took business from Chicago to San Francisco via New Orleans.

Mr. SEVERANCE: And it also went, of course, by the Union Pacific?

Mr. MARKHAM: Also went by the Union Pacific.

Mr. SEVERANCE: In fact, all the lines to the Coast were competing for that business, were they not?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Did machinery and heavy commodities of various kinds move by New Orleans?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: From the Illinois Central territory?

Mr. MARKHAM: From the Illinois Central territory and the manufacturing centres in the east, and Indiana, Ohio and Michigan and Pennsylvania.

Mr. SEVERANCE: And how would these shipments reach the Southern Pacific?

Mr. MARKHAM: They would reach them at New Orleans or Omaha, as they were routed.

Mr. SEVERANCE: Well, *I how* say, would they reach the
345 Southern Pacific System—over what rails would they reach there?

Mr. MARKHAM: They would reach the Southern Pacific at New Orleans via connecting lines there or Ogden by the Union Pacific and Denver & Rio Grande.

Mr. SEVERANCE: I was coming to that in a moment. But in order to ship to California from these manufacturing towns you have spoken of in Indiana and Ohio, it is necessary to first ship over some other railroad before they reach the Southern Pacific tracks at *at* New Orleans. That is true, is not?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: And traffic did move that way and in very considerable quantities, did it not?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: And at the same time traffic moved over other rails and connections with the Union Pacific at Omaha. That is true, is it not?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: And thence to the Coast; so that from all that Central Traffic Territory it was just as essential and necessary for the Southern Pacific to have a rail connection to New Orleans as it was for the Union Pacific to have a rail connection to Council Bluffs. The stuff had to move over other lines first?

Mr. MARKHAM: Yes, sir; to control the business from Omaha and New Orleans, of course, it was necessary that the rails of the respective lines should reach there.

Mr. SEVERANCE: So that as to that trans-continental business the Southern Pacific formed what was yesterday termed a link as well as the Union Pacific formed a link in the Northern route.

Mr. MARKHAM: The link to the point of origin of the shipments.

Mr. SEVERANCE: You may examine, Mr. Milburn.

Mr. MILBURN: Mr. Markham, as I understood you, you said that the Union Pacific line by the Oregon Short Line to Portland and thence——

346 Mr. MARKHAM (interrupting): The Oregon Railway & Navigation Company.

Mr. MILBURN (continuing): Yes, and thence from Portland to San Francisco by vessel, was a Union Pacific route from San Francisco to Ogden, which made it independent of the Southern Pacific.

Mr. MARKHAM: Do you want an answer?

Mr. MILBURN: Yes, sir.

Mr. MARKHAM: Yes, sir; I did.

Mr. MILBURN: Now, taking freight bound for San Francisco and taking it by the Union Pacific from Ogden up to Portland, it was about nearly as far from its destination when it got to Portland as it was when it was at Ogden, was it not?

Mr. MARKHAM: A little more, I think.

Mr. MILBURN: A little more. So, it was hauled a thousand miles and that got no nearer its destination than when it began.

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Treating the Union Pacific as an independent line and the Southern Pacific as an independent line, that is the line from Ogden to San Francisco, with other connections at Ogden than the Union Pacific for eastern business, what would you say as to the power of the Southern Pacific over the Union Pacific with respect to transferring business to it there if the Union Pacific attempted to operate a San Francisco line via Portland?

Mr. MARKHAM: I should say that the line from Ogden to San Francisco would be entirely independent of the Union Pacific.

Mr. MILBURN: The line from——

Mr. MARKHAM (interrupting): Ogden to San Francisco.

Mr. MILBURN: Via Portland, would be entirely independent?

Mr. MARKHAM: I am afraid I did not get you correctly.

Mr. MILBURN: I am assuming that the Southern Pacific line is entirely independent; that is, the line from Ogden to San Francisco. You appreciate that?

347 Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Now, it gathers the east bound freight at San Francisco and brings it to Ogden, does it not?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Now, at Ogden it has a choice by which line it can send it east, has it not?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Now, what would the effect be on the eastern business in respect to its transportation east of Ogden if the Union Pacific operated a line to San Francisco via Portland to avoid transferring the freight at Ogden to the Southern Pacific for transportation to San Francisco?

Mr. MARKHAM: The effect would be no different than it was for the reason that the matter of rates which the Union Pacific could make by way of Portland dominated the whole situation.

Mr. MILBURN: No, but I am talking—I am bringing your attention to this fact: The Southern Pacific has it within its power at Ogden to transfer a large or a small quantity, relatively speaking, of freight to the Southern Pacific, has it not? It would have as an independent line?

Mr. MARKHAM: Yes, sir; large or small; that is right.

Mr. MILBURN: It could transfer the bulk of its business to the Denver & Rio Grande, could it not?

Mr. MARKHAM: I do not know whether it could. I do not know that it could.

Mr. MILBURN: Why not?

Mr. MARKHAM: There are things that work that would make it doubly expensive for the Southern Pacific to probably carry out a policy of that kind.

Mr. MILBURN: It has that power?

Mr. MARKHAM: It could do that and destroy itself.

Mr. MILBURN: Well, but let us—you may think one is being de-

stroyed, and I may think the other. It has that power at Ogden? We will take that step. Has it not?

Mr. MARKHAM: It has that power.

348 Mr. MILBURN: That is a power over the Union Pacific, is it not?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: It is a very natural thing, would it not be, to say, if you operate a line, or attempt to operate a line from Ogden to San Francisco via Portland, a thousand miles longer, adversely to us, we will exercise that power against you. That would be perfectly natural, would it not?

Mr. MARKHAM: I do not know that I could go as for as that. To some extent, it would.

Mr. MILBURN: Now, then, do you know from any experience what volume of traffic the Union Pacific was ever able to take around to San Francisco via Portland?

Mr. MARKHAM: No, sir; I do not.

Mr. MILBURN: As a railroad man, would you consider that a feasible competitive line to be at Ogden and to transport San Francisco freight, to transport it by railroad to Portland and then by ship from Portland to San Francisco, as compared with a line direct, a railroad line direct from Ogden to San Francisco?

Mr. MARKHAM: The rates are made from New York. I will give you your answer. The rates are made today from New York to San Francisco, a natural route, at least under more adverse circumstances than that would be.

Mr. MILBURN: That still does not answer my question. That takes me into a region of other things. I am bringing before you a concrete proposition, whether, as a railroad man, you would regard it as a feasible competitive route from Ogden to San Francisco, to go by rail to Portland and then by ship from Portland to San Francisco, as compared with a line from Ogden to San Francisco?

Mr. MARKHAM: What a railroad man has to consider under those circumstances are the rates, the rates that can be made by that route control the whole situation. A rate may be made less than by

349 the Ogden route. Therefore the situation is controlled as much as if the line was direct?

Mr. MILBURN: You say it is conceivable that there should be such a difference in rates, such a difference in rates that the transportation of the extra distance could be afforded.

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: That the extra thousand miles of distance would cut no figure.

Mr. MARKHAM: It has been in practical operation every day for years.

Mr. MILBURN: Do you think so? Do you know so?

Mr. MARKHAM: I know it.

Mr. MILBURN: Over that line, I am speaking of.

Mr. MARKHAM: All throughout the country.

Mr. MILBURN: No, but this line? I do not know about other lines. This line, you say, has been in practical operation?

Mr. MARKHAM: It has governed the rates.

Mr. MILBURN: The line from Ogden to Portland?

Mr. MARKHAM: From Ogden to Portland.

Mr. MILBURN: And from Portland to San Francisco?

Mr. MARKHAM: The power that line had to make those rates, of course, enable it to get a proper share of the business from the Union Pacific at Ogden.

Mr. MILBURN: Do you know of the business ever being done that way?

Mr. MARKHAM: By the way of Portland?

Mr. MILBURN: Yes, sir.

Mr. OGDEN: Yes, sir.

Mr. MILBURN: To San Francisco?

Mr. MARKHAM: Yes, I understand so.

Mr. MILBURN: Well, do not understand. Do you know?

Mr. MARKHAM: No, I do not know, but in times of——

Mr. MILBURN (interrupting): In your judgment, the trans-continental rate is fixed and is founded on the fact that the Union Pacific can take freight up to Portland and then take it back to San Francisco?

Mr. MARKHAM: No.

350 Mr. MILBURN: But it is a factor? That is a factor?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: You were speaking of the Illinois Central situation. It has a line running from Chicago to New Orleans?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: And a line running from Chicago to Omaha?

Mr. MILBURN: Yes, sir.

Mr. MARKHAM: It also has a line—what is that point west of Chicago, the short line?

Mr. MARKHAM: Sioux City?

Mr. MILBURN: No.

Mr. MARKHAM: Dubuque?

Mr. SEVERANCE: It runs to Omaha.

Mr. BALDWIN: Freeport.

Mr. MILBURN: Freeport.

Mr. MARKHAM: It does not run from Chicago to Freeport, Mr. Milburn, that is, not direct—oh, yes, it does, right through Freeport—that is right—by the way of Rockford.

Mr. MILBURN: Now, freight originating on the Illinois Central, the natural, normal route, taking that first, Mr. Markham, part of it would be via—would be to go north and via those lines to the Pacific Coast, would it not?

Mr. MARKHAM: Originating where?

Mr. MILBURN: On the Illinois Central? The normal—I am talking about the normal.

Mr. MARKHAM: Having destination where?

Mr. MILBURN: California—San Francisco?

Mr. MARKHAM: We took all that we could by the way of New Orleans; always endeavoring to take it by the way of New Orleans.

Mr. MILBURN: To get the longest haul for yourselves?

Mr. MARKHAM: And the most money.

Mr. MILBURN: To get the longest haul?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: That would take as an equivalent of the most money?

351 Mr. MARKHAM: We did not take it all.

Mr. MILBURN: But when you controlled the situation, you took it to New Orleans so as to get the longest haul to New Orleans?

Mr. MARKHAM: That is, prior to this Union Pacific—Southern Pacific, we took that business. After that we could not take it.

Mr. MILBURN: Now, let me understand that. What effect did that have?

Mr. MARKHAM: We had instructions from the Southern Pacific that we had better send it by the way of Omaha, there being a division of territory.

Mr. MILBURN: That you had better send your freight by the Southern Pacific line connecting at Ogden?

Mr. MARKHAM: Above a certain line of demarkation, we would send by the way of Ogden; below that, we would send by New Orleans.

Mr. MILBURN: Above a certain line of what?

Mr. MARKHAM: A certain line running—I have forgotten the territory, but certain territory was prescribed under which we would send business to Ogden——

Mr. MILBURN (interrupting): Will you give me——

Mr. SEVERANCE: Let him finish his answer. He has not finished.

Mr. MILBURN: I thought he was through.

Mr. MARKHAM: Certain territory was prescribed whereby we could send by New Orleans.

Mr. MILBURN: Can you give me what that line was?

Mr. MARKHAM: No, sir. It was a line northeast from Cairo that struck the lakes at either Cleveland or Buffalo. All east of that line would go by New Orleans and all west by way of Ogden. I am not positive on that, that is, on that line.

Mr. MILBURN: Will you tell me who gave you that order?

Mr. MARKHAM: We had the information from our soliciting agent.

Mr. MILBURN: You are speaking here—at this time what office did you hold?

352 Mr. MARKHAM: Assistant Traffic Manager of the Illinois Central.

Mr. MILBURN: Now, you did not take your orders from soliciting agents, did you?

Mr. MARKHAM: I did not take orders from soliciting agents. I got my information from soliciting agents.

Mr. MILBURN: If there was such an order as that affecting the business of your road, from whom did it emanate?

Mr. MARKHAM: The order emanated from a source that we recognized very fully to know that it was for our best interest to observe it.

Mr. MILBURN: Let us get away, if we may, from generalities like that. Who issued the orders? If there was an order of that kind, somebody must have issued it?

Mr. MARKHAM: We got the information from our soliciting agent and the soliciting agent told us he got instructions from the Southern Pacific.

Mr. MILBURN: Then, what you say is that you, as Assistant Traffic Manager of the Illinois Central were informed by your soliciting agent that your traffic, which was in your charge from a certain territory had to go one route and certain traffic from another territory, another route?

Mr. MARKHAM: That is right.

Mr. MILBURN: And you, as Assistant Traffic Manager of that road had to submit to an order conveyed to you in teat way?

Mr. MARKHAM: But I did not submit. We had instructions, but did not submit.

Mr. MILBURN: You say you had the instructions? That is what I want to get, who from?

Mr. MARKHAM: I mean this way.

Mr. SEVERANCE: Let him explain it.

Mr. MILBURN: I say it is important. That is what I want to get.

Mr. MARKHAM: Our soliciting agents who reported to the traffic officers, would give us information of that character, but of course we did not come into contact with them. We gave general in-
353 structions. We were given to understand that such and such business had to go by way of Omaha and such and such business had to go by the way of New Orleans. If it did not go, we knew that they had it in their power to make it cost us very dearly.

Mr. MILBURN: That is you- statement, but you can — us nothing but what your soliciting agent told you? That is all you can give?

Mr. MARKHAM: That is all.

Mr. SEVERANCE: We will give you the definite information later.

Mr. MILBURN: All right, Mr. Severance.

Mr. SEVERANCE: You will get it.

Mr. MILBURN: We would like it in a definite way.

Mr. SEVERANCE: You will get it.

Mr. MILBURN: But we do not care for it otherwise. (Addressing witness:) You spoke of Mr. Neemyer, who was agent at Chicago, did you not?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: At one time he was agent for what line?

Mr. MARKHAM: For the Southern Pacific.

Mr. MILBURN: For the Southern Pacific?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: And in Chicago?

Mr. MARKHAM: In Chicago, yes, sir.

Mr. MILBURN: Was he at that time when he was acting for the Southern Pacific, working the Ogden Line, as it was called?

Mr. MARKHAM: The Southern Pacific by way of New Orleans.

Mr. MILBURN: He was agent of the Southern Pacific at Chicago, you say?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Soliciting agent, or what do eou call it?

Mr. MARKHAM: He was General Agent of the solicitors east of Chicago.

Mr. MILBURN: Now, was he working at that time the Ogden line?

354 Mr. MARKHAM: Yes, sir; when he could not get it by New Orleans.

Mr. MILBURN: I think it answers my question to say, "yes." I think I am entitled to the answer.

Mr. MARKHAM: I want to answer you.

Mr. MILBURN: I asked you whether he was working the Ogden line?

Mr. MARKHAM: Yes, sir; he was working the Ogden line.

Mr. MILBURN: At that time?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Mr. Markman, in the Chicago territory, to solicit or seek for freight there to go by the Sunset Route means that it is taken to New Orleans?

Mr. MARKHAM: Not necessarily. The Illinois Central, of course, in soliciting freight there would take it to New Orleans.

Mr. MILBURN: No, I am not talking of the Southern Pacific agent in Chicago for the territory there.

Mr. MARKHAM: No, sir; not New Orleans.

Mr. MILBURN: Where, then?

Mr. MARKHAM: Why, by any of the various junctions with the Sunset Route in Texas, by El Paso or the many junction points this side reached by lines,——

Mr. MILBURN (interrupting): I am talking about California business.

Mr. MARKHAM: That is what I mean. It could be taken by many lines and given to the Southern Pacific in Texas at the Texas junctions as well as taken by the lines from the north and given to the Southern Pacific at New Orleans.

Mr. MILBURN: Well, not only New Orleans, but other southern points similar to New Orleans?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: And taking New Orleans as an instance, I just ask this one question: For freight in the vicinity of—what you call in the territory of Chicago—that would be a very roundabout way, would it not, to go to New Orleans?

Mr. MARKHAM: Not for freight.

355 Mr. MILBURN: Then, to go to San Francisco?

Mr. MARKHAM: It is not so considered.

Mr. MILBURN: When it got to New Orleans, it was farther from San Francisco than when it started?

Mr. MARKHAM: I think that is true, thirty-two hundred miles as against twenty-four hundred.

Mr. MILBURN: Taking the two extremes, how far is it from Chicago to New Orleans?

Mr. MARKHAM: 912 miles.

Mr. MILBURN: Mr. Markham, you spoke of the Southern Pacific and the Union Pacific being competitors for business originating on the Illinois Central?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: By that you meant the Southern Pacific from New Orleans or those other points you mentioned. That would be, so far as the Illinois Central is concerned, New Orleans?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: And the other competitor would be a line made up of the Southern Pacific, the Union Pacific and some other line between Omaha or Council Bluffs and the Illinois Central itself?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: It has a line to Omaha?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Those are the two competitive routes?

Mr. MARKHAM: Those are the two competitive routes.

Mr. MILBURN: One route is made up entirely of the Southern Pacific and the Illinois Central by the south?

Mr. MARKHAM: There might be other lines——

Mr. MILBURN (interrupting): I am talking of the Illinois Central.

Mr. MARKHAM: You are talking of a local station on the Illinois Central?

Mr. MILBURN: Yes, sir; I am talking of the Illinois Central. One competing line would be the Illinois Central and the Southern Pacific?

Mr. MARKHAM: You understand, of course, by reason of
356 the junctions on the Illinois Central, that probably one-third of the territory might be competitive to New Orleans with some other lines.

Mr. MILBURN: I am talking about traffic originating on the Illinois Central.

Mr. MARKHAM: That is what I have in mind too.

Mr. MILBURN: Very well. So, from the time it strikes the Illinois Central you say it has two competitive routes to San Francisco. One was made up of the Illinois Central and the Southern Pacific—the Illinois Central to New Orleans and the Southern Pacific from New Orleans to San Francisco.

Mr. MARKHAM: No, sir. There might be half a dozen competitors to New Orleans from the Illinois Central stations.

Mr. MILBURN: I am not talking about any other. I am talking about that line now. I say, that is one competing line.

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: From the Illinois Central to the Southern Pacific at New Orleans and over the Southern Pacific.

Mr. MARKHAM: But there might be half a dozen competing lines——

Mr. MILBURN: I concede it. I am talking of the proposition between two competing lines which you mentioned.

Mr. MARKHAM: That is, half a dozen lines to New Orleans and one line from New Orleans.

Mr. MILBURN: I am talking about traffic on your old line, the Illinois Central. I am not talking about traffic on any other line.

Mr. MARKHAM: But you understand, the traffic on the Illinois

Central you are talking about may be competitive between four or five lines to New Orleans.

Mr. MILBURN: I am talking about traffic that got to your line; not that missed your line.

Mr. MARKHAM: I will follow you on that.

Mr. MILBURN: When I talk of traffic originating on the Illinois Central, that is Illinois Central traffic. Now, you take the
357 one route, which is the Illinois Central to New Orleans and the Southern Pacific to San Francisco.

Mr. MARKHAM: I will follow you on that line now.

Mr. MILBURN: Do you say, yes?

Mr. MARKHAM: I do not understand the question now?

Mr. MILBURN: You do not?

Mr. MARKHAM: No.

Mr. MILBURN: You said that the Union Pacific and the Southern Pacific were competitors for Illinois Central business for San Francisco.

Mr. MARKHAM: That is, prior to this amalgamation.

Mr. MILBURN: That is what I am talking about.

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Were competitors for Illinois Central business for San Francisco?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: Now, then, I say the competing lines, so far as these two companies are concerned, the Southern Pacific and the Union Pacific, would be from the Illinois Central to New Orleans and by the Southern Pacific to San Francisco, No. 1.

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: No. 2 would be the Illinois Central to Omaha and by the Union Pacific to Ogden and by the Southern Pacific to San Francisco?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: That is true, is it not?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: So that in both competing lines, the Southern Pacific and the Illinois Central were common elements?

Mr. MARKHAM: No, not in a traffic sense. I cannot follow you on that.

Mr. MILBURN: In both those competing lines, the Illinois Central and the Southern Pacific were common elements?

Mr. MARKHAM: If there was nothing else between the point of origin of the traffic on the Illinois Central and New Orleans and Omaha, there was nothing else.

358 Mr. MILBURN: Well, it seems to me, Mr. Markham, it should be pretty plain.

Mr. MARKHAM: Our mind seems to run in different directions.

Mr. MILBURN: No, my mind does not run in any direction. It runs in the direction where you take it. I want to get at the facts. I will repeat it once more and then give it up if we do not come to the point.

You spoke of the Union Pacific and Southern Pacific.

Mr. MARKHAM: Can I answer you this way——

Mr. MILBURN: No, answer the question.

Mr. MARKHAM: You are perfectly right if you eliminate from the question all other lines except the lines you mentioned. That is, if I do not find anything to harrass me in the situation except the lines you mentioned, that is, the Illinois Central to New Orleans plus the Southern Pacific, and the Illinois Central plus the Union Pacific plus the Central Pacific—if you take everything else away, then——

Mr. MILBURN: I take those lines and all those competing lines. The Southern Pacific and Illinois Central would be common elements.

Mr. MARKHAM: Yes, common elements.

Mr. MILBURN: Now, those were the lines which were competing for Illinois Central traffic so far as the Southern Pacific and Union Pacific were concerned, were they not?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: When did you leave the Illinois Central, Mr. Markham?

Mr. MARKHAM: In 1903.

Mr. MILBURN: That is all.

Mr. SEVERANCE: Now, Mr. Markham, Mr. Milburn seems to make a great deal of the fact that some lines are longer than other lines and have the impression that they cannot successfully compete because they are longer. Let us examine into that questions for a moment. Take Mr. Milburn's own lines. The Southern Pacific, the Sunset Route, made up of a line of steamers from New York, running to New Orleans and Galveston and by rail from New Orleans to
359 San Francisco, has been for years an active competitor with the all rail lines, not only from New York but back into the country, at least as far as Pittsburgh, and sometimes to Cincinnati. Is not that true?

Mr. MARKHAM: Not to Cincinnati.

Mr. SEVERANCE: Well, to Indianapolis?

Mr. MARKHAM: No, as far back as Toronto, Buffalo, Pittsburgh and Wheeling.

Mr. SEVERANCE: Well, leave it there. Now, the Southern Pacific line, boat and rail, is how much farther from New York to San Francisco than an all-rail route?

Mr. MARKHAM: I do not know.

Mr. SEVERANCE: Well, the boats have to go down from New York around the southern end of Florida and then get up to New Orleans, and then there is a long line—or to Galveston; then, there is the long bow-shaped line going up to San Francisco. That is very much longer—and then you must add to that the distance from Pittsburgh to New York. That is certainly very much longer, perhaps a thousand or two thousand miles longer—I expect two thousand miles longer than a direct rail route from Pittsburgh to San Francisco, is it not?

Mr. MARKHAM: I should think so. That could easily be determined or figured out.

Mr. SEVERANCE: Here is a map that shows (exhibiting map).

Mr. MARKHAM: It is 440 miles from Pittsburgh to New York.

You can take the Coast Line to Florida, plus the meridian from Florida to Galveston and you will get the distance.

Mr. SEVERANCE: The coast line to Florida would not do. The boat lines run clear around the southern end of Florida.

Mr. MARKHAM: I was taking the meridian from the southern end of Florida to Galveston.

Mr. SEVERANCE: Is it not a fact not only that the Southern Pacific haul freight that distance, but don't they also absorb the rail charge from Pittsburgh to New York in addition? All railroad men know that.

360 Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: So that the Southern Pacific not only conveys traffic that tremendous distance, a couple of thousand miles farther than the all-rail haul, but in addition it pays over to the Pennsylvania Road, or whatever road may transport the traffic from Pittsburgh to New York the amount of its local charge and takes that out of the revenue it gets for transporting the stuff around to San Francisco. That is true, is it not?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: It does that in competition with the all-rail lines running west from Pittsburgh?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Now, in the face of that fact it does not seem impossible, does it, that a rail and boat line by Portland might dominate the situation, as you say, as against the straight line to San Francisco?

Mr. MARKHAM: It is considered no disability in the matter of control of traffic.

Mr. SEVERANCE: Now, you were asked whether Mr. Meemyer when he was the representative of the Southern Pacific did not work the Ogden line. That was the language, I think, of the question, and I think you said he did. What did you mean? You said he did when he could not get the other way, or something of that kind? What did you mean by that answer?

Mr. MARKHAM: I meant that that would be his proper function.

Mr. SEVERANCE: Now, the Santa Fe was a competitor all the way from Chicago, was it not?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: The Southern Pacific's interest was to take everything possible by way of New Orleans or Galveston or Texas junction points, because they got the longer haul as against the short line?

Mr. MARKHAM: That is as I understand it.

Mr. SEVERANCE: Now, you said, Mr. Markham——

Mr. MILBURN: What was that answer?

Mr. SEVERANCE: He said yes. You were also asked whether the Southern Pacific could not have turned over all its business

361 to the Denver & Rio Grande, and you said that if they wanted to ruin themselves they could have done it. What did you mean by that?

Mr. MARKHAM: I think I said self-destruction. I meant that the other route by the way of Portland could make the rates of such a

character that it would be self-interest for the Southern Pacific to come to some proper understanding.

Mr. SEVERANCE: Is there not another factor in that, Mr. Markham? There are a number of roads running to Omaha, connecting with the Union Pacific, and they turn a large amount of traffic over to the Union Pacific at that point, west bound?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Now, would not self-interest impel the Southern Pacific to treat fairly the haul from Ogden to San Francisco and take a proper division to get a share of that traffic that the Union Pacific had turned over?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: That is all.

Mr. MILBURN: Just one question. Do you know, Mr. Markham, whether that freight originating in the Chicago territory, the Southern Pacific has got the most net money going by the Ogden line, or going by the Southern Pacific, the New Orleans line?

Mr. MARKHAM: I do not know the net money.

Mr. MILBURN: You do not know the net money?

Mr. MARKHAM: No, sir, I do not.

Mr. MILBURN: You have no figures from which you can tell which was the most profitable line for the Southern Pacific?

Mr. MARKHAM: No, sir.

Mr. MILBURN: That is all.

Mr. SEVERANCE: That is all.

Com'r LANE: One moment. Do you regard the Northern Pacific and Union Pacific as competitors?

Mr. MARKHAM: Yes, sir.

Com'r LANE: And the Great Northern?

Mr. MARKHAM: Yes, sir.

Com'r LANE: And the Canadian Pacific?

362 Mr. MARKHAM: Yes, sir.

Com'r LANE: Do you regard the Canadian Pacific and the Southern Pacific, running from New Orleans, as competitors for San Francisco business?

Mr. MARKHAM: Yes, sir; from New York State and all that territory.

Com'r LANE: Take it for this territory.

Mr. MARKHAM: Hardly, although I suppose, in as much as the same rates obtain from New York, that business might be sent from Chicago to New York and taken by the Canadian Pacific, if not to a connecting line at Detroit.

Com'r LANE: Sent back to Detroit and taken by the Canadian Pacific that way?

Mr. MARKHAM: Yes, sir; or from Chicago to New York.

Mr. SEVERANCE: Or from Chicago to St. Paul?

Mr. MARKHAM: Or to St. Paul, and pay the local rate in the same way as Mr. Severance has just stated that the local rates are paid by the Morgan Steamship Company from Pennsylvania and New York State to New York.

Com'r LANE: Is there a through route from here to San Francisco by way of the Great Northern and the Northern Pacific?

Mr. MARKHAM: I do not know that there is now.

Com'r CLEMENTS: At the time you say there was competition between the Union Pacific and the Southern Pacific and your road was carrying freight from Chicago to New Orleans bound for San Francisco, for instance it was to your advantage to have it all go by the Southern Pacific, wasn't it?

Mr. MARKHAM: Yes, sir.

Com'r CLEMENT: You got the longer haul and the greater division of the through rate?

Mr. MARKHAM: That depended on the distance. If it originated at Memphis, for instance, it might be that it would be more profitable to take it north; according to the——

Com'r CLEMENTS: It might be more profitable to take it north to the Union Pacific?

363 Mr. MARKHAM: We generally took it south when we could.

Com'r CLEMENTS: Did that determine that you take it north or south, according to whether you would get the greater division of the rate?

Mr. MARKHAM: We always worked in the direction of getting the greatest revenue.

Com'r CLEMENTS: Yes. Do you remember about the time that the complaint of the Colorado Fuel & Iron company was up in regard to rates to Denver, for instance, from Chicago on steel rails and other iron and steel products; that it was shown in that case there had been a heavy movement of steel products from Chicago to San Francisco by way of New Orleans, or do you know about those things?

Mr. MARKHAM: I don't know about that.

Com'r CLEMENTS: Was that a fact that freight of that kind did move in large quantities?

Mr. MARKHAM: I don't recall it moving. Oh, yes; to San Francisco by way of New Orleans; yes, by rail.

Com'r CLEMENTS: Via the Illinois Central and the Southern Pacific?

Mr. MARKHAM: Yes sir.

Com'r CLEMENTS: From Chicago by way of New Orleans to the Pacific Coast, San Francisco?

Mr. MARKHAM: Yes, sir.

Com'r CLEMENTS: There was a rate at that time—I don't know whether you remember it — not, but it is a fact—a rate of $1.60 from Chicago to Denver, and, say 60 cents on steel rails from Chicago to San Francisco.

Mr. MARKHAM: I don't recollect.

Com'r CLEMENTS: Well, now, in what way did this competition manifest itself to you, as an officer of the Illinois Central Railroad, and having the routing of this business either by way of the Union Pacific or the Southern Pacific? You would get it at Memphis and other places?

Mr. MARKHAM: Only in the reports that were received from time to time from the soliciting and traveling agents.

364 Com'r CLEMENTS: Was there a difference in the rates?

Mr. MARKHAM: No.

Com'r CLEMENTS: The rates were the same then by one route as by the other?

Mr. MARKHAM: The published rates were.

Com'r CLEMENTS: The published rates were?

Mr. MARKHAM: Yes, sir.

Com'r CLEMENTS: Well, now, what manifestation of competition was there; was there any departure from the published rates?

Mr. MARKHAM: An undue volume of traffic going by one route from time to time, or it would go by a route other than that by which it was solicited, probably.

Com'r CLEMENTS: Were you called upon to adjust movements of freight and the freight rates applicable to them, on a basis lower than the published rates in those days in connection with the Union Pacific and the Southern Pacific?

Mr. MARKHAM: No, sir; never was.

Com'r CLEMENTS: Was there any practice of that sort?

Mr. MARKHAM: There was.

Com'r CLEMENTS: Cutting the rates or paying rebates below the published freight rates?

Mr. MARKHAM: I suppose there was. It was general at that time.

Com'r CLEMENTS: Well, did your company participate with the Union Pacific on the one hand and the Southern Pacific on the other in the adjustment of rates lower than the published rates, in that period I am talking about.

Mr. MARKHAM: I don't recollect anything having come before me on that matter, that I could answer definitely.

Com'r CLEMENTS: Was there at any time an offer made to you by the Union Pacific or a representative of the Union Pacific on the one hand and a representative of the Southern Pacific on the other for a better division of the through rate more favorable to the

365 Illinois Central than that which had theretofore prevailed?

Mr. MARKHAM: Not to me.

Com'r CLEMENTS: Any inducements of that sort offered by either line to have the freight moved over it that you know of?

Mr. MARKHAM: No, the divisions are generally determined upon in convention and the Southern Pacific had very set views on those matters, and their views generally obtained in the matter of divisions.

Com'r CLEMENTS: Their views obtained? You mean by that that the determination of the Southern Pacific as to the division of the through rate dominated the situation?

Mr. MARKHAM: Generally.

Com'r CLEMENTS: And fixed the limit or what could be obtained by the Union Pacific?

Mr. MARKHAM: I don't know about the Union Pacific.

Com'r CLEMENTS: Well, in what way did the—how did the views of the Southern Pacific operate to fix the division of the through rate

as between you and these other roads, whichever route you would send the freight by?

Mr. MARKHAM: I think there was—there had been originally fixed a set division, and it was not varied from. I don't know what the division was now, but I know that the general impression was that the divisions were fixed by the Southern Pacific and they were masters of the situation. We had to acquiesce.

Com'r CLEMENTS: Did this practice of deviating from the published rates or paying rebates prevail by both roads, the Union Pacific and the Southern Pacific in those days?

Mr. MARKHAM: I don't know that it prevailed by any road, Mr. Clements. I only know the general impression. Whether it obtained, I do not know personally.

Com'r CLEMENTS: You were only speaking of that then as a matter of general report?

366 Mr. MARKHAM: General report.

Com'r CLEMENTS: Did you have any contact with these matters by which you had any personal knowledge of it?

Mr. MARKHAM: No, sir; in connection with the Southern Pacific, I did not.

The CHAIRMAN: Mr. Markham, you were connected with the Illinois Central Railroad Company for a number of years?

The CHAIRMAN: And up to about what date?

Mr. MARKHAM: 1903.

The CHAIRMAN: It appears that the Union Pacific acquired control of the Southern Pacific in 1901?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: Or two years, perhaps, before you ceased to be connected with the Illinois Central?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: You were aware of that acquired control at the time it occurred?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: By public knowledge?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: Did you observe any difference in the conditions which your company met after that control of the Southern Pacific was acquired than before?

Mr. MARKHAM: I cannot say that I did.

The CHAIRMAN: Was any difference reported to you by your subordinates?

Mr. MARKHAM: I have got an impression there was. We had taken it for granted that it would be so, as being the natural thing.

The CHAIRMAN: I understand.

Mr. MARKHAM: And therefore did not look for it in the same way we would otherwise; and it might have been there and not noticed it.

The CHAIRMAN: In what manner, if at all, did that change of control affect your company?

Mr. MARKHAM: Only in this matter, I think, that I described a

short time ago; that business in and around the territory of
367 Chicago would have to be sent by way of Omaha, when otherwise, if we controlled it ourselves with the shippers, we would route it by the way of New Orleans.

The CHAIRMAN: That is, you secured a less share for the long haul to New Orleans than you did before?

Mr. MARKHAM: No, sir. We received a less revenue by being obliged to send the business by way of Omaha instead of New Orleans, as we had done before?

The CHAIRMAN: That is the same thing, isn't it?

Mr. MARKHAM: Well, in substance it might be.

The CHAIRMAN: Yes, it comes to the same thing.

Com'r HARLAN: You had to use the short haul instead of the long haul?

Mr. MARKHAM: Yes, sir.

Mr. MILBURN: What is the difference in that haul to Omaha and to New Orleans?

Mr. MARKHAM: About 400 miles.

Mr. MILBURN: From any point south of Chicago, on the Illinois Central——

Mr. MARKHAM: It would be more.

Mr. MILBURN: What?

Mr. MARKHAM: It would be less. It grows less as you go south.

Mr. MILBURN: That is, from Chicago to Omaha, and Chicago to New Orleans there is a difference of 400 miles?

Mr. MARKHAM: Yes, sir; about that.

The CHAIRMAN: The Union Pacific has a line from Kansas City to Denver, and also one from Omaha to Denver, hasn't it?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: And at the time you speak of was there competition for traffic moving to Denver and Colorado common points as between the all rail lines up to Omaha or Kansas City and then the Union Pacific to Denver and the water lines to New Orleans and then rail to Denver in that territory?

Mr. MARKHAM: From the seaboard territory?

The CHAIRMAN: Yes.

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: Was that an active competition?

368 Mr. MARKHAM: Yes, sir; not from the territory west of Buffalo and Pittsburg.

The CHAIRMAN: No. I understand that. But from the seaboard territory?

Mr. MARKHAM: Yes, sir.

Mr. SEVERANCE: Was that to New Orleans or to Texas points and up to Colorado?

Mr. MARKHAM: It was to Colorado points.

The CHAIRMAN: I asked about Colorado common points.

Mr. SEVERANCE: Yes, I know, but would it move from New Orleans; did boats stop there, or would it be moved from Galveston?

Mr. MARKHAM: Boats did stop there ten or fifteen years ago, but not for some years.

Mr. SEVERANCE: Then the stuff didn't move by way of New Orleans, but by way of Texas points.

Mr. MARKHAM: Yes, sir; by Galveston, for instance.

The CHAIRMAN: You were familiar in a general way at least, with that competition for seaboard traffic, moving to Colorado common points, were you not?

Mr. MARKHAM: In a general way, as understanding the traffic situation of the country.

The CHAIRMAN: You are not connected with the Missouri Pacific?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: Your road reaches Denver and Colorado points?

Mr. MARKHAM: Yes, sir. It reaches Pueblo.

The CHAIRMAN: And your line is a competitor for traffic to that territory?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: Which it secures from its connections east of the Mississippi River?

Mr. MARKHAM: Yes, sir.

The CHAIRMAN: Have you observed any effect in competition which your line meets in securing a share of that traffic, resulting from a control of the Southern Pacific by the Union Pacific?

Mr. MARKHAM: No, sir.

369 The CHAIRMAN: Is there any other question to be asked Mr. Markham?

Mr. SEVERANCE: No questions.

The CHAIRMAN: If not, he is excused.

(Witness excused)

J. C. STUBBS, called as a witness, having been duly sworn, testified as follows:

Mr. KELLOGG: You are the Traffic Director of the Union Pacific Railroad, are you not, Mr. Stubbs?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Of the Oregon Short Line Railroad?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Of the Oregon Railroad and Navigation Company?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Of the Southern Pacific System?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Of the Pacific Mail?

Mr. STUBBS: No.

Mr. KELLOGG: Do you have anything to do with the steamship lines?

Mr. STUBBS: No.

Mr. KELLOGG: Prior to——

The CHAIRMAN: Pardon me, Mr. Kellogg. Do we understand, Mr. Stubbs, that your jurisdiction does not cover the Morgan lines from New York?

Mr. STUBBS: Well when I answered as to steamships I referred to the Pacific Mail. Yes, it does extend over the Morgan Line.

Mr. KELLOGG: The Southern Pacific System, in a general way, then, owns the Morgan Line of Steamships from New York to New Orleans and Galveston, does it?

Mr. STUBBS: I so understand it.

Mr. KELLOGG: And lines of railway extending from New Orleans through Louisiana and Texas, Arizona and New Mexico, California and Oregon up to Portland?

Mr. STUBBS: I do not understand that the Southern Pacific owns the lines through Texas.

370 Mr. KELLOGG: Well, I mean they control them through stock ownership?

Mr. STUBBS: Well, I presume that is so, but I would not be a very good witness on that, I think. I don't know the facts.

Mr. KELLOGG: All the Southern Pacific is under your jurisdiction?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Including the Texas lines?

Mr. STUBBS: No, sir.

Mr. KELLOGG: No?

Mr. STUBBS: No.

Mr. KELLOGG: You don't have anything to do with the Texas lines?

Mr. STUBBS: No, sir; except as to traffic that passes through.

Mr. KELLOGG: Except as to through traffic?

Mr. STUBBS: Yes; passing through the State; and to that extent my jurisdiction or control over that is no greater or no less than if these Texas roads were held by perfect strangers.

Mr. KELLOGG: Well, we will see about that in a minute. Prior to the first——

Mr. STUBBS: You can take my word for it; you will find that out before you get through.

Mr. KELLOGG: Prior to the acquisition of the South- Pacific by the Union Pacific, what was your jurisdiction?

Mr. STUBBS: The same as now, eliminating the Union Pacific System.

Mr. KELLOGG: You were the Traffic Manager of the Southern Pacific System?

Mr. STUBBS: I was one of its vice-presidents in charge of traffic, to be accurate.

Mr. KELLOGG: At that time who was the head of the Southern Pacific System?

Mr. STUBBS: Well, until his death, practically Mr. Huntington was, but after his death Mr. Hayes, the General Manager——

Mr. KELLOGG: He was the President, wasn't he.

Mr. STUBBS: President; yes, sir.

371 Mr. KELLOGG: But Mr. Huntington during his life and the estate after his death, until the sale of the stock to the Union Pacific, controlled the Southern Pacific System?

Mr. STUBBS: They dominated it.

Mr. KELLOGG: How many years were you connected with the system?

Mr. STUBBS: From 1870.

Mr. KELLOGG: Now, that system then, included the rail lines that I have mentioned from Portland through San Francisco to New Orleans and the line from San Francisco to Ogden, did it not?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And the steamship lines from Ogden too—or from New Orleans and Galveston to New York?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Now, what steamship lines at that time did it control on the Pacific?

Mr. STUBBS: Well, I understand at the time of Mr. Huntington's death the Southern Pacific Company, or the people that controlled the Southern Pacific Company—I cannot be exact as to that—held a majority of the stock of the Pacific Mail Steamship Company.

Mr. KELLOGG: That steamship line had boats running from what ports to what ports?

Mr. STUBBS: Well, from San Francisco to the Orient, and to Panama and coastwise.

Mr. KELLOGG: In connection with the Panama Railroad?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And where?

Mr. STUBBS: Well, coastwise points; that is, Mexican points; I believe they made stops——

Mr. KELLOGG: Did it control any other steamship line on the Pacific?

Mr. STUBBS: It controlled, with the Union Pacific, the Occidental and Oriental Steamship Company.

Mr. KELLOGG: What line was that?

Mr. STUBBS: That was the line that operated between San Francisco and Asiatic ports.

372 Mr. KELLOGG: Who owned at that time the stock of that company; how much did each company own?

Mr. STUBBS: Well, my understanding is that it was equally divided between the controllers, the individuals controlling the Southern Pacific and the Union Pacific Company, but I cannot be accurate as to that.

Mr. KELLOGG: Well, now, during those days——

Mr. STUBBS: In other words I mean to say by that, that I did not know whether the Southern Pacific side was owned by the individuals or by the Southern Pacific Company.

Mr. KELLOGG: You understand that either the company or the interests with them owned them?

Mr. STUBBS: Practically the same.

Mr. KELLOGG: That is practically the same thing?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Did the Union Pacific during those days own a line of railroad from Council Bluffs via Denver, thence to Cheyenne and Ogden to Portland?

Mr. STUBBS: I think so.

Mr. KELLOGG: What steamship lines did it control or the Navigation Company control?

Mr. STUBBS: I understand that they operated a line of steamships between San Francisco and Portland, and then they had steamships

—they had various steamboat lines on the Willimat and the Columbia Rivers.

Mr. KELLOGG: Did they also own another line of steamships which operated in connection with the Orient at that time?

Mr. STUBBS: I cannot be accurate as to that. They established or there was established a line of steamships between Portland and Oriental ports, first, I think, by outside parties.

Mr. KELLOGG: The Doddwell people?

Mr. STUBBS: Doddwell people, but I don't know but what another man intervened later. However, at the time I went there the Portland & Asiatic Steamship Company was organized and controlled by the Oregon Railroad and Navigation.

Mr. KELLOGG: At the time you went there—you mean
373 the time you became connected with the Union Pacific?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And prior to that time either private interests owned a line in connection with the Oregon Railroad and Navigation Company, or the Oregon Railroad and Navigation Company owned the Portland & Asiatic Steamship Line which operated to Asiatic ports?

Mr. STUBBS: I think so.

Mr. KELLOGG: In connection with the Union Pacific System?

Mr. STUBBS: Yes, in connection with the Navigation Company.

Mr. KELLOGG: The Oregon Railroad & Navigation Company was a part of the Union Pacific?

Mr. STUBBS: Yes.

Mr. KELLOGG: And controlled by it?

Mr. STUBBS: I understood so.

Mr. KELLOGG: You understood that it was at that time did you not?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Now——

Mr. STUBBS: I wish to be understood as saying, in the matter of being controlled by the Union Pacific, that it had its separate organization; that is to say the President of the Union Pacific Company had nothing to do, had no control over the President of the Navigation Company; but it was generally understood—I understood it—that the stock ownership was in the same hands.

Mr. KELLOGG: That is as you understood it, and I believe it to be a fact that the Union Pacific owned the stock and controlled in that way the Short Line and the Oregon Railroad and Navigation Company?

Mr. STUBBS: I so understood it.

Mr. KELLOGG: And in connection with those lines from Portland, there was a steamship line running to San Francisco, and a steamship line running from Portland to Asiatic ports?

374 Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And the Southern Pacific had a rail line from Portland to San Francisco?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Now, Mr. Stubbs, prior to that time—I say prior to March, 1901—I believe that was about the time of the acquisition?

Mr. STUBBS: Somewhere about it.

Mr. KELLOGG: Prior to that time you were the Traffic Manager of the Southern Pacific System, or Vice-President in charge of traffic, and familar with its business for many years, were you not?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Business from the Atlantic Seaboard as far west as Pittsburg and common points all through the Atlantic coast moved via the Southern Pacific, the Morgan Line and Southern Pacific Railway Line to Pacific Coast points, did it not?

Mr. STUBBS: A part of it did.

Mr. KELLOGG: I didn't say all of it; some of it?

Mr. STUBBS: Very well. Except as to the City of Pittsburg, Buffalo and Wheeling. The line is somewhat east of those points. I cannot describe it to you exactly, but Pittsburg proper and Buffalo proper, and Wheeling proper business did not go that way.

Mr. KELLOGG: Now, do you say, as a matter of fact, that no business ever went from Pittsburg, Wheeling and Buffalo to the Atlantic seaports and via the Morgan Line and the Southern Pacific to California and Oregon points?

Mr. STUBBS: No, I do not say of my own knowledge that no business ever did that, go that way, but I do say that no tariffs were published, through tariffs were published that way from Pittsburg proper.

Mr. KELLOGG: Don't you know, Mr. Stubbs, of your own knowledge that business did go that way?

Mr. STUBBS: Indeed, I do not.

Mr. KELLOGG: You do not?

Mr. STUBBS: No, sir.

Mr. KELLOGG: All right. Business then east of Pittsburg and Buffalo from all that territory or the principal points, all
375 moved via the Morgan Line and Southern Pacific to the Pacific coast?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: To the Orient via the——

Mr. STUBBS: No. Oh, yes; I am not sure but what it did westbound. Yes, that is right.

Mr. KELLOGG: And business from the Orient?

Mr. STUBBS: No.

Mr. KELLOGG: It didn't move that way?

Mr. STUBBS: No.

Mr. KELLOGG: No business at all?

Mr. STUBBS: No.

Mr. KELLOGG: No business came——

Mr. STUBBS: It was never solicited and I do not recall of a single case.

Mr. KELLOGG: You know of no business?

Mr. STUBBS: No business.

Mr. KELLOGG: But business from the Pacific Coast did move to Atlantic seaboard places via that line?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: As far north as Portland?

Mr. STUBBS: I think not. I am not sure. I think that very little

business was done from that end; some hops moved from Willimat Valley, but I wouldn't be sure about that.

Mr. KELLOGG: Well, business moved from the eastern points for Portland via that line, didn't it?

Mr. STUBBS: I think some did; that line was worked for Portland.

Mr. KELLOGG: And even moved to Seattle and Tacoma?

Mr. STUBBS: No.

Mr. KELLOGG: No business ever went there that way to Seattle and Tacoma?

Mr. STUBBS: I think not.

Mr. KELLOGG: Do you know the merchants of Seattle Tacoma, many of them?

Mr. STUBBS: No.

Mr. KELLOGG: Do you remember the Spokane rate case in which merchants of Seattle, Tacoma, Portland and San Francisco
376 testified that merchandise all moved from Pittsburgh and eastern points, and even points as far west as Cleveland, to Portland, Seattle and Tacoma via that line?

Mr. STUBBS: No.

Mr. KELLOGG: You don't remember that case?

Mr. STUBBS: I do not remember it. There may have been something of that kind but it was very small; not enough to attract my attention.

Mr. KELLOGG: But it did move to Portland?

Mr. STUBBS: I think in small quantities.

Mr. KELLOGG: Do you remember that prior to 1896 the rates via that line at one time to Portland were less than they were via the Union Pacific for a while?

Mr. STUBBS: I do not remember.

Mr. KELLOGG: You do not remember it?

Mr. STUBBS: No, sir. I should be very much surprised to learn that it was a fact or had been a fact.

Mr. KELLOGG: Now, the rates to-day are from that eastern country the same via the Morgan Line and the Sunset route as they are via the all-rail lines on substantially all traffic?

Mr. STUBBS: Substantially.

Mr. KELLOGG: That means that the Southern Pacific Company takes the stuff from Pittsburg or east of Pittsburg, pays the rate to the seaboard or absorbs or the rate is taken out from the through rate, at the same rate that would be hauled via the all-rail lines to California points?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Business west of Pittsburg and the territory between there and the Missouri River, the rates are the same via New Orleans and Texas Points, with the Southern Pacific as they are via Ogden or other gateways to the Pacific Coast, are they not?

Mr. STUBBS: I think so, yes, sir.

Mr. KELLOGG: So that practically on all the business that goes to and comes from the Pacific Coast from the territory east of the Missouri River in the United States the rates are the same and it can go either via New Orleans gateway or Ogden?

377 Mr. STUBBS: Oh, no; not east; all the territory east of the Missouri.

Mr. KELLOGG: Well, substantially the rates are the same.

Mr. STUBBS: Not substantially. I cannot conceive of business, or the rates would be the same from Omaha on the Missouri River or Kansas City by the Sunset Route as they are the other way.

Mr. KELLOGG: Aren't the rates substantially the same from Kansas City via El Paso to California points?

Mr. STUBBS: They are to California points, yes, sir.

Mr. KELLOGG: And substantially the same from St. Joe?

Mr. STUBBS: I am not sure. However, I will answer that I think you are right.

Mr. KELLOGG: Passenger business. Take the tourist business in the winter, aren't substantially all the rates east of the Missouri River and as far north as St. Paul the same via the Sunset Route and its connections as via the Union Pacific and its connections?

Mr. STUBBS: I don't know about that. I don't know as to the St. Paul. I cannot say.

Mr. KELLOGG: Well, substantially all the territory east of the Missouri River.

Mr. STUBBS: I think so.

Com'r CLEMENTS: How far south does that answer hold good as to freight and passenger business?

Mr. STUBBS: In what respect?

Com'r CLEMENTS: In what respect?

Com'r CLEMENTS: That the rates would be the same either via the Union Pacific or the Sunset route.

Mr. STUBBS: The passenger business, according to my understanding, the great bulk of it moves on round trip rates, and the round trip rates cover nearly all of this territory.

Com'r CLEMENTS: How far south do you recall is embraced in this territory?

Mr. STUBBS: I think as far as New Orleans.

Com'r CLEMENTS: Clear to the Gulf?

Mr. STUBBS: But I am not a very good witness as to what
378 the passenger rates are. You can get that from Mr. McCormick.

Com'r CLEMENTS: Well, as to freight; how is that—substantially the same by either route from points in Georgia and Tennessee?

Mr. STUBBS: I think the rates from Missouri River points are the same; from New Orleans north and from Missouri River points are the same from Kansas City north. My recollection is that Galveston and Houston take practically the same as Kansas City. Chicago is a little higher.

Com'r CLEMENTS: Take a point in Kentucky and Tennessee and Georgia; would you include that in the same territory where the rates would be substantially the same by either route?

Mr. STUBBS: Not east of the Mississippi River; no.

Mr. KELLOGG: What point is that?

Com'r CLEMENTS: I am speaking of the southeastern territory.

Mr. STUBBS: Still, in a large measure the rates to California are blanket from nearly all this eastern territory, the same.

Com'r CLEMENTS: That is what I am asking about. What do you mean by this territory; how far south does it go?

Mr. STUBBS: My answer was this: That according to my recollection the rates from New Orleans and all Mississippi River points are the same, and from Kansas City and all Missouri River points, and from Galveston and Houston are the same. The Chicago rates, I think, differ.

Com'r CLEMENTS: Well, then do the same rates apply from points east of the Mississippi River and south of the Ohio River; substantially the same by either route?

Mr. STUBBS: I cannot be exact as to that; I don't know. The tariffs will show that.

Mr. KELLOGG: Here is the westbound trans-continental tariff. (Counsel hands witness tariff.)

Mr. STUBBS: I have been out of the rate business a good
379 many years. I do not know what the rates are any more than some clerk, some stranger.

Com'r CLEMENTS: Of course we are only asking now about their being substantially the same in general; not being absolutely and specifically the same.

Mr. KELLOGG: I think Mr. Stubbs was correct that substantially all the territory has the same rates.

Mr. STUBBS: Now, according to this tariff the class rate—it shows the rates from Missouri River common points on $3.50 scale, first class; Mississippi River, $3.70; Chicago and Milwaukee points, $3.90. But the most of that business is done under commodity rates westbound and the differences in the commodity rates are not as marked as they were in the class rates, and I guess it is safe enough to say that they are generally blanket, although not always.

Mr. KELLOGG: I think that is substantially correct.

Com'r CLEMENTS: Well, generally blanket—you mean from Mississippi River points?

Mr. STUBBS: All this territory as far east as the Atlantic Seaboard.

Com'r CLEMENTS: And that means from New Orleans and as far as the Mississippi River goes north?

Mr. STUBBS: Yes, sir. Except that St. Paul is on the Missouri River basis.

Com'r CLEMENTS: And that is the same thing—the same thing is true all east of the Mississippi River?

Mr. STUBBS: Practically so. I think there is some—I think that would have to be modified in respect to the southeastern territory, but I am not sure about that.

Mr. KELLOGG: Then, Mr. Stubbs, why is it that New York has, always has had, substantially the same rate as other points east of the Mississippi River to California points?

Mr. STUBBS: Well, the reason has been from the very beginning, the nature of the competition from New York to San Francisco, which was controlling as to all the business; it was the sea competition that fixed the rate.

380 Mr. KELLOGG: Via the Southern Pacific?

Mr. STUBBS: Via all the lines.

Mr. KELLOGG: Well, via the Southern Pacific was an important factor in that competition, wasn't it?

Mr. STUBBS: Not at the outset.

Mr. KELLOGG: Well, it has been for many years?

Mr. STUBBS Yes, sir.

Mr. KELLOGG: Well, now then——

Mr. STUBBS: No more than the other all-rail lines.

Mr. KELLOGG: Oh, no. With the all rail lines it was the sea competition that made the rate from New York the same to San Francisco as it was from Chicago, wasn't it?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: It was not the all-rail lines that made that?

Mr. STUBBS: That is hardly the correct statement. It is the sea competition that determined the rate between New York and San Francisco, for example, and all the other rates based on that; sometimes they were higher. There was a period, I think, back in the early seventies when we charged a higher rate from Chicago and interior points than from New York.

Mr. KELLOGG: I am coming to that. That was in the early days?

Mr. STUBBS: I think it was, yes, sir.

Mr. KELLOGG: And in the traffic meetings when you represented the Southern Pacific System in those days you insisted, did you not, that as you went west from New York to the interior the rates should be raised, should be higher than New York, because you had to haul the stuff east of New York and then around by the sea?

Mr. STUBBS: No, I don't think so.

Mr. KELLOGG: You never made that claim in a traffic meeting?

Mr. STUBBS: I wouldn't say that. I have probably advocated this, that in order to be consistent, the rates should be higher.

Mr. KELLOGG: Yes, in the traffic meetings then, in the
381 early days when the Southern Pacific, when you represented that line, in order to be consistent you insisted that the rates should be higher than west of the seaport, in order that your line might participate in that business?

Mr. STUBBS: Oh, no. I wouldn't state it that way. They were treating that in an academic manner.

Mr. KELLOGG: No, it was not academic.

Mr. STUBBS: Yes, it was academic. Now, wait a minute. You will understand that when this line—now, we are going back; I am, at least, to the early days, say previous to 1883.

Mr. KELLOGG: Well?

Mr. STUBBS: Or 1885. When I went to California in 1870 practically all the business from this territory and east of this territory moving to San Francisco moved via sea?

Mr KELLOGG: Yes.

Mr. STUBBS: We didn't get a hat full of the through business. The merchants had their connections made and adjusted to that business. We had to make the rates from time to time to meet competition, primarily of the Clipper ships, secondly of the Pacific Mail Steamship Company, and it was not until, I think, 1878 that we made very much of an impression on that business and it was ac-

complished only by contracts. Taking a large importer, as he was called.—Every man that imported, that got his goods from the east in San Francisco, was called an importer in those days. We made a contract—when we started we went to a large dealer whom we found from the records was shipping a certain percentage or a large percentage of his business via the sea, the Clipper ships, another percentage, because the time was shorter by the Pacific Mail, and a very small percentage by rail; and taking up these merchants individually we figured on his insurance and the interest for the difference in time and then considered whether we could undertake, by the aid of our connections east, to contract with him for all his business at an average rate which would be equal to his average cost as he was then shipping it. Well, my experience was that in very
382 nearly every case the average was so low that we could not meet it, but the merchants would add 25, and sometimes 40 per cent. to the rate and say: "There are advantages that we cannot express to you that we realize in shipping it by rail"; and one by one we made those contracts. They were not private contracts; they were open public contracts. Anybody could make the contract, and there was no law against it in those days; and that was the scheme and the method used by which we made our first inroads into the movement of the tonnage by the sea.

Mr. KELLOGG: During the time of the ocean competition the Morgan Line in connection with the Southern Pacific was an important factor in the competition from Atlantic ports, seaports to California points?

Mr. STUBBS: Not at this time.

Mr. KELLOGG: Well, afterwards it was?

Mr. STUBBS: Afterwards, yes.

Mr. KELLOGG: Prior to 1901?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And for many years the Southern Pacific and the Morgan Line was an important factor in that competition?

Mr. STUBBS: I should think so; yes, sir.

Mr. KELLOGG: And you represented that line?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And in those meetings that you had, traffic meetings, you were opposed by the Union Pacific, were you not, as to the basis of rates west of New York?

Mr. STUBBS: You mean from this territory?

Mr. KELLOGG: No, the territory west of New York and east of Pittsburg and west, even of Pittsburg.

Mr. STUBBS: I do not think so?

Mr. KELLOGG: You do not think so?

Mr. STUBBS: No.

Mr. KELLOGG: Well, prior to the Interstate Commerce Law there was a trans-continental pool, was there not?

Mr. STUBBS: Sometimes.

Mr. KELLOGG: At times there was?

383 Mr. STUBBS: Yes, sir.

Mr. KELLOGG: In which the trans-continental roads took a certain percentage of the business?

Mr. STUBBS: Yes, sir. They divided all that trans-continental business; divided it all.

Mr. KELLOGG: Oh, certainly the trans-continental lines divided it all. The Southern Pacific had a percentage of that business, did it not?

Mr. STUBBS: Well, I suppose when you say the Southern Pacific you mean that Sunset route?

Mr. KELLOGG: I mean the Sunset route, including the Morgan line of steamships.

Mr. STUBBS: I would not be sure about that.

Mr. KELLOGG: Isn't it a fact, Mr. Stubbs—let me refresh your memory.

Mr. STUBBS: I wish you would.

Mr. KELLOGG: Isn't it a fact that at one time the Southern Pacific or the Sunset route had 21 or 23 per cent., and the Union Pacific 30 per cent., and that you insisted in a traffic meeting that the Southern Pacific should have an additional—should have up to 23 per cent., and the Union Pacific opposed it?

Mr. STUBBS: Well, it is too far back for me to remember.

Mr. KELLOGG: Well, you remember the pool, don't you?

Mr. STUBBS: I do not remember that pool that you have in mind. I know that from time to time we had arrangements that we called pools, and I think properly called pools. They were ineffective. We divided the traffic between us.

Mr. KELLOGG: And you had percentages for each line?

Mr. STUBBS: Yes, sir, I think so.

Mr. KELLOGG: And the Southern Pacific participated in that?

Mr. STUBBS: I think so.

Mr. KELLOGG: And had a percentage?

Mr. STUBBS: I think so.

Mr. KELLOGG: And the Union Pacific had a percentage of the trans-continental business?

384 Mr. STUBBS: I think so.

Mr. KELLOGG: Then they were competing for this business, were *you* not?

Mr. STUBBS: Yes.

Mr. KELLOGG: And during those days the Union Pacific and the Southern Pacific, when you were with the Southern Pacific, were sharp competitors for the trans-continental business, were they not?

A. The Union Pacific, was not.

Q. Well it was a competitor for that business?

A. It was seeking that business, but it was a connection of the Southern Pacific.

Q. It was a competitor with the Southern Pacific for that business?

A. It was part of the line that was competing for that.

Q. It was a link in the competition?

A. Yes, a small link.

Q. Well, a thousand miles wasn't it?

A. Yes.

Q. And it had about thirty per cent.——

A. It had carried it 10 2 miles.

Q. It had about thirty per cent. of the trans-continental business?
A. I would not remember it, I cannot remember what it was so as to give any information.
Q. You have some information?
A. Not the slightest.
Q. It had as much as the Southern Pacific?
A. Well I should say that the line made by the Union Pacific and Southern Pacific, as against the Southern Pacific El Paso line would have more, because it has always taken and can to-day and always will take a larger percentage of the total business.
Q. Now during those days the Southern Pacific had its own freight soliciters or commercial agents in all the large cities of the country, didn't it?
A. What days?
Q. Prior to 1901, general agents.
A. It had I think from about 1888, it had an agent in Pittsburg and a general western agent in Chicago, and I think an agent in St. Louis and an agent in Cincinnati.
385 Q. Are you speaking of the Southern Pacific?
A. Yes, sir.
Q. Prior to 1901 that is?
A. Yes.
Q. Prior to 1901 it had a General Agent or a traffic official in New York, didn't it?
A. Well it had in New York and Boston. I thought you were alluding to this territory.
Q. Oh, no.
A. New York, Boston, Philadelphia and Baltimore.
Q. It had one in Cincinnati?
A. Yes.
Q. Chicago?
A. Yes.
Q. Des Moines, Iowa?
A. Not as far as I know.
Q. And Detroit, Michigan?
A. No.
Q. And Kansas City, Missouri?
A. I think not.
Q. At Pittsburg it had?
A. Yes.
Q. Buffalo?
A. I think not.
Q. Portland, Oregon?
A. I think at one time they may have had a passenger agent in Buffalo.
Q. It had one in Portland, Oregon?
A. Yes.
Q. And in San Francisco?
A. Yes.
Q. And in all the important points out West?
A. Yes.
Q. It had one in St. Louis?

A. Yes, I stated that.

Q. Can you furnish us a list of the commercial agents, the freight or passenger agents, whatever you call them, in the large cities prior to the acquisition of the Southern Pacific by the Union Pacific, in the cities off its line of road. I mean the principal cities not connected with its line of road?

A. I think I can give them to you from memory.

Q. You have given some of them?

A. I think I have given you all of them.

Q. Those agents were not at the same time agents of the Union Pacific, were they?

A. No.

Q. They had their agents in the same cities?

A. I don't know as to that, I know they had in some.

Q. They had in Chicago?

A. I think so.

Q. In Pittsburg?

A. I think so.

Q. In New York?

A. Yes.

Q. Boston?

A. Yes.

386 Q. Buffalo?

A. I do not know as to Buffalo.

Q. And in St. Louis?

A. Yes.

Q. And in a good many other places, didn't they, in Portland, Oregon?

A. I think not.

Q. They have no General Agent in Portland?

A. I think the Navigation Company represented them there.

Q. Well, the Navigation Company I mean?

A. Of course, that was its headquarters.

Q. Well now, your men were at that time actively engaged in soliciting business for your line alone, were they not?

A. The Southern Pacific.

Q. Yes?

A. That was part of their business.

Q. That was part of their business?

A. Yes.

Q. Trying to get all they could?

A. Yes, for all its line. Don't forget it had a line from Ogden, west.

Q. I have not forgotten it at all, Mr. Stubbs. Business via water lines also move from the seaboard points via Panama, and the Southern Pacific's line of steamers from Panama to San Francisco, didn't it?

A. I did not know the Southern Pacific had a line of steamers.

Q. I mean the Pacific Mail had a line?

A. Yes.

Q. The Southern Pacific owns the control of the stock, doesn't it?

A. I have understood that it owns fifty-one per cent. of the stock of the Pacific Mail, but how long it has owned it I don't know.

Q. That was a line over which freight was transported in competition with the other lines, was it not?

A. Yes.

Q. And the Clipper Lines around the Horn?

A. Through the Straits of Magellan.

Q. About what time was it that you became the Traffic Director of the Union Pacific Railroad?

A. I think the appointment dates from July 1st, 1901, but the office did not become organized and effective until perhaps late in 1902, because of my illness. I was very ill.

Q. Since 1903 then you have been Traffic Director of the Union and Southern Pacific and their allied lines?

A. Yes, you might state it to be more accurate, since 1902.

387 Q. Well since 1902, that is near enough. Now you say that you are not a traffic director of the Texas lines, the lines in Texas. The Southern Pacific Company owns the stock and controls through stock ownership, the Texas lines, I believe?

A. Well I do not know the fact.

Q. You understand that to be the fact, don't you?

A. I believe it to be the fact.

Q. I don't think there is any doubt about it. Those lines have separate organizations, have they not?

A. They have.

Q. Mr. E. H. Harriman is President of those lines, isn't he?

A. If you give me the guide, I can answer you. No, he is not.

Q. Well, he is president of the Galveston, Harrisburg & San Antonio?

A. I don't know. Is he Judge?

Mr. LOVETT: Yes.

Mr. SEVERANCE: Judge Lovett is President of one of them.

Mr. KELLOGG:

Q. The Texas & New Orleans Railroad he is president of?

A. Really, I would have to have the books in order to answer that. He is president of some of them.

Q. You understand that the Southern Pacific controls those lines and that they are a part of its system?

A. No, sir, I understand so far as traffic matters are concerned, quite the contrary.

Q. You have charge of the through traffic east and west over those lines from New Orleans to San Francisco, don't you?

Mr. LOVETT: If you wish the record to appear here on that, as a matter of fact the Southern Pacific owns practically all of the stock of the lines in Texas known as the Southern Pacific lines. The railroads are managed, however, by their own organization.

Mr. STUBBS I think it would be a fair answer to say yes to that, although I do not control, except as a connection, the busi-

388 ness that would originate in Texas. I desire simply to give you the facts in the case.

Mr. KELLOGG:

Q. As a system competing for Eastern and Western traffic that goes over those lines from New Orleans each way, you have charge of that through traffic?

A. Practically, but no more than I would have under the conditions such as if the Southern Pacific Company had no ownership in the Texas lines; simply because of my jurisdiction over both ends of the road.

Q. When you are in a meeting considering the question of a through rate from New York to San Francisco, you don't have to wait to call up a man down in San Antonio, Texas, to know whether you shall make it or not, do you?

A. No, I do not make those rates.

Q. Well you have something to do with them?

A. If there was perhaps any dispute in reference to the higher traffic officers, it might come to me.

Q. You generally have charge of the subject of rates and represent all of those lines on that subject?

A. In a general way, so far as they interchange traffic.

Q. Who are your assistant traffic directors?

A. Mr. E. O. McCormick and Mr. Storr.

Q. Mr. B. C. Storr?

A. Mr. B. C. Storr.

Q. They have jurisdiction over the entire systems under your direction?

A. Just as far as mine.

Q. Is their jurisdiction divided between passenger and freight?

A. No.

Q. Does one of them have particular charge of passenger traffic?

A. Well it is my habit to refer passenger matters to Mr. McCormick, because he knows more about it than I do, and I think he knows more than Storr does, but he also handles freight or takes anything that comes up.

Q. Now when you finally organized your Traffic Department, you made a great many changes in the system of the two systems, did you not?

A. Not many.

Q. Well what did you make?

A. The only change that I recall, as resulting from the new
389 control, was that I consolidated the agencies in Chicago, in St. Louis, and in Pittsburg, and in Cincinnati.

Q. Previous to that time in Chicago, Mr. Neimeyer had been your local agent?

A. He was General Western Agent.

Q. What jurisdiction did he have, what was his business?

A. Well he had charge of this territory here, and I think he also exercised supervision over the Cincinnati and Pittsburg officers.

Q. And Detroit?

A. No. There was no Detroit agent, that was established after I came here.

Q. That is prior to your coming here he had this jurisdiction?

A. I think he has it to-day.

Q. Well now to-day he has charge of the Southern and Union Pacific also—the Union Pacific also have an agent here in Chicago, at that time, didn't they?

A. Yes.

Q. And kept a separate office?

A. Not after I had consolidated them.

Q. I mean before that?

A. Yes.

Q. A separate General Agent, and a separate office?

A. Yes.

Q. Separate solicitors of freight, and an entire organization, which was separate?

A. I do not know how many solicitors they had, or I don't know that they had any.

Q. Presumably they would have.

A. I think it is likely.

Q. You consolidated them, and put Mr. Niemeyer at the head?

A. Yes, sir.

Q. So that the two systems only have one Chicago office?

A. Yes.

Q. What is Mr. Niemeyer's business now?

A. I think the same as before. I think that the Cincinnati agency, and the Pittsburg agency report to him, and I think the Detroit agency does.

Q. Well is all the intervening territory what is called his territory.

A. Well I cannot give you that information, but each one of these centers take a certain territory.

390 Q. The intervening territory is covered when necessary by freight solicitors under the jurisdiction of Mr. Niemeyer, or agents of his?

A. Yes.

Q. So that really his jurisdiction extends as far east as Pittsburg?

A. Yes.

Q. And as far north as Detroit, and as far south as the Ohio River?

A. Yes.

Q. And west to the Mississippi?

A. Yes.

Q. Or to Omaha, or as far as Omaha?

A. I think not. I think he don't go west of the Mississippi River.

Q. Now through his agency or his solicitors, they look after and solicit traffic for the two systems, do they not, in competition with other lines?

A. Yes.

Q. There is a certain amount of that traffic that he can route either way he pleases, isn't there?

A. No.

Q. None of it whatever?

A. I think very little, I think it is safe to say no.

Q. Do you wish to be understood as saying that there is no traffic whatever that Mr. Niemeyer can route in any direction at all?

A. I do not say that there is no traffic whatever he cannot change.

Q. Then there must be some?

A. Wait till I have finished my statement. I do not think that Mr. Niemeyer controls the direction of any traffic or any agent that the Southern Pacific has. He must work with the connection, the connection which originates the traffic, dominates and controls the routing of it.

Q. There is a certain amount of traffic that Mr. Niemeyer or his agents soliciting in this territory between here and Pittsburg, or the Mississippi River and Pittsburg can route via either Southern Pacific or Union Pacific?

A. That is where I disagree with you.

Q. You say there is not?

A. I do not think there is any that it is at all important in amount.

Q. Well there is some, isn't there?

A. I would not say that, because I do not know.

Q. You do not know whether there is any?

A. I think it is very doubtful. I think you have a mis-
391 taken idea as to the purpose of these agencies, and as to their influence.

Q. What is his business?

A. I have described it already.

Q. Well what is his business?

A. His business is to represent these lines here in relation to the public, and in relation to the connecting lines, and in every way that we need him.

Q. If the dictating of the route of the traffic is entirely in the hands of the other lines, the connections, why do you need a General Agent in Chicago?

A. To work with the other lines.

Q. To work with the other lines?

A. Yes.

Q. And get traffic from them?

A. Yes.

Q. Does not your solicitor visit the wholesale houses?

A. Yes.

Q. The commercial houses?

A. Yes.

Q. In order to get freight to be shipped by your line?

A. I think not, not originally. I mean to say that they cannot control the routing of any traffic to any extent against the will of the originating line.

Q. I am not stating that; I am asking you if there is not a certain amount of free traffic that your solicitors get from shippers, where the route is either via the Ogden gateway, or via the Southern Pacific?

A. Well I have already answered that question. I believe that if there is any of that traffic that it is very small in its amount. You will have Mr. Niemeyer on the stand, and you can get that information from him.

Q. Well now, these various solicitors of yours, Mr. Niemeyer, who solicits freight to be routed,—they solicit freight to be routed over your line as against the Santa Fe and the Northern Pacific, do they not?

A. Yes.

Q. And they succeed, do they not?

A. Why, I think they are useful, yes.

Q. Then they must get some traffic, which they influence to go over your line, instead of the Santa Fe?

A. I do not mean to say that their influence is not good
392 and effective, but what I wish to be understood as saying is, that it is not conclusive, and that they cannot do it as against the influence of the connecting line, the originating line.

Q. Then if the entire business is in the hands of the originating line, what is the object of your commercial agent soliciting as against the Santa Fe or the Rock Island, or the Northern Pacific?

A. I want to watch the originating line, and see that he treats us right.

Q. That is all you have them for then, as watchers of the originating line?

A. Watchers and solicitors of the originating line, keeping up our connection with them.

Q. Then, according to your views, there is no competition whatever between any line from the east and the coast trade?

A. Well, have I said so?

Q. Is it true, doesn't that follow?

A. Have you asked me that question?

Q. Yes.

A. My answer to that is no.

Q. There is no competition?

A. My answer to that question would be, yes, there is plenty of competition.

Q. There is strong competition between the lines for the transcontinental business, isn't there?

A. Yes.

Q. Don't your agent- participate in that competition?

A. Yes, they assist.

Q. And they are factors in the struggle for business for the Union and Southern Pacific?

A. Yes.

Q. As against the other lines?

A. Yes, competitors of the Southern Pacific.

Q. As against the competitors of the Southern and Union Pacific, but as between the Southern Pacific and the Union Pacific, Mr. Niemeyer is not competing for one, as against the other, is he?

A. Just as much to-day as ever.

Q. Do you mean to say they never were?

A. Yes.

Q. When Mr. Niemeyer was here, representing the Southern Pacific alone, and the Union Pacific had their agent representing the Union Pacific——

A. I will qualify that. He differs in this respect; Mr. Niemeyer has always worked for the Ogden route.

Q. Exclusively?

A. Yes, practically. That is so far *far* as his own in-
393 fluence goes, and his instructions were to do that. If he would—but he would work just as freely with the Rio Grande as he would with the Union Pacific. If he found that he could aid the Union Pacific and the Union Pacific had originated the business, he would work with them; if it was the Rio Grande he would work for them.

Q. He never worked for the New Orleans route?

A. No, sir, I don't believe so. If he did he disobeyed instructions.

Q. His instructions were, prior to 1901, at all times to work the traffic exclusively——

A. From this territory, yes.

Q. That is not the case with the man at Pittsburg, is it?

A. Well, I am not sure about that; I think his instructions were to work either.

Q. To work either?

A. Yes.

Q. But he was working for the Southern Pacific?

A. Yes.

Q. The Union Pacific also had an agent?

A. Yes.

Q. And that man was working for the Union Pacific alone?

A. Yes.

Q. He was not working for the Sunset Route.

A. He was working for the Southern Pacific. I want to correct that statement. You say that man was working for the Union Pacific alone. He could not work for the Union Pacific without working for the Southern Pacific.

Q. He was not working for the Sunset Route via New Orleans?

A. No.

Q. And your man was?

A. Well, incidentally, yes.

Q. Now, there was only one man there?

A. That is right.

Q. That man is not competing with himself, is he?

A. Yes.

Q. He is?

A. He might be. If he found that the lines leading from Pittsburg to New Orleans were working a certain line of traffic, he would help that line. On the contrary, if he found they were working it direct via Chicago or St. Louis over the Union Pacific, he would work that line.

Q. When he was working the Union Pacific he could
394 not be working the Southern Pacific, at the same time, as to the same traffic?

A. No, he could not be effective. He would be simply doing incidentally what the two agents would be doing under like conditions and circumstances.

Q. Except they were not competing—he was not competing with himself?

A. Well, the competition is originated, represented, created, fostered and promoted by the initial line. The influence of the Southern Pacific in this territory, against any of its connections, and the Union Pacific alike would be if exercised against one of its connections in favor of another, disastrous, and the consequences would be very serious.

Q. Will you tell me whether it is true or not——

A. I know what your theory is, and perhaps it is pretty hard to convince you to the contrary, but I am giving you the facts as I see them.

Q. I understand what you are giving me exactly, I think. Will you tell me whether the Pacific lines, the Northern Pacific is competing with the Union and Southern Pacific, and how they do compete for transcontinental business?

A. Why I think so.

Q. How do they do it?

A. In every known way.

Q. Name them, we want to find out?

A. They do it through their officers, they do it through their service, they do it through their soliciting agents, and they do it in a thousand and one ways.

Q. And you do it in the same way as against them?

A. Yes.

Q. You do it yourself by looking after the general traffic, don't you?

A. Yes.

Q. And your assistants do it by looking after the Union and Southern Pacific?

A. Yes.

Q. And your General Freight Agents do it by looking after the Union and Southern Pacific?

A. That is you are speaking now about our connecting with the Northern Pacific.

Q. Yes?

A. Yes.

Q. And your soliciting agents throughout all the United
395 States, where they are after traffic are hustling against the Northern Pacific?

A. I think so.

Q. Now where you have joint agents, joint traffic officials, joint assistant traffic officials, having charge of the Union and Southern Pacific in the same place, will you tell me how they can compete with themselves? If you can, I would like to be enlightened?

A. Well I would not put it that way, that they were competing with themselves. That is the first answer. The second answer is that the Union Pacific is a connection of the Southern Pacific and in many cases and with respect to such territory it is to the interests of the Southern Pacific that the business should move via Ogden over the Union Pacific, because it would get a larger net out of the

rate. Now there may be some exceptions to that with respect to the Pittsburg territory, and territory west.

Q. East you mean?

A. No, west. As to the Atlantic seaboard territory, where the competition is the most rife and most effective, the conditions to-day are just as they always were. They have separate joint agents at New York, separate general agents at Boston, separate general agents at Philadelphia, and I think they have separate general agents at Baltimore, and they work that territory just as independently as they ever did.

Q. Then you don't mean to say that you and your traffic directors and the joint agents who represent the two, are or can be competing with themselves, you don't pretend to say that?

A. I do not see the point of your question.

Q. Oh you don't.

A. I have explained it as best I can, the facts with respect to these agents that we have been talking about. Now if you have a theory of your own, and want to establish it by my testimony, I do not believe that I can go as far as you may want me to.

Q. You did state that the Northern Pacific and the Union and Southern Pacific were competing through the traffic officers,
396 assistant traffic officials as well as General Agents?

A. Now will you let me interrupt you there.

Q. No, you said that, didn't you?

A. I said in that way—— Of course I am not an authority on what the Great Northern and Northern Pacific is doing.

Q. They don't have common traffic officials and common traffic directors and common freight solicitors in certain places, and those particular officers are not competing with each other, are they?

A. Well but you forget a vital fact.

Q. Is that true, or is it not?

A. I will answer it in my own way. You forget the whole fact that the Union Pacific is a connection of the Southern Pacific.

Q. I have not forgotten it at all?

A. I think there cannot possibly be said to be a competition between the Union Pacific and the Southern Pacific for California business.

Q. There never was, was there?

A. According to my theory, no.

Q. Then why did the Union Pacific have thirty per cent. in the pool, and the Southern Pacific twenty-one per cent.?

A. I don't recall what the pool was, but you must remember if there was a pool, that it involved other lines. They had to divide it that way, if that was so.

Q. As to your eastern agents, you say they are competing as actively as ever in New York and Boston?

A. I said so, yes.

Q. If the two lines are not competing, how are they competing?

A. Well possibly you are juggling with words, and I should be more careful in my answer.

Q. No, I am not at all?

A. You said they are competing. What I said was this: That

with respect to the Atlantic seaboard business, that the conditions to-day in the matter of two representatives were the same as before 1901 that you speak of, that the Union Pacific had its general agents there soliciting or working in aid of its connections and watching its connections and the Southern Pacific still had its agents, its general agents there, but the Southern Pacific is the initial
397 line there, while the Union Pacific is not: but even the Union Pacific, all the endeavor of the Union Pacific general agencies in this Atlantic seaboard system, must contribute to the Southern Pacific because they cannot get into California otherwise, and really you might say that the agency was practically joint.

Q. They are practically joint, are they not?

A. They are not, but I say that you might say because in helping their own line, the Union Pacific, they cannot fail to help the Southern Pacific that they are.

Q. I understand your theory?

A. Well my fact you mean.

Q. Then they are competing in this way; that if the Southern Pacific man gets freight in New York, the Southern Pacific gets the whole transportation to San Francisco, does it not, via the Morgan Line and Sunset route?

A. The Southern Pacific, except for that little link, between Galveston and El Paso. The G. H. & S. A. gets it there.

Q. It owns the stock of that line, does it not?

A. I have heard Judge Lovett say that it did.

Q. Then if that is true, the Southern Pacific gets the entire charge does it not, for the haul?

A. Eventually, yes.

Q. If the Union Pacific agent gets it, the Southern Pacific gets the haul from Ogden to San Francisco?

A. That is right.

Q. And the Union Pacific gets 1032 miles from Council Bluffs?

A. It did once, its gets 1003 miles now.

Q. Well you have shortened the line. It is from Council Bluffs to Ogden, isn't that true?

A. Yes.

Q. As to that, there is competition as between the agents, is there?

A. As to that seaboard business, yes. That is there is competition between the agents in so far as the line from New York to San Francisco via Ogden is concerned, and the line from New York via Galveston, and El Paso, but the competition is a line competition. You might draw the Union Pacific agency out of New York I think to-day, and I think it would not affect the volume of business
398 which the Union Pacific gets with respect to this trans-continental traffic.

Q. Why don't you do it then?

A. Well, I may. I have not quite got to that yet.

Q. I suppose the public interest is not considered, it is simply a question of the volume of traffic that the Union and Southern Pacific can get?

A. You have not given me an opportunity to say it yet, but in establishing this general agency in Chicago, and these agencies I

have named, and even in New York, so far as the Union Pacific is concerned, the solicitation of traffic was to my mind a small part of their duties, a small part of it. Now when I established the joint agency here in Chicago, the main reason for doing it——

Mr. MILBURN: For the Southern Pacific?

Mr. STUBBS: For the Southern Pacific. That is before I had anything to do with the Union Pacific. The main reason was that I was over 2000 miles away from Chicago and the headquarters of all our competitors and of our connections practically, were at Chicago. I had no means of communication with them, except by letter or by wire. I wanted someone here that belonged to me or to my railroad company to have his finger upon the traffic pulse and the management and doings of our connections, and our competitors. Now that was primarily the reason for establishing the joint agency in Chicago.

Q. You wanted somebody who owed allegience to the Southern Pacific alone?

A. That is to be eyes and ears for me. I will give it to you in full, the facts. I sent him here for the purpose of intercourse with the officers of these lines that could not be very readily, or as fully accomplished in any other way. Furthermore I sent him here, or established the agency here as an advertising agency. I did not propose to be the tail to the Union Pacific kite, or any other company's kite. I wanted the Southern Pacific's sign up here.

Q. That has been taken down?

A. No, it has not.

Q. It has been consolidated?

399 A. Yes, you may say so, but the conditions then were very different from the conditions to-day. California was, comparatively speaking, unknown. It had not been advertised, the advertisement had not been as fully distributed. I wanted this agency here to distribute our advertising matter. I could not trust our connections to do that as fully, and we were spending and had spent millions of dollars in advertising California. Now these items, and these considerations that I have mentioned to you were not subordinate to the matter of soliciting business, but they were principal, and the solicitation of busines was subordinate to them.

Mr. KELLOGG:

Q. In other words you did not propose to leave the Union Pacific, as merely a connecting line, to represent you in the East and in Chicago?

A. In those days, yes.

Q. You could get freight from the Denver & Rio Grande and its connections, as well as the Union Pacific could you not?

A. Why, we did get it, and we do get it to-day.

Q. Therefore you thought it was for the interest of the Southern Pacific to have a separate representative in Chicago?

A. I did.

Q. But you think that necessity has passed away?

A. Why I think so, yes.

Q. And that the Union and Southern Pacific, now together——

A. Not altogether on account of the joinder of interests, but the changed conditions.

Q. Now that necessity seems to have passed away at the same time the Union Pacific got control of the Southern Pacific stock, isn't that true?

A. Well it would be apparently so, but no, as a matter of fact. No, the joinder of agencies would have nothing to do with it to-day.

Q. Let me ask you. Did you prior to the acquisition of the stock of the Union and Southern Pacific have one single joint agency in any of these large cities for soliciting business?

A. Not at the time, but once we did join with them in New York City.

400 Q. You did not have such at that time, and had not for several years before?

A. No, but we had a joint agency with the Union Pacific for many years in New York.

Q. But you had not for many years before this, many years, before 1901?

A. For the reasons that I have stated to you, we thought it best to establish our independent agencies.

Q. It did not have one common traffic official or officer.

A. I do not know of one.

Q. It now has a common President, Vice President, Traffic officials and assistant traffic officials, and directors of maintenance and operation, has it not?

A. I will answer that in detail.

Q. No. Have I named any officials that are not common?

A. What the Commission wants are the facts.

Q. Certainly.

A. Well I will give the Commission the facts as I understand them.

Q. All right sir.

A. I understand that Mr. Harriman is President of each one of those lines to-day. That was not true when I came to Chicago.

Q. Well it is now.

A. I understand that the director of purchases and supplies is the same for all these lines; that the director of maintenance and operation, Mr. Kruttschmitt, is the same, and that the Traffic Director is the same, the officers here. I also understand that each one of these companies the Navigation Company, the Short Line, the Union Pacific and the Southern Pacific, as well as the Morgan line and the Louisiana and Western line, have their separate set of operating officers having their headquarters respectively at San Francisco, at Portland, at Salt Lake City, at Omaha and at New Orleans and that those officers, separate officers are charged with the immediate and direct management of those lines both as to operation and as to traffic and so far as the traffic is concerned that my relation to them is only supervisory.

401 Q. Now all of these freight agents and traffic officials report to you, don't they?

A. The general officers do.

Q. Mr. Munroe, who is the Traffic Manager of the Union Pacific, reports to you?

A. Yes.

Q. How far west does his jurisdiction go?

A. Well the Union Pacific road runs to Ogden.

Q. Where does his jurisdiction end, at Ogden, or at Green River?

A. Green River, I believe.

Q. Well now, from Green River west Mr. Bancroft has charge of operations?

A. Well I am not so sure. I think it will be found that Mr. Reeves, who is General Freight Agent of the Short Line, also handles the line from Green River to Ogden, subject to Mr. Munroe and he has the immediate management of it.

Q. That is Mr. Munroe's jurisdiction extends to Green River?

A. Well did I say that now? You don't want to try to make me say something I did not. I would not be certain about it. Mr. Munroe will be on the stand, and he can tell you.

Q. Who is the traffic official of the Short Line?

A. Mr. John A. Reeves is the General Freight Agent.

Q. Well now, John A. Reeves, his jurisdiction extends from Green River on the Union Pacific to where?

A. Well it extends from Salt Lake City to Butte, or to Silver Bow, and it extends west to Huntington and it extends west also on the Central Pacific line to Sparks.

Q. That is the Southern Pacific line, isn't it?

A. Yes.

Q. Then this freight agent——

A. Now let me explain that.

Q. All right, explain it.

A. His jurisdiction over the Central Pacific is subordinate to Mr. H. H. Jones, who is freight traffic Manager of the Southern Pacific with headquarters at San Francisco.

Q. And that man is subject to your jurisdiction?

A. Yes.

Q. Now then what is this man's name at Salt Lake?

A. Mr. Reeves.

Q. And he has jurisdiction over part of the Union Pacific
402 and of the Short line, and of the Southern Pacific as far west as Sparks?

A. Sparks.

Q. How far west of Ogden is that?

A. A little over 600 miles.

Q. In the written instructions given him, was it stated that as to the Southern Pacific line he was subject to—what was the other man's name?

A. You mean Mr. Jones.

Q. Mr. Jones.

A. If I recollect right his circular of appointment is approved by Mr. Jones.

Q. Who issued that circular of appointment, you?

A. I think so.

Q. Will you get us the circulars appointing, or changing the ap-

pointments of all of the freight agents and traffic officials, so we can see exactly what they contain?

A. Well, I think I can get you all that have been publishd since I have been here. That is what you want?

Q. Yes. Now this freight agent at Portland then has charge of the Southern Pacific line in Oregon and of the Navigation line in Oregon, has he not?

A. Yes, but he is subject to the Southern Pacific Freight Traffic Manager with respect to the lines in Oregon.

Q. He is subject to you?

A. Yes.

Q. So that ultimately you get back to the same head?

A. That is right.

Q. And the systems are divided up, the Union Pacific and Southern Pacific, irrespective of the mileage owned by each corporation, are they not, in that way?

A. You mean that they have common officers?

Q. Common freight agents over certain parts of their lines irrespective of the mileage owned by each corporation?

A. Well, if I understand your question yes.

Q. So this separate organization laps over on to the Southern Pacific line and all of its heads in you as the common traffic official of both lines?

A. That is right.

Q. All of these general freight agents then of these various lines report to you?

A. Where there is not a freight traffic manager, or a higher local officer, yes.

403 Q. That is, the highest traffic officer of each line reports to you?

A. Yes, that is right.

Q. Now who is the freight agent in charge of the Union Pacific,—of the Oregon Railway and Navigation and the Southern Pacific line in Oregon?

A. R. B. Miller is the general freight agent, of the Oregon Railway & Navigation Company, and also of the Southern Pacific lines in Oregon, but with respect to the latter he is subject to H. H. Jones, who is Freight Traffic Manager of the Southern Pacific Compan*ie*'s Pacific system.

Q. Who appointed him?

A. I did.

Q. You appointed him for the Southern Pacific, and for the Navigation Company, both of them?

A. Well I think I was wrong in saying that I appointed him as general freight agent of the O. R. & N. I think Mr. Campbell appointed him General freight agent of the O. R. & N. but I put him in charge of the Southern Pacific lines in Oregon.

Q. Who has charge of the steamship line from Portland to San Francisco?

A. I think Mr. Sherine has.

Q. He also has charge of all the other steamship lines?

A. Well he is practically the managing officer of all our steamship lines on the Pacific.

Q. Both Union and Southern Pacific?

A. Yes, that is my understanding.

Q. So that your steamship lines are under one general management?

A. Practically.

Q. Now Mr. Stubbs do you remember the Graham case pending in the United States Court in New York against the O. R. & N.

A. Yes, I remember the case, but I don't remember the facts of the case. I was very remotely connected with it. I believe I was put on the stand with respect to some statement that Graham made as to advice that I had given him in a letter as to what the divisions of the trans-Pacific rates were, but as to the dispute between Graham and our people, in its detail, I know very little about it.

Q. Did you testify in that case, Mr. Stubbs, as a witness?

A. According to my recollection, as to this particular fact.

404 Q. Did you say as follows: "My relations with Mr. Graham, so far as I can recall, and I believe I do recall them, were wholly with respect to his interests in the Coos Bay region. I dealt with him in the movement of freight by way of our line, that is the Southern Pacific line to Roseburg. I could hardly be any authority or advisor to him with respect to contracts for the steamship connection with the Oregon Railway & Navigation Company in the way of giving him information or advice, because that line was directly opposed to the interests I represented and a competitor to the lines via San Francisco.

A. Possibly I said that.

Q. That was before the time of the Union Southern Pacific joint control that is, that you were referring to?

A. Yes.

Q. Did you also testify "I would undertake to say that it is very unlikely that he would have asked me about them or either of them. The relations of the Southern Pacific with the Pacific Mail, and the relations of the O. R. & N. with the Dodwell Lines, because as I have explained, the two lines were diametrically opposed to each other, and a competing vigorously everyday in the year."

A. I think so.

Q. You testified to that?

A. I think so.

Q. That is that the Oregon Railway & Navigation Company in connection with the Doddwell Line and the Southern Pacific and its line were competing vigorously every day in the year.

A. That is for trans Pacific business.

Q. For trans Pacific business.

A. Yes, sir, and they are doing it to-day.

Q. Then they are competitors are they?

A. In that sense yes.

Q. On the trans Pacific business?

A. In that sense, yes.

Q. From the Pacific coast points to the Atlantic Coast points?

A. The Union Pacific participates in both lines, don't forget that.

Q. The Union Pacific does not participate in business coming off the Doddwell Line, does it?

405 Whereupon the further hearing of said matter was adjourned till two o'clock P. M. the same day, January 9th, 1907.

After Recess.

2 O'CLOCK P. M.

Mr. J. C. STUBBS resumed the stand.

Mr. KELLOGG: Mr. Stubbs, I show you a list of your joint agents, freight and passenger, so far as named in various places, and ask you if that is substantially correct? (Presenting paper to witness.) If you desire, you can check it over during the afternoon and hand it in later, unless you know off-hand.

Com'r HARLAN: You have not named the roads, Mr. Kellogg?

Mr. KELLOGG: The Union Pacific and Southern Pacific; a list of joint agents in various places.

Mr. STUBBS (after examining list): I think that is practically correct, as I read it over. I do not know who these traveling agents are. I do not appoint them.

Mr. KELLOGG: Well, subject to correction, you are willing to say that is substantially correct?

Mr. STUBBS: Yes, I am willing to say it is substantially correct.

Mr. KELLOGG: Prior to the consolidation in 1901 of the management of the two companies, neither the Southern Pacific nor the Union Pacific had a joint agent in either of those places, did they?

Mr. STUBBS: I think that is true.

Mr. KELLOGG: Mr. Stubbs, if there has been any particular competition between those lines since 1901, it has not evidenced itself in the reduction of rates, has it?

Mr. STUBBS: I think that whatever competition there was between those lines before 1901 and now will not be evidenced by differences in rates.

406 Mr. KELLOGG: You would not now permit the Southern Pacific Company to cut the rate—I mean, even by a published tariff—from the Atlantic Seaboard to the Pacific Coast for the purpose of taking freight away from the Union Pacific line, would you?

Mr. STUBBS: I would permit it as much as I would permit it for the purpose of taking the freight away from the New York Central or the Northwestern.

Mr. KELLOGG: Well, would you permit it?

Mr. STUBBS: To-day?

Mr. KELLOGG: Yes, sir.

Mr. STUBBS: I think not with respect to either one of the lines.

Mr. KELLOGG: You would not permit it to take business away from the Union Pacific?

Mr. STUBBS: Or any other——

Mr. KELLOGG (interrupting): Well, I have asked you as to the Union Pacific?

Mr. STUBBS: I will say yes, and add to it, or any other company.

Mr. KELLOGG: That is, you would permit it? You mean you would not?

Mr. STUBBS: I mean I would affirm your statement.

Mr. KELLOGG: And you would not permit the Union Pacific to cut the rates for the purpose of taking the business away from the Southern Pacific, would you?

Mr. STUBBS: I would not in the same sense that previous to 1901 I would not have permitted the Southern Pacific to cut the rates to take business away from the Union Pacific.

Mr. KELLOGG: Now, Mr. Stubbs, did you not used to cut the rate to and from California points by the Southern Pacific for the sake of taking business away from the Union Pacific and other lines?

Mr. STUBBS: No.

Mr. KELLOGG: As a matter of fact, in 1896, did you not have a merchandise rate to Portland from New England and New York points which you reduced 5 cents a hundred for the purpose of getting the business below the other roads?

Mr. STUBBS: I think not. I do not recall it.

407 Mr. KELLOGG: You do not recall it?

Mr. STUBBS: No, sir.

Mr. KELLOGG: You will not swear that it was not so?

Mr. STUBBS: To the best of my knowledge and belief, yes, sir.

Mr. KELLOGG: Will you say you never did cut the rates on the Southern Pacific for the sake of taking business away from any other line?

Mr. STUBBS: Well, it has been so long since it was done it has passed out of my mind, if it has been done.

Mr. KELLOGG: Well, how long?

Mr. STUBBS: Well, a great many years.

Mr. KELLOGG: Well, how many is a great many years?

Mr. STUBBS: It might be seventeen, fifteen or twenty; I cannot tell which.

Mr. KELLOGG: Say, seven years ago, before the acquisition of the Southern Pacific by the Union Pacific, or ten years ago, did you not at times reduce the rate or cut the rate, whichever you call it, on the Southern Pacific or Sunset Route for the purpose of taking business away from other lines?

Mr. STUBBS: I think not.

Mr. KELLOGG: You think you never did?

Mr. STUBBS: I may have done it. When we first opened the Sunset Route along in 1883, I think the line was opened as a differential line.

Mr. KELLOGG: But after that you have no recollection of ever having done that?

Mr. STUBBS: I have not.

Mr. KELLOGG: You always maintained the rate?

Mr. STUBBS: I think so.

Mr. KELLOGG: The published tariff rate?

Mr. STUBBS: Yes, sir. Of course, you mean by your questions to ask me whether we initiated the cut.

Mr. KELLOGG: Oh, no—whether you initiated it or not or made it with somebody else.

Mr. STUBBS: I mean the line initiating it.

Mr. KELLOGG: No, I mean the line itself or with somebody else.

408 Mr. STUBBS: Tell me what you do mean?

Mr. KELLOGG: Were the rates cut, your proportion or the whole on the Southern Pacific Sunset Route for the purpose of taking California business to or from California from any other line?

Mr. STUBBS: I think not.

Mr. KELLOGG: Never?

Mr. STUBBS: In 1886 there was a war of rates instituted by the Santa Fe, the management that was then in charge of the Santa Fe that involved all of the lines to California, both by the Southern and the Union Pacific routes, and I think pretty much all of the lines west of Chicago. Since that time I do not remember any cuts in rates.

Mr. KELLOGG: No cuts since 1886?

Mr. STUBBS: As against another line. The rates have been equal by all roads.

Mr. KELLOGG: And always maintained?

Mr. STUBBS: Well, I think so; measurably so.

Mr. KELLOGG: Not entirely maintained?

Mr. STUBBS: I could not answer as to that.

Mr. KELLOGG: Well, since 1901, all or practically all, or at least a great majority of the rates of the transcontinental freight from this territory you named east of the Mississippi River, as covered by transcontinental freight tariff have been advanced, have they not? (Referring to tariff.)

Mr. STUBBS: As to east bound rates?

Mr. KELLOGG: As to west bound rates.

Mr. STUBBS: Wait a minute; well, no—as to west bound rates, I think in February, 1904, was it not, there was an advance undertaken, but for the most part it did not last very long; that is, the general scale was advanced by all routes.

Mr. KELLOGG: Are not the rates on a large number of commodities from the territory east of the Mississippi River, known as the Trans-Continental Freight Bureau Territory, covered by that tariff, ten cents a hundred pounds higher than they were in 1901?

Mr. STUBBS: Well, I can only repeat my former answer

409 that in 1893 or 1894—I do not remember the date——

Mr. KELLOGG: You mean 1903 or 1904?

Mr. STUBBS: Yes, 1903 or 1904, that all the trans-continental lines, in view of the increased expense, endeavored to secure an advance, I do not know, but I think generally an advance of 12½ per cent., and tariffs were published showing that advance in rates, but my recollection is that here and there immediately the advance was recalled in respect to particular articles or particular commodities, as they were found to pinch and could not be maintained. How much of that advance has been maintained until to-day and is now in force, I am unable to say.

Mr. KELLOGG: I show you the west bound Trans-continental Freight Bureau tariff, including all the lines of railroad running west of the Mississippi River, for all business from points east of

there to the Pacific Coast, with the old rate in red and the present rate in black. This has been checked up by the Commission and I believe it to be substantially correct, and I wish to know if that corresponds with your recollection of the advance?

Mr. STUBBS: I do now know. I was not in the Convention, was not in the meeting or association, or Freight Bureau at the time these rates were decided upon.

Mr. MILBURN: What date did you say, Mr. Kellogg?

Mr. KELLOGG: About 1903, I think.

Mr. STUBBS: I could not answer that. I was going to answer that the tariffs on file with the Commission will show the fact to the Commission. You do not need my testimony to affirm or deny it.

Mr. KELLOGG: Well, the rates generally on the Union Pacific Road are substantially as high to-day as they were in 1901, are they not?

Mr. STUBBS: I do not know anything about what the local rates are, what changes have been made. I do not recall any material change, except a recent reduction in the rates to Utah common points, which was very material and I think some reductions with
410 respect to Idaho points, points east of Huntington, on the Short Line. I cannot tell you as to what they were.

Mr. KELLOGG: Well, your report——

Mr. STUBBS (interrupting): I believe the rates to Montana common points have also been reduced.

Mr. KELLOGG: On your line of road?

Mr. STUBBS: Yes, sir; and I believe on other lines of road also.

Mr. KELLOGG: The reports which you file and publish show that the rate per ton per mile all over the Union Pacific line in 1896 was 9.5 cents—no, 95/100 of a cent per ton per mile and in 1896 it was 92/100 of a cent—substantially the same. That is a pretty fair indication that the rates since 1901 have not been reduced much, is it not?

Mr. STUBBS: Well, it does not necessarily follow. There might be a change in the movement of the traffic that would work a slight difference in the average percentage.

Mr. KELLOGG: But it is a fair indication generally, is it not?

Mr. STUBBS: I should say that any material reduction on a considerable volume of traffic for a considerable period during the year would manifest itself in the average rate per ton per mile.

Mr. KELLOGG: Yes.

Mr. STUBBS: And yet month by month, if you will allow me to explain—month by month you will find on different commodities, changes in rates, in the rate per ton per mile, both advances and reductions, which are not the result of any change whatsoever in the rates, but a change in the direction or length of the haul, the average length of the haul.

Mr. KELLOGG: Oh, yes.

Mr. STUBBS: Well, it is quite material.

Mr. KELLOGG: I notice that in spite of the rate per ton per mile being substantially the same as it was ten years ago, the earnings per mile of road have nearly doubled.

Mr. STUBBS: Yes, there has been a very large increase and a very large increase in expense too.

411 Mr. KELLOGG: And the earnings per mile of road have nearly doubled?

Mr. STUBBS: I cannot answer as to that. I presume the reports will show it.

Mr. KELLOGG: You say there has been a very large expense, increase in expense since then?

Mr. STUBBS: I think so.

Mr. KELLOGG: The ratio to total gross earnings of operating expenses—the percentage of operating expenses—to total gross earnings are much less to-day than they were in 1896, are they not?

Mr. STUBBS: I do not know.

Mr. KELLOGG: That is what your report shows.

Mr. STUBBS: I do not make these reports.

Mr. KELLOGG: You have a general familiarity with the traffic of the System?

Mr. STUBBS: I do not pay much attention to those questions of accounting.

Mr. KELLOGG (referring to memorandum): Well, I wish to call your attention to the fact that your report shows that your rate per ton per mile is substantially the same on the Union Pacific and that the net earnings per mile have increased from $2,896 to $5,962 per mile of road.

Mr. STUBBS: Well, I will not dispute it.

Mr. KELLOGG: Very well; and that the percentage of operating expenses to gross earnings were practically 62 per cent. in 1896 and 55 at the present time. Do you think that is substantially correct?

Mr. STUBBS: I will not dispute it. I cannot say. I would have to take our annual reports and look at them. I do not carry those things in my mind.

Mr. KELLOGG (referring to memorandum): And that your earnings, that the Union Pacific Company has a large surplus from operating, exceeding seven million dollars after paying ten per cent. Do you know about that?

Mr. STUBBS: No, except what the annual report says.

Mr. KELLOGG: Well, you do not doubt that fact, do you?

412 This statement is made up by your Auditor or Comptroller.

Mr. STUBBS: I do not doubt it. If you have his statement, why do you want my testimony?

Mr. KELLOGG: Well, I want to ask you a question that follows it. That being the case, do you consider the trans-continental rates which are competitive between those various lines, reasonable rates, or are they pretty high?

Mr. STUBBS: I think they are reasonable.

Mr. KELLOGG: And you think the competition is just as keen to-day on the question of rates between the Southern Pacific and the Union Pacific as it ever was?

Mr. STUBBS: As it ever was. I not only thing it; I know it.

Mr. KELLOGG: And, being at the head of both companies, you have a very good opportunity to know it?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Now, as to the Southern Pacific, its rate per ton per mile is just as high to-day as it was—substantially as high as it was in 1896. Is not that true?

Mr. STUBBS: I think so.

Mr. KELLOGG: And generally its rates are as high as they were at that time?

Mr STUBBS: I think so.

Mr. KELLOGG: And its earnings, both net and gross, have more than doubled?

Mr. STUBBS: I think that is quite likely.

Mr. KELLOGG: And its operating expenses to its gross earnings have decreased?

Mr. STUBBS: I do not know as to that.

Mr. KELLOGG: Well, that is what the report shows.

Mr. STUBBS: Well, that is not my side of the account.

Mr. KELLOGG: You have more to do with handling the traffic than making the rates. You do not think, in view of that fact, that the rates on the Southern Pacific System are a little high?

Mr. STUBBS: No.

Mr. KELLOGG: You think they are very reasonable?

413 Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Well, do you think they are low?

Mr. STUBBS: I think they are fair.

Mr. KELLOGG: And you think the competition on that transcontinental business, in view of that fact, is just as keen between the Union Pacific and Southern Pacific as it ever was?

Mr. STUBBS: As I said, I know it.

Mr. KELLOGG: That also in view of the fact that they have the same traffic officials, the same president and the same ownership?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Well, do you mean by that that there never was any competition?

Mr. STUBBS: Not to any considerable extent.

Mr. KELLOGG: You have testified heretofore that there was.

Mr. STUBBS: Well, I said whatever competition there was has continued. I have repeatedly stated to you that the Union Pacific was a connection of the Southern Pacific. Now, the Union Pacific had no authority, no right, and could not in any way reduce the rates, except secretly, and I have no knowledge of it having done that in connection with the Southern Pacific.

Mr. KELLOGG: It could reduce on its own?

Mr. STUBBS: I supposed we were talking in the main about the interchangeable business.

Mr. KELLOGG: In connection with its connection to the east it could reduce its proportion of the rate, leaving your proportion the same, could it not?

Mr. STUBBS: It could not do that without every one of its rivals, the Santa Fe, the "Q", the Rock Island and the Missouri Pacific and Rio Grande doing the same thing.

Mr. KELLOGG: Certainly.

Mr. STUBBS: What would be the object of their doing it under those conditions, and that without any combination?

Mr. KELLOGG: What is the object of any competing line ever reducing rates?

414 Mr. STUBBS: Well, I think that wherever there is such an act it is with the object of getting a larger share of the business.

Mr. KELLOGG: That is all.

Mr. STUBBS: Not with any particular idea of benefiting themselves permanently.

Mr. KELLOGG: That is all, Mr. Stubbs.

Com'r CLEMENTS: Mr. Stubbs, what express company operates over the systems of road you represent, the Southern Pacific and Union Pacific and their lines?

Mr. STUBBS: The Wells Fargo & Company express operate over the Southern Pacific. I think over the Union Pacific, the Navigation Company and the Short Line the Pacific Express Company operates.

Com'r CLEMENTS: Do you know whether the Southern Pacific owns any stock of the Wells Fargo Company?

Mr. STUBBS: I do not know of my own knowledge. I have understood that either the Southern Pacific Company or some of the people that are represented or interested in the Southern Pacific Company own stock in the Wells Fargo.

Mr. LOVETT: It owns about a million and a half out of about eight millions. That is the latest information I have.

Com'r CLEMENTS: Can you give the same information as to the Pacific Express Company?

Mr. STUBBS: I cannot. I understand that the Union Pacific has an interest in the Pacific Express Company.

Mr. LOVETT: 40 per cent.

Com'r CLEMENTS: Do you know what the stock is?

Mr. LOVETT: Six millions. The Union Pacific owns 40 per cent. and the Gould Lines 60 per cent.

Com'r CLEMENTS: What is the capital stock of the Wells Fargo?

Mr. LOVETT: Eight millions.

Com'r LANE: Is there any competition between the Southern Pacific and the Nrothern Pacific for San Francisco business?

415 Mr. STUBBS: Well, somewhat in the same sense that there is with the Union Pacific. The Northern Pacific connects with the Southern Pacific at Portland and they interchange traffic. I think the Northern Pacific also publishes through rates in connection with the Oregon Railway & Navigation Company Steamship Line from Portland down and also from Seattle. I cannot [illegible] exact as to that, but whatever the amount of business they [illegible] that way, it is infinitesimal, I think. I mean in connection with the steamship line.

Com'r LANE: The Great Northern, does that have any influence upon rates or competition for San Francisco business with the Southern Pacific?

Mr. STUBBS: I believe the Great Northern connects with the Navigation Company at Spokane and works into California over the

Southern Pacific—over the Navigation Company and Southern Pacific via Portland. I would not be sure about that, but I think they have that route.

Com'r LANE: Then, the Great Northern and Northern Pacific, the Union Pacific and Central, the Santa Fe and Southern Pacific from New Orleans, the Sunset Route, are all competitors for California business.

Mr. STUBBS: Yes, sir; measurably.

Com'r LANE: Do you think that there is just as much competition today between the Sunset Route and the Union Pacific Route as there ever has been?

Mr. STUBBS: I know it.

Com'r LANE: Is there just as much competition today between the Sunset and the Union Pacific and the two northern routes, the Great Northern and Northern Pacific as there ever has been?

Mr. STUBBS: I think so. I think so. If there is any mitigation of that competition, it is such probably, only such as may be worked by the amendments to the law. You cannot reduce a rate now without 30 days' notice. Before you could do it in 3 days.

Com'r LANE: Do you think, assuming there was a combi-
416 nation in ownership between the Northern Pacific and Great Northern, that that would affect in any way the competition in rates for California business?

Mr. STUBBS: I do not think it would have the slightest effect.

Com'r LANE: You say yourself that the giving to you of the traffic direction of the Southern Pacific and Union Pacific had no effect upon that competition?

Mr. STUBBS: I think so.

Com'r LANE: The competition of those two routes. Suppose also you had the traffic direction of the Santa Fe, Great Northern and the Northern Pacific, would that affect it?

Mr. STUBBS: Not under present conditions.

Com'r LANE: They would be all as free to compete as they are now?

Mr. STUBBS: I think so.

Com'r LANE: Then, it is your idea that the fact that these lines run parallel to each other and are under opposing ownership does not materially affect the rate or competition?

Mr. STUBBS: It is not likely to under present conditions. It might do so at the initial stage when the practice in the past was—it is my experience that if a new line was opened it seemed to be the idea of the traffic manager to ring the bell and raise the flag and reduce the rates. But he has got out of that, considering his own self-interest, and very soon, or within a reasonable time, so far as the general business was concerned, the rates were the same.

Com'r LANE: They have come down to a condition of equilibrium?

Mr. STUBBS: Yes, sir. There is more or less influence on rates. The most effective influence on rates is the needs of the traffic; that is the development of it, and that is manifested to the carrier generally through the reports of its agents coming in contact with the shippers,

producers and merchants, or by direct intervention or petition or showing on the part of the merchants or producers, and when that showing is made, of course there is an attitude of resistance
417 on the part of the carrier, but sooner or later—but more often sooner than later—the carriers recognize in some measure the demands of the petitioner, and the rates are reduced, but instead of being reduced by the individual carrier, they are usually reduced by the whole bunch at once, that is, I mean by all the carriers.

Com'r LANE: Suppose you were also the director of the Denver & Rio Grande, that connects with the Southern Pacific at Ogden, would that make any difference in the direction of the freight?

Mr. STUBBS: Well, If I were a director of the Rio Grande, I presume that would only be in the event that the ownership or control of the lines were the same, and of course in that event it would be a question as to whether there should be a preference of interchange on the part of, we will say, the Southern Pacific, in favor of one or the other of these two connections. So far as the Union Pacific is concerned, from the very beginning, because of the shortness of its haul, there has always been a preference in favor of the Union Pacific. That preference has been limited, however, to very small tonnage, which we call "uncontrolled business."

Com'r LANE: We have testimony before us, taken — New York to the effect that the acquisition by the Union Pacific of the Southern Pacific or *vice versa* affected materially the Denver & Rio Grande and its Ogden connection with the Central Pacific, and that that made necessary the establishment or was a prime factor that made necessary the esrablishmout of the Western Pacific to San Francisco.

Mr. STUBBS: I do not think you believed it.

Com'r LANE: You do not think that is so?

Mr. STUBBS: Yes, I will say I do not think that is so. As a matter of fact, the Southern Pacific works preferentially with the Union Pacific, but notwithstanding that for the last four years, on the average for the last four years,—and you cannot equalize interchange business except by an average——

Com'r CLEMENTS: Except by what?

Mr. STUBBS: By an average: For the last four years the
418 Southern Pacific at Ogden has given the Rio Grande as large a per cent. of the business it had to offer as the Rio Grande has given to the Southern Pacific.

Com'r LANE: How could the Rio Grande get to San Francisco except over the Southern Pacific?

Mr. STUBBS: It cannot.

Com'r LANE: So, it gave you all it had going to San Francisco?

Mr. STUBBS: Yes, sir.

Com'r LANE: And you gave it back an equivalent to the amount it gave you?

Mr. STUBBS: Yes, sir; that is what I mean.

Mr. KELLOGG: An equivalent in tonnage?

Mr. STUBBS: Yes, sir; an equivalent in tonnage. I will frankly say to you that I was surprised when the showing came to me that way. That is also true of passengers. In other words, the Rio

Grande, according to the custom governing the interchange between connecting lines has not a thing to complain of as to the Southern Pacific, and if they found their building of the Western Pacific upon the suspicion—because it cannot be more than a suspicion, the facts being as I have stated them—that they were not getting as much tonnage as they were entitled to under the rules from the Southern Pacific, why, then, they have been misled very materially.

Mr. KELLOGG: Has there been a great increase in tonnage that has been delivered to the Union Pacific?

Mr. STUBBS: There has been a very material—according to my recollection—increase on the gross tonnage moving both east and west bound via Ogden, but the increase has been almost wholly on the Union Pacific and Southern Pacific.

Mr. KELLOGG: Yes, there has been no increase of tonnage delivered to the Denver & Rio Grande since 1901, has there?

Mr. STUBBS: There has been no material increase in the tonnage delivered by the Rio Grande to the Southern Pacific nor by the Southern Pacific delivered to the Rio Grande.

419 Mr. KELLOGG: One of the reasons would naturally be because you gave preference to the Union Pacific as to the unconsigned traffic, did you not?

Mr. STUBBS: It might have had some influence, but the facts are as I state them, and the Commission can judge. I do not think anything the Southern Pacific Company has done could have worked that result which I have stated to you; but, on the other hand, or in order to be perfectly plain and frank, for there is nothing to conceal in the matter, the Southern Pacific Company has worked preferentially with the Union Pacific as against the Rio Grande and I personally told Mr. Gould just to the extent and the degree to which we would do it.

Mr. KELLOGG: One question I did not think to ask you. Did you wish to ask a question (addressing Commissioner Clements)?

Com'r CLEMENTS: Yes, but I will not interrupt you.

Mr. KELLOGG: On business to the Atlantic Seaboard and points east of that line near Pittsburg, the rates are the same to certain Colorado points via the Texas ports as they are via all rail, are they not?

Mr. STUBBS: No, sir; I think not. I think, so far as Colorado and Texas are concerned—I think that is a differential territory.

Mr. KELLOGG: That the rates are less by the southern routes?

Mr. STUBBS: By the South Atlantic as well as by the Gulf ports.

Mr. KELLOGG: That is, that business moves from the Atlantic ports via Galveston and rail from there to Colorado points at less rates than by rail all the way?

Mr. STUBBS: I think so.

Mr. KELLOGG: So that business by the Sunset Route is in competition with the lines running west from New York and Pittsburg to the Colorado points?

Mr. STUBBS: Yes, sir; the Union Pacific works business that way in connection with the Savannah route, taking it from the Savannah route at Kansas City?

420 Mr. KELLOGG: And as to that business the Union Pacific does not have to have the Southern Pacific as a connection?

Mr. STUBBS: No.

Mr. KELLOGG: So that the Southern Pacific and Union Pacific are naturally competitive as to that business?

Mr. STUBBS: Well, they, as a matter of fact—the way the business moves, you may say there is a measure of competition there, but it would not necessarily follow because the Union Pacific can make a line via Galveston as well as the other.

Mr. KELLOGG: But it can also make a line via Kansas City and Council Bluffs.

Mr. STUBBS: It has a line that way.

Mr. KELLOGG: And using that line to Colorado points, it does compete with the Southern Pacific via New Orleans?

Mr. STUBBS: Today precisely as it always has done.

Mr. KELLOGG: That is all.

Com'r CLEMENTS: Mr. Stubbs, you said a moment ago that where a new line is built, sometimes it starts into competition by reducing rates, but that as a general rule it settles down to where, if a reduction is made by one, it is made by the whole bunch.

Mr. STUBBS: Well, I was speaking with respect to the general experience in the past.

Com'r CLEMENTS: That is what I understood.

Mr. STUBBS: That has been my experience.

Com'r CLEMENTS: That is the way I understood you.

Mr. STUBBS: I had no particular case in mind.

Com'r CLEMENTS: That, you state, is the general practice?

Mr. STUBBS: It has been in the past. I think it will grow more and more into disuse, the opening of the new line in that way. The reason is that it does just as much harm to the community at large as it does to the railroads or carriers. Instability of rates is as damaging to the public as it is to the carrier, and far more so.

421 Com'r CLEMENTS: I suppose the thing that keeps a single road from doing that is the knowledge of the fact that the others will follow suit and do the same thing, so that no permanent increase in tonnage is gained by it.

Mr. STUBBS: Yes, that has its influence, but then the consideration of its own interests independently would lead the carrier to hesitate today. Rates, as a whole in the United States are low. There is no question about that. Take any comparison you may make with foreign countries, they are low, and I think that in the natural course in the growth and development of commerce and new countries, they are bound to go lower, and that going lower in the way that they will under settled conditions, that the condition of the public, the country, the community served by the carriers, as well as the carriers themselves—it will be far more healthful. I do not know of an instance where I have in my official relations passed through a war in rates where the merchants, the shippers, did not complaint just as bitterly—well, more bitterly than I complained of the effect on us. It unsettled all conditions.

Com'r CLEMENTS: Well, of course, that is due to a rate war. But

what I was coming to was, you said that where a reduction was made now under modern methods or present conditions, ordinarily it was done by all the roads and not by one; that they all made the reduction—that they all made the reduction substantially at the same time.

Mr. STUBBS: Well, it may be caused by the position taken by one road, but before the reduction is put into effect, all that are concerned in it or affected by it, know it, and have put themselves in position to meet the rates and put their tariffs in on the same date.

Com'r CLEMENTS: Is not that substantially true in respect to increases as well as decreases?

Mr. STUBBS: Why, it must necessarily be true in respect to increases. I cannot increase a rate unless my competitor does.

Com'r CLEMENTS: You would not undertake to do it,
422 would you, unless you felt sure that the others would do the same thing at the same time substantially?

Mr. STUBBS: Well, not — ordinary conditions. There might be conditions that would cause me to do it, but I think I will let my answer stand as yes to your question.

Com'r CLEMENTS: Take these increases that have just been referred to by Mr. Kellogg, occurring in 1903. They appear to have been published by all trans-continental lines at the same time?

Mr. STUBBS: Yes, sir.

Com'r CLEMENTS: Are they published by a joint common agency that represents all the trans-continental lines?

Mr. STUBBS: They were, and to-day the tariffs for Pacific Coast business, published by the trans-continental lines are published by a common agency, and we are petitioning your Commission to allow that to continue. We believe that it will work to the public interest as well as our own.

Com'r CLEMENTS: Were these increases you have just referred to by all these lines published by a common agency at the same time? They must have been the subject of conference and understanding between the competing lines, were they not?

Mr. STUBBS: Yes, we do not deny that. We do confer as to what rates shall be.

Com'r CLEMENTS: And reach an understanding as to what each other shall do in respect to the matter? Is that true?

Mr. STUBBS: Well, in one sense, yes, sir; but not in the sense that any one line is compelled or coerced by another to do that thing. After all it is done in such a way, that as a matter of fact, it is the individual interest of the company that is considered and operates upon the mind of its representative in determining whether the change shall or shall not be made.

Com'r CLEMENTS: But after all, is it not also true that if you wanted to make an advance you would not in fact under-
423 take to do it until you had the practical assurance that the competitor would also do it at the same time? In other words, your action would be dependent on his, would it not?

Mr. STUBBS: Well, that fact, Mr. Commissioner, is—or that condition or practice is not created by the organization. For example, if I operated a line out of Chicago to the Missouri River and I felt

that the conditions were such that rates were not remunerative, they were not fairly proportioned to our expenses, and Mr. Biddle operated another line and Dr. Darius Miller another, and half a dozen others, I might go to each one of those men individually and state the facts and say that I was of the opinion that the rates ought to be advanced, and I might be satisfied that if I did it, they would follow, and yet have no assurance or agreement that would subject them to a penalty or in anywise deter them from doing what I thought it was to our interest to do, if they did not want to.

Com'r CLEMENTS: But if you did not believe that they were going to do it or have practical assurance that they were going to do the same thing at the same time, you would not do it?

Mr. STUBBS: I would not dare do it; no, sir.

Com'r CLEMENTS: So, after all, it is not absolutely independent action, because your action is dependent on the knowledge of what they will do.

Mr. STUBBS: It is just as independent as the act of any member of society can be. Every member of society is under some obligation to his neighbor. He yields a portion of his natural right in order to contribute to the well being of the whole, and I do not see any difference.

Mr. KELLOGG: Well, he has the power to reduce rates without the consent of his competitor, has he not?

Mr. STUBBS: Yes, sir; but he will not do it unless he talks with them about it.

Mr. KELLOGG: It has been done, has it not?

Mr. STUBBS: Yes, sir. There have been a great many things done. I do not think you will put an experienced traffic manager upon this stand but what will tell you that a great many
424 things have been done that ought not to have been done, and he will be very glad to see them made impossible.

Mr. KELLOGG: But some one line or the other must reduce the rate as a starter and usually does without the consent of the other, don't they?

Mr. STUBBS: I think—well, you might—I do not like your word "consent." Of course, it must be true that any suggestion whatsoever, whether it is for an advance or for a reduction, must have a starting point with some one person or some one company. I believe that to that extent your statement is true, but not true in the sense that I think you would like to have me tell it.

Com'r CLEMENTS: Have you ever attempted to increase or reduce rates on your road after talking with these other gentlemen representing other roads where they did not consent to it and you desisted from your purpose because you did not get their consent or concurrence?

Mr. STUBBS: I do not remember ever having advanced a rate without feeling pretty certain that my competitors would follow, but I think there have been cases that I have reduced rates openly by published tariffs that I had reason to believe that my competitors would rather that I would not do it.

Mr. KELLOGG: That is what you call competition, isn't it?

Mr. STUBBS: That is competition

Com'r CLEMENTS: Well, if the same interests dominated the various roads that had previously been in competition——

Mr. STUBBS: Sir?

Com'r CLEMENTS: I say to the extent that the same interests dominated the various roads that had previously competed, isn't all that difficulty about concurrent action removed; that is, if the same people own the Southern Pacific and the Northern Pacific, the C. B. & Q. and the Santa Fe, or, in fact, if they influenced the action of each one, you would not be troubled then about having to
425 talk to Mr. Darius Miller and these other various representatives of the various roads?

Mr. STUBBS: I think, under those conditions that the rate would be diminished gradually, just as rapidly as though they were under the continuance of the present conditions.

Com'r CLEMENTS: What would reduce them in that case; what influences?

Mr. STUBBS: Why, the commercial and industrial conditions that call for it. I do not suppose that there is anybody who will sit up and say that because an individual merchant says he would like to have a lower rate than he is getting, that that is a good reason for doing it, or that because a half a dozen merchants would combine and say, we want a reduced rate, that they ought to have it. The question is whether the reduced rate will be of a general public benefit, and whether it is for the interests of the community at large, in which I count the carrier as one.

Com'r CLEMENTS: Suppose under these conditions that several lines had reached the point where they publicly and openly maintain and declare dividends to the extent of 10 or 12 or 15 per cent. a year, would that be any cause for a reduction on the ground that it was more than ought to be taken?

Mr. STUBBS: Well, I don't know whether it is expedient for me to give my personal opinion about that, but I think in considering these dividends of 10 per cent.—presuming that whoever refers to that is referring to the Union Pacific——

Com'r CLEMENTS: Not solely.

Mr. STUBBS: That it would be well to remember——

Com'r CLEMENTS: There are other roads that have declared more than that.

Mr. STUBBS: It would be well to remember the lean years that the stockholders of those roads have gone through. Years when they didn't get any dividend at all; and when you do that and make the average I think you will find, so far as the roads that I have any connection with are concerned, that the average inter-
426 est on the investment has been very small, compared with what is commonly made by commercial enterprises.

Com'r CLEMENTS: I didn't mean to refer to the Union Pacific particularly. My question was when they get to where they do that year after year, when they come to have what would be generally regarded as an excessive income, would that be a factor that would cause a reduction of the rates if the commercial conditions did not

demand it; and I referred to other roads as well as the Union Pacific when I spoke of 10 per cent.

Mr. STUBBS: Well, under present conditions I don't think 10 per cent. interest is a very excessive interest. Take the cheapness of money and the high profits that everybody is making, that is, everybody engaged in any enterprise; take even the cost of labor or I mean the revenue of the laborers to-day as compared with what it was ten years ago. I think the laborer is getting perhaps just as much out of the general increased prosperity of the country as the capitalist is, if the capitalist does not get more than 10 per cent.

The CHAIRMAN: Just one question, Mr. Stubbs. At one time a portion of the lines between Ogden and San Francisco was an independent line—the Central Pacific, wasn't it?

Mr. STUBBS: Well, I think I know what you want.

The CHAIRMAN: I want to locate the date of the acquisition of that property by the original——

Mr. STUBBS: Yes, I know. The Central Pacific was the original line operated by the Central Pacific Railway Company. That ran from Ogden to Sacramento and from Sacramento to San Francisco.

The Southern Pacific Railroad was constructed by the same people. The Southern Pacific Railroad was built to Yuma on the Colorado River and the Southern Pacific Railroad of Arizona was built across to Arizona; and the Southern Pacific of New Mexico was built across the State of New Mexico to El Paso, or to the Rio Grande River, just opposite El Paso.

Well, those lines, those Southern Pacific Lines were built by the promoters and constructors, and practically the owners of
427 the Central Pacific; and the Central Pacific continued to operate them until sometime along in 1885, when the Southern Pacific Company of Kentucky, the holding Company, was organized and took over all the stocks of both companies. That is my understanding of it. Of course, I am not an authority on those things, but that is my understanding.

The CHAIRMAN: That is just the point I wanted to determine, that there was a unity of interest at all times between the line from San Francisco east as far as Ogden and the line subsequently built from San Francisco south that again forms a part of the southern route.

Mr. STUBBS: Yes, sir; practically the same men built them.

The CHAIRMAN: And when the holding company, under the laws of Kentucky, was organized, it acquired both of them at about the same time.

Mr. STUBBS: Yes, sir.

Mr. MILBURN: Mr. Stubbs, you referred just now in the discussion of the matter of dividends to the lean years, of the past; there may be lean years in the future may there not?

Mr. STUBBS: Well, I hope there won't, but I am afraid there will be.

Mr. MILBURN: This is a period of what you call very prosperous conditions, physical conditions?

Mr. STUBBS: The most exceptional that I have known of in my life.

Mr. MILBURN: You spoke, in answer to a question which assumed your control as traffic manager over many other different lines, which were enumerated, from those which are under your present jurisdiction, that you did not think it would make much difference with respect to competition under existing conditions. What do you mean by "existing conditions?" I think that was your phrase.

Mr. STUBBS: In the law, and the more sense that railroad
428 companies, through their officers and agents, are getting every day.

Mr. MILBURN: What do mean by "the law?"

Mr. STUBBS: I mean that the Interstate Commerce Law will be very effective in restraining practices that, while in the past were lawful or at least not prohibited, have been detrimental to the interests of the public and the carrier. I have particularly in mind in saying this, the mid-night tariff that is killed by the thirty days' notice clause, and also the fact that the thirty days' notice clause is going to make a stability of rates generally that has not obtained, and it is of more value, upon the whole, to the public, in my judgment, and I think merchants generally consider it so, than the volume of the rate, whether it is more or less. I don't know of anything that has been said to me more often by strong shippers and able men than that "We want to be sure; we want to be certain, Mr. Stubbs, that we get as low rates as our competitors, but one thing that is of more value to us than anything else is to have staple rates so that we can adjust our business to it and know that when we buy goods to-day, that in 10 days after we have shipped, our competitors who have bought subsequently, cannot ship and get a difference of 2 or 3 or 5 per cent. in the rates over us."

Mr. MILBURN: You give significance to the thirty days' provision and to the effect of it, which I do not quite follow or appreciate. Would you mind amplifying it a little?

Mr. STUBBS: The present law provides that the published rates cannot be changed, either advance- or reduced, except upon thirty days' previous notice and publication and posting of the tariff. The old law provided that a published rate might be reduced upon three days' notice and publication and posting of the tariffs and might be advanced by ten days' notice. Now, in my opinion, that change was the wisest change that has taken place in the new law, notwithstanding some people may take a different view. I think that the effect of that is going to be of more public benefit than any other.

429 Mr. MILBURN: As a measure maintaining rates.

Mr. STUBBS: Giving stability.

Mr. MILBURN: Giving stability, and preventing a slashing of rates?

Mr. STUBBS: Not slashing.

Mr. MILBURN: Changes of rates.

Mr. STUBBS: Changes that may be made orderly and in a lawful way.

Mr. MILBURN: That was one factor that you put under the head of "existing conditions." What was the other—the personal equation, did I understand that of the officers; the actual men in charge?

Mr. STUBBS: Well, I don't know that I elaborated that.

Mr. MILBURN: I don't know whether you gave that at all.

Mr. STUBBS: I hold strongly this view, Mr. Milburn, I don't know that I can express it better than by giving an illustration. At the time the question was up as of great public interest between the Northern Pacific and the Great Northern, that the common control of those lines would wipe out all competition between them—in talking with my friends I expressed a view that I hold, that that was impossible. I consider Mr. Hill one of the greatest men in this country, probably at the lead as a practical railroad man; but with all his power it is utterly impossible for Mr. Hill, even if he has the will, and owning and controlling the Northern Pacific and the Great Northern, to completely destroy competition between them. He has got to employ officers; vice-presidents, general managers, traffic officials. And what I mean by the personal equation, if I stated that, is that the Vice-President of the Great Northern has a personal interest in that line: he has his reputation, his record to make; he has his influence and he is going to build his line, the Great Northern, as against the Northern Pacific, and Mr. Hill cannot help that. If he takes that out of the man, the officer, then he destroys his influence, his value, and he might as well turn his business over to a hundred dollar clerk.

430 Com'r HARLAN: If the same man makes the rates for these two roads, the competition between the roads will not take the form of rate changing, will it?

Mr. STUBBS: The same man in making the rates would not do any differently than two men in making the rates. The rates are the same; the rates have been the same from St. Paul to Seattle over the Great Northern and over the Northern Pacific—not any more so since the so-called interest of Mr. Hill in both companies than they were before he was known to have any interest.

Com'r HARLAN: In response to Mr. Kellogg you said that a seduction of rates was competition. Every one knows that that is one way by which railroads may compete with one another. Now, if you were the rate maker for the Great Northern and the Northern Pacific, would it be likely that the competition between those two roads would take that form?

Mr. STUBBS: In my humble judgment, quite as likely as if you were the traffic manager of one line and I was of the other. That is what I mean by the personal equation.

Mr. MILBURN: Mr. Stubbs, taking the trans-continental business, the trans-continental lines, rather; they are made up of various groups of railroads, are they not?

Mr. STUBBS: Yes, sir.

Mr. MILBURN: The trunk lines running to the Atlantic seaboard from Chicago; some from Chicago and some from Buffalo and so on; they are one element in these trans-continental lines, are they not?

Mr. STUBBS: Necessarily.

Mr. MILBURN: The trunk lines between—I suppose the general expression that I may use is the Mississippi River and the Missouri River, are made up of another set are they not?

Mr. STUBBS: Yes, sir.

Mr. MILBURN: The lines west of that; west of the Missouri River are another group?

Mr. STUBBS: Yes, sir.

Mr. MILBURN: Now, bringing together those lines in
431 relation to trans-continental traffic, what would be the importance, as a factor in rates, in rate making of the Union Pacific as a separate and independent system; not coming east of Kansas City and Omaha; not going west of its western termini?

Mr. STUBBS: Well, the Union Pacific would be a middle line in the through line, and would have to do pretty much what its connections desired.

Mr. MILBURN: Did you hear Mr. Markham's testimony this morning?

Mr. STUBBS: I did.

Mr. MILBURN: Do you remember the testimony he gave, I think, in response to questions that I put, about a transcontinental line worked by the Union Pacific from Ogden to Portland and thence by water to San Francisco, as an effective independent line which would preserve its independence in dealings with the Southern Pacific or the Central Pacific from Ogden to San Francisco, as an independent line? Do you recollect that testimony?

Mr. STUBBS: I do.

Mr. MILBURN: Will you please give me your view of that matter, of that situation, in your own words?

Mr. STUBBS: Well, the navigation company, I understand, by which I mean the Oregon Railway and Navigation Company, has operated a line of steamers between San Francisco and Portland—well, as far back as I can recollect; long before I had any connection with it; and the Short Line, the Oregon Short Line and the Union Pacific have been the Navigation Company's principal dependents in the matter of connection for a long time for trans-continental business to Portland or to any point south of Portland; although it has been a connection at Spokane also with the Great Northern for Portland, and for business to points south of Portland; that is, for many years, and they have never been able to—I don't recollect that we have ever made any serious attempt to take trans-continental business, what we call trans-continental business; business originating, say, east of their eastern terminus, to San Francisco via Port-
432 land and the Columbia River and the Pacific Ocean on their steamships. It seems to me that fact of itself would show that it was in their judgment practically an old thoroughfare.

Now, as to the Union Pacific individually, the Union Pacific connects with the Oregon Short Line at Granger. Granger is somewhere in the neighborhood of 130 miles east of Ogden and it also connects with the Southern Pacific, what was originally known as the Central Pacific, at Ogden. Now, the Union Pacific, I would consider, would have a longer haul and a very considerably larger portion of the through rate by interchanging its traffic with the Central Pacific at Ogden than it would by interchanging its traffic with the Short Line at Granger; while the use of the Ogden Line would

open up to the Union Pacific all the interior territory, the common points, what is called the Pacific Coast common points, including some interior points like Sacramento and Marysville, and by working with the Union Pacific all of the California, all of the interior California is opened up freely and fully to the Union Pacific by the Southern Pacific. If it worked a line by Portland and the Steamship it would be getting less out of the through rate than it would if it delivered to the Southern Pacific at Ogden, but would also be limited to San Francisco proper and would take the business under the necessity of a delay waiting for the ship to depart from Portland and the increased time required in the haul from Granger to Portland, thence to San Francisco by ship as against the all-rail haul from Ogden direct to San Francisco. So that it would be manifestly to the disadvantage of the Union Pacific to work the line via Portland -or San Francisco business or for California business, independent of what might follow if it undertook to do it in view of the attitude which the Southern Pacific might take toward it.

Mr. MILBURN: Treating, Mr. Stubbs, the Southern Pacific Line as totally independent and the Union Pacific and the Oregon Short Line and the Oregon Railway & Navigation Company as one system, and the Union Pacific endeavoring and seeking to work
433 a line to San Francisco via Portland, what effect would that have in the ordinary course of things in its relation to the Southern Pacific; what would be its power to do so?

Mr. STUBBS: Well, of course—I think if I or you or brother Kellogg were traffic manager of the Central Pacific under those conditions we would try to handle the Southern Pacific traffic in such way as to make it a very expensive thing to the Union Pacific to use the line via Portland.

Mr. KELLOGG: And the line via Portland might make it expensive to the Southern Pacific?

Mr. STUBBS: No, sir.

Mr. SEVERANCE: Not as long as Mr. Stubbs had the Southern Pacific.

Mr. STUBBS: Not if Mr. Severance was in command of that, because you cannot cut those rates—that is what you had in mind—without cutting your own in getting the traffic. You cannot hurt me under those conditions without hurting yourself quite as badly.

Mr. KELLOGG: And *vice versa?*

Mr. STUBBS: That is it. No; not in the other case. Evidently it would not be necessary with another connection for the Southern Pacific to cut rates to make you very sick if you were running the Union Pacific and they wanted to do it?

Mr. MILBURN: Without changing its rates?

Mr. STUBBS: And without doing any unlawful thing either.

Mr. MILBURN: Taking this very case, without changing its rates at all, if it was an independent line, it could divert all the traffic subject to its control to the Denver & Rio Grande, couldn't it?

Mr. STUBBS: Certainly.

Mr. MILBURN: It could divert all the traffic subject to its control to the Denver and Rio Grande, couldn't it?

Mr. STUBBS: Certainly.

Mr. MILBURN: It could exercise its influence in that?

Mr. STUBBS: Certainly.

Mr. MILBURN: Well, now, as a practical railroad man, Mr. Stubbs, if you were in charge of the Union Pacific System, including in it the Oregon Short Line and the Oregon Railroad and
434 Navigation Company and the boats of the Central Pacific, and say they were an independent company, wouldn't you regard it as quite essential to the welfare of your line to operate it in connection for San Francisco business with the Southern Pacific line?

Mr. STUBBS: No doubt of it. That is the view that the Union Pacific has always taken of it. I do not suppose it is a proper thing for me to exhibit on the witness stand, but it seems to be such a preposterous notion as to be hardly worthy of a serious answer, that it would be at all, in any sense or in any degree, to the interest or profitable to the Union Pacific or even the Navigation Company, to work business via Portland and the sea as against the Union Pacific's all-rail connection at Ogden, with the Central Pacific, or the Navigation Company's connection at Portland with the Southern Pacific line. You might make a paper case out, but you cannot get any railroad man or any traffic man that knows his business to say anything differently.

Mr. MILBURN: There is, is there not, along the Oregon Short Line or in the region of the Oregon Short Line, and I do not know but what the Oregon Railroad & Navigation Line—it is the Navigation Line Judge Lovett tells me. In Washington they are reaching wheat producing lands; that is true, isn't it?

Mr. STUBBS: The Navigation Company's Line runs from Portland up the Columbia River and then has various branches running from Wallula and another junction point through to Walla Walla and Spokane and draining what is called the Palouse Valley, that famous wheat producing country; and in that territory is also the Northern Pacific.

Mr. MILBURN: That is a business local to that region?

Mr. STUBBS: Altogether local to that region, but not local to the Navigation Company, because it is subject to the competition of the Northern Pacific. The Northern Pacific is seeking to draw
435 that wheat or the flour that is made from it, out through Tacoma and Seattle, while the Navigation Company seeks to take it out by Portland. The ships that serve Puget Sound take it, after it is milled into flour, to the Orient. The ships that serve Portland take it from Portland, in the form of flour, from Portland. That is the chief business of those lines, of the outgoing business of those Washington lines, including the Navigation Company.

Mr. MILBURN: Now, Mr. Stubbs, that was Oriental business, originating right there in the locality that you have described, consisting of the wheat grown there and the flour ground from it?

Mr. STUBBS: Yes, sir.

Mr. MILBURN: A large and valuable business?

Mr. STUBBS: The principal market for it, but not altogether, but the principal market for it is in the Orient; some goes to Europe and some goes to South America.

Mr. MILBURN: And that is taken by the Northern Pacific to Puget Sound and by the Oregon Railroad and Navigation Company to Portland, and thence by ships to the Orient?

Mr. STUBBS: Yes, sir.

Mr. MILBURN: Now, what was the connection, if you can tell me, between that local traffic and the so-called Portland & Asiatic Steamship Company? Will you give a history of that thing, if it is in your mind?

Mr. STUBBS: It was essential, absolutely necessary, for the navigation Company to have a steamship Line, or to induce a steamship line to operate between Portland and the oriental ports, in order to furnish an outlet for this wheat grown on its line in Eastern Washington; otherwise, as that was the chief market, that is, the orient was the chief market for that wheat—otherwise that wheat, converted into flour, would go out to the orient from Seattle and from Tacoma, and the Navigation Company would get no haul in it, no earnings on it whatsoever. The Navigation Company, before I was with it—this is simply a matter of history; I don't know
436 that my testimony is worth anything on that—had engaged with Mr. Doddwell to run a line of steamers in connection with Portland to the Orient, but it was not a profitable venture for Mr. Doddwell, and he withdrew. The upshot of it was that the Navigation Company had to provide steamships in order to take care of that business or lose the business, which was practically in one sense local to it in Eastern Washington. They then organized, or caused to be organized the Portland & Asiatic Steamship Company and chartered vessels and have since operated it at considerable loss. I mean by that that the earnings from the Steamship Line do not meet the expenses by quite a considerable sum—I cannot recall what it was per annum; but when you take into consideration that it enabled the Navigation Company to hold its grain traffic from Eastern Washington into Portland, of course it was a profitable arrangement. This is the occasion for the organization or establishment of a Portland & Asiatic Steamship Company; that is the occasion for continuing it; and all other traffic that it handles through Portland in connection with the Portland and Asiatic Steamship Company is merely incidental.

Mr. MILBURN: Well, now let me ask if there has been any considerable volume of so-called trans-continental traffic for the orient which took that line?

Mr. STUBBS: Very little. There is some, but the ships were infrequent. According to my recollection, they couldn't guarantee even a monthly service. While from Puget Sound and from San Francisco, there were several lines which gave, well, at least biweekly and sometimes oftener service, and the demands—the number of ships that were warranted by the line—I think it would not exceed three, sometimes there were only two—all their space at times was demanded by the offerings of flour and local cargo, and transcontinental traffic would be shut out so that it was found to be very difficult to engage outward tonnage that way. The inward tonnage they worked and got all that they could, making the same rates, as I understand it as were made by Puget Sound and it was

437 forwarded from Portland over the trans-continental lines precisely as it had been forwarded from Seattle or Tacoma or San Francisco, had it gone that way.

Mr. MILBURN: So the origin of that line was the cocal traffic on the Oregon Railroad & Navigation Company?

Mr. STUBBS: There never would have been any line there, either of *navigation* ownership or private ownership, except for that business.

Mr. MILBURN: Now, the whole situation, Mr. Stubbs,—would you ever think of trying to establish a steamship line at Portland to endeavor to compete for trans-continental or oriental traffic with Puget Sound?

Mr. STUBBS: No, sir. As I say, the sole reason, the foundation reason for the establishment of that line was to take care of the wheat and flour traffic. That is a matter of public knowledge.

Mr. MILBURN: Now, Mr. Stubbs, that same local traffic, the flour and what not that originates on the Oregon Railroad & Navigation line, to some extent finds its way to San Francisco, doesn't it?

Mr. STUBBS: How is that?

Mr. MILBURN: I say that some of the products that we have been referring to here as *a* local on the Oregon Railroad and Navigation line, to some extent finds a market in San Francisco? No, I am wrong about that.

Mr. STUBBS: Oh, certainly. You mean wheat and flour and their products go to San Francisco? Yes, and for that matter some of it goes to San Francisco for transfer to South American vessels, but I don't think that is in very large volume.

Mr. MILBURN: They still run between——

Mr. STUBBS: Yes, sir. That local business, particularly in wheat, is increasing in San Francisco. The wheat production of California is diminishing very rapidly.

Mr. MILBURN: What steamers run there?

Mr. STUBBS: Well, I don't know.

Mr. MILBURN: Don't some of the independent steams run?

438 Mr. STUBBS: Oh, yes, a number of them.

Mr. MILBURN: There is an independent business done there.

Mr. STUBBS: Yes.

Mr. MILBURN: And has the Navigation Company——

Mr. STUBBS: There is a lot of schooners that run south with lumber, and I believe they also run with wheat. I think there is a regular steamship line between San Francisco and the north coast, but, whether,—independent of the Navigation Company,—it goes into Portland, I am not sure; I think it does not; but as to that I am not a very good witness because I haven't paid any attention to that business.

Mr. MILBURN: Oh, very well. I don't think of anything else now. Do you think of anything else that you think I might ask you?

The CHAIRMAN: You don't mean that Mr. Stubbs is exhausted?

Mr. MILBURN: I save myself by asking if there was anything else

I might ask him about, or that I ought to ask him, whether I have been a diligent pupil.

The CHAIRMAN: Have you anything further, Mr. Kellogg?

Mr. KELLOGG: Mr. Stubbs, you say the Doddwell Line or the Portland & Asiatic Steamship Line was primarily created, organized, for the purpose of handling flour to the orient and to San Francisco?

Mr. STUBBS: That is my impression. Of course, I was not connected with it——

Mr. KELLOGG: To the orient and not to San Francisco?

Mr. STUBBS: No, to the orient.

Mr. KELLOGG: That is not its only business?

Mr. STUBBS: It takes any business that it can, but it gives preference to that.

Mr. KELLOGG: It brings back something from the orient doesn't it?

Mr. STUBBS: I explained that.

Mr. KELLOGG: And delivers it to the Navigation Company?

439 Mr. STUBBS: Yes, sir.

Mr. KELLOGG: Now, the San Francisco ships don't take any of that business, do they, from up the Palouse country?

Mr. STUBBS: No, not under any through rate. I don't know whether—I think they have at times taken flour.

Mr. KELLOGG: Well, they trans-ship it at San Francisco?

Mr. STUBBS: Yes, sir. It was done by the Navigation Company's boats or outside boats, but I am not sure, I think I have known of cases of that kind.

Mr. KELLOGG: Then in the case coming back, it is delivered to the Navigation Company and hauled east by the Navigation Company, the Union Pacific and the Short Line?

Mr. STUBBS: That is right.

Mr. KELLOGG: What did you mean by testifying when you testified in this case, that the Oregon Railroad & Navigation Company and the Southern Pacific Lines were diametrically opposed to each other and competing vigorously every day in the year—in the Graham case?

Mr. STUBBS: Well, it is a fact, as I have testified here, that the Southern Pacific Company takes business into Southern Oregon, and as I said, I was not sure about it, but I think that it took business to Portland and possibly out of Portland for eastern points; and it is also a fact, just as I have explained to you that the steamship line between the orient and San Francisco and the steamship line between the orient and Portland, and the steamship line between the orient and Puget Sound all compete for the traffic from the orient to all points in the United States.

Mr. KELLOGG: And the Navigation Company and the Short Line and the Union Pacific are the connecting links with one of those steamship lines?

Mr. STUBBS: Yes, sir.

Mr. KELLOGG: And is therefore a competitor of the Southern Pacific?

440 Mr. STUBBS: There is no question about that, so far as business goes, but it don't amount to anything.

Mr. KELLOGG: That is all.

The CHAIRMAN: Any further questions to be asked Mr. Stubbs. If not he is excused.

(Witness excused.)

J. M. HANNAFORD, called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live?

Mr. HANNAFORD: St. Paul, Minnesota.

Mr. SEVERANCE: What is your business?

Mr. HANNAFORD: Second-Vice-President of the Northern Pacific Road.

Mr. SEVERANCE: What are your duties as Second Vice-President of the Northern Pacific Railroad?

Mr. HANNAFORD: They relate entirely to traffic and commerical interests.

Mr. SEVERANCE: How many years have you been connected with the Northern Pacific?

Mr. HANNAFORD: 34 years last spring.

Mr. SEVERANCE: How is that?

Mr. HANNAFORD: Thirty-four years last spring.

Mr. SEVERANCE: In what different capacities, Mr. Hannaford, have you been connected with that road?

Mr. HANNAFORD: Everything in the traffic department from Chief Clerk in the freight department to Second-Vice-President.

Mr. SEVERANCE: Now you say for 23 years you have been connected with the Traffic Department of the Northern Pacific?

A. Yes, sir.

Q. For how many years have you been — the traffic department, under your own title or another?

A. Well more than twenty years.

Q. The Northern Pacific has its western terminus at Portland, Oregon, does it not? Or rather Portland, Seattle, Tacoma and all along up the coast?

A. Yes, sir.

Q. And you have a line running to Portland?

A. Yes, sir.

Q. How long has that line been built?

441 A. Since—well we ran to Portland in connection with the Oregon Railway & Navigation Company at first in 1883, the last part of 1883, that line was opened.

Q. Your own line?

A. No, the line in connection with the Oregon Railway & Navigation Company. I don't think I can give you the date exactly, but in the late '80's our own line was put through from Tacoma.

Q. From Tacoma down to Portland?

A. That was the first part that was built over to Tacoma that was the later, the late construction.

Q. Now the lines of Railway that reach Portland are the Northern

Pacific the Oregon Railroad & Navigation Company and the Southern Pacific?

A. Yes, sir, those are the principal lines.

Q. Mr. Hanaford, in the old days prior to the enactment of the Interstate Commerce law, which was in 1887 were you familiar with traffic meetings that were held by the trans-continental road, did you attend those meetings?

A. I attended them all I think, except during the winter of 1886 and 1887.

Q. You had been attending them for several years hadn't you?

A. Yes, sir.

Q. Prior to that time did you often meet Mr. Stubbs at those meetings?

A. Yes, sir.

Q. What road was he representing?

A. The Southern Pacific.

Q. Who represented, if any one, who represented the Union Pacific at those meetings?

A. Well various officials of that company the late Thomas M. Kimball and I think Mr. Vinning when we first met Mr. Clark, the General Manager and Mr. Shelby, Mr. Munroe and whoever their traffic official in charge was at that time.

Q. Now at those meetings were there discussions as to divisions and pools of trans-continental business?

A. Prior to 1887 there was.

Q. Yes that is what I mean, prior to 1887?

A. Yes, sir.

Q. Did the Union Pacific and Southern Pacific figure as independent parties to those pools, separate parties?

A. Separate roads, yes, sir.

442 Q. Separate roads, and the Northern Pacific also?

A. Yes, sir.

Q. There was an arrangement with the Northern Pacific was there not?

A. Yes, sir.

Q. And was there not also at one time an arrangement for division of the traffic, that is traffic for certain parts of the west being handled by the Northern Pacific and traffic for certain parts further south being handled by the other lines?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

Q. In those negotiations the Union Pacific and the Southern Pacific acted as separate and independent roads, did they not?

A. To the best of my knowledge, yes, sir.

Q. Isn't it a fact that in those meetings there were discussions between the different lines as to the percentages that they should be allowed, and were not the different lines each, including the Union Pacific and Southern Pacific struggling to get as large a per cent. as possible of the common business?

A. All of us were.

Q. In those days they did not allow—they had not arrived at the point of having one man to compete for two roads, but each road had its own representative. That is true isn't it?

A. Sometimes one man represented two roads.

Q. But not where they were competing with each other?

A. Only by proxies.

Q. Where their interests were common?

A. Where they were joint or common.

Q. That was in the case where it was a question of the division between the different roads?

A. No.

Q. That was not a case of that kind?

A. No.

Q. They each had their own representatives?

A. They each had their own representatives as a rule.

Q. Our Mr. Stubbs was endeavoring to get as large a percentage of the business as he could for the Southern Pacific system?

A. The indications pointed that way.

Q. What you mean by indications is that that is based on
443 what Mr. Stubb said, his arguments in the meeting?

A. Yes, certainly.

Q. And Mr. Munroe or the other gentlemen, whoever they may have been, who represented the Union Pacific, were likewise trying to get as large a percentage as they could for that line?

A. As large a percentage of earnings, or as small a percentage when it was a division of expenses.

Q. Now Mr. Hanaford, prior to 1901 you were familiar with traffic conditions so far as trans-continental and overland business was concerned?

A. Yes, sir.

Q. And as you always have been. Now prior to 1901 was there any active competition throughout the Atlantic seaboard territory and the Chicago territory, between the different trans-continental lines for the Pacific Coast business?

A. Yes, sir.

Q. All the roads were competing for that business?

A. Well all of the roads lying west of a line drawn north and south through Chicago.

Q. What Pacific roads were competing for it, the Southern Pacific was competing for it, wasn't it?

A. Yes, sir.

Q. And the Santa Fe?

A. The Southern Pacific with some restrictions of territory.

Q. And the Santa Fe?

A. The Santa Fe.

Q. And the Union Pacific?

A. The Union Pacific.

Q. The Northern Pacific?

A. The Barlington and the Denver & Rio Grande road. The Northern Pacific at the date you mentioned, the Great Northern and the Canadian Pacific, were the principal lines. Of course they had lines that led up to them.

Q. Now has the Sunset route, the Southern Pacific been one of your competitors at Portland on business originating in the Atlantic seaboard states?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

Q. Has the route made up of the Union Pacific and Oregon Short Line and the Oregon Railroad & Navigation Company likewise?

A. Yes, sir.

444 Q. These three roads have been competitors for the Portland business?

A. The Great Northern has been for some time in connection with the Union Pacific via Spokane.

Q. Now Portland is a large distributing point, is it not?

A. Yes, sir.

Q. It is the wholesale point for all that region up there?

A. Yes, in Oregon.

Q. And the traffic there is a very considerable traffic into Portland?

A. Yes, sir.

Q. And out of Portland?

A. We consider it so.

Q. Now has your road also participated to the same extent (perhaps not to a large extent) but to some extent in the San Francisco business?

A. Quite largely in passenger business and to a limited extent in freight.

Q. How do you get into San Francisco with your freight?

A. From the—over the Southern Pacific lines from Portland and over the Pacific Coast Steamship Company's boats from Puget Sound.

Q. The O. R. & N. has always maintained a line of boats from Portland and San Francisco, has it not? By always, I mean a good many years.

A. Well, I cannot explain to you just the combination there. I have always supposed that the Pacific Coast Steamship Company—just what that organization is I don't know. The same managers handle the boats that run to Puget Sound and the boats that run to Portland, except the wild boats, the outside boats, there are more or less outside boats.

Q. Now, in late years has there not grown up quite a large traffic in cotton shipments from the Southern States of the United States to the Orient?

A. Yes, sir.

Q. What lines are competing for that?

A. What line of boats?

Q. No, what line of railroad to get to the coast?

A. So far as I know all the lines are competing for that.

Q. Now, the Southern Pacific take that cotton by the Sunset route, do they not?

A. I think they do from Texas. I guess they do from

445 all the territory so far as I know in the South.

Q. All the cotton States?
A. Yes, sir.
Q. Considerable of that traffic comes to you?
A. Yes, it comes up by Kansas City, the Burlington and some to St. Paul in connection with other lines. It comes from Louisiana.
Q. It also moves west over the Union Pacific, does it not, that cotton?
A. I suppose so.
Q. You say it comes up to Kansas City. That would be the Union Pacific connection?
A. I think it goes over the Union Pacific. I don't know but to Portland what it goes over the Union Pacific, Oregon Short Line and Oregon Railway & Navigation Company.
Q. And is shipped to the Orient from Portland?
A. Yes, sir.
Q. When it is taken from the South by the Sunset route it is shipped to the Orient from San Fancisco or possibly also from Portland?
A. No, I think, from San Francisco. I don't think they ever bring any up to Portland via that route.
Q. In handling your traffic has it been your practice to maintain general agents or commercial agents at different large points in the east?
A. Yes, sir.
Q. Chicago?
A. Chicago.
Q. Pittsburg?
A. Pittsburg, New York, Philadelphia, Boston and Buffalo.
Q. What are the functions of those agents?
A. Well, to represent the Northern Pacific Railroad and to get all of the business they can that we are able to carry and route it over our line.
Q. That is, they endeavor to get the business consigned to points of connection on your line, at St. Paul perhaps?
A. Yes, they are there to secure business for us if they can.
Q. And that includes transcontinental and Asiatic business?
A. Yes, any business.
Q. Now, do your agents meet any competition at such places and in the same line with agents of the Southern Pacific and the Union Pacific?
A. Yes, sir.
446 Q. And at some places you meet an agent who represents both the Southern Pacific and the Union Pacific, don't you?
A. Recently.
Q. How is that?
A. Recently we have.
Q. Now, those commercial agents that are kept at these different points throughout the country are a great assistance are they not to the lines they represent in securing the routing of traffic over those lines?
A. Why we feel so, yes, sir.
Q. And that is the reason you keep them there?
A. Yes, sir.

Q. Do you do a large winter tourist business over your line?
A. No, sir.
Q. You do not.
A. No, sir.
Q. That goes further south?
A. Yes, sir.
Q. You get summer tourists up your way?
A. Yes, we get a large passenger business from California returning via our line in the Spring. That I presume would be called winter tourists.
Q. Now, a great deal of the winter tourist business is handled by round trip tickets, isn't it?
A. Yes, sir.
Q. Is that business solicited?
A. Yes, sir.
Q. And the tourist goes out over one of the Southern roads and comes back over your line, or the Canadian Pacific or the Great Northern?
A. If we can get him to, that is the part we solicit.
Q. And the Southern line solicits the trip out?
A. I guess they solicit both ways.
Q. Well, that is an active competitive business?
A. Quite so.
Q. I think you said that you handled some tonnage into San Francisco?
A. Yes, a limited amount. Not as much as we did prior to 1887.
Q. How is that?
A. Not as much as we did prior to 1887, but we handle some there still.

Mr. MILBURN:

Q. 1887 seems to have been an eventful year?
A. It was, very.

Mr. MILBURN: I wonder what happened.

447 Mr. HANAFORD: I spent six months in the hospital and that is why it is so firmly impressed on my mind.

Mr. MILBURN: To say nothing of the Interstate Commerce act.

Mr. SEVERANCE:

Q. Now isn't all the traffic in the middle territory of this country naturally, that is, the Pacific Coast traffic or Asiatic traffic from the middle territory both ways, going and coming competitive between these various lines beginning with the Southern Pacific on the south, taking in the Santa Fe, the Union Pacific and the Great Northern, or practically all of it?
A. Well to some degree. Some of it of course is quite strongly competitive between all the lines. The further east you get, and the further towards the south that you get, I think the Southern Pacific are competitors for the Chicago business.
Q. Where? You are?
A. We are very strongly, and all the other lines are that I know anything about, and I suppose the Southern is and I think they are in connection—either via the Illinois Central and New Orleans, or

via some of their El Paso connections. I don't see why they should not be. If I was running the road I should be.

Q. The rates are so adjusted from New York and back nearly to Pittsburg or about to Pittsburg and Buffalo so that the Southern Pacific and all these northern lines are competitive for Pacific coast business in that region, are they not?

A. That would be what was known as the Trunk line territory?

Q. Yes?

A. Why I should say so.

Mr. MILBURN:

Q. Mr. Hanaford you were speaking of the good old times prior to 1887 when you gentlemen used to meet and divide things up into percentages, were you not?

A. Yes, sir.

Q. In the earlier part of your testimony. And you said in those conferences somebody was there representing the Northern
448 Pacific, and other gentlemen representing the Southern Pacific, and somebody else representing the Union Pacific?

A. All lines that were interested were represented.

Q. All engaged in getting as much as possible?

A. Yes, sir.

Q. That is true?

A. Yes, sir.

Q. Now the Southern Pacific man—did you say it was Mr. Stubbs, did you mention anybody?

A. I don't know that I did. He represented them quite frequently, and quite frequently there were other officials.

Q. The Southern Pacific man in that conference would represent the Sunset route, wouldn't he, that would be one.

A. That would be one, yes, sir.

Q. And he would represent the Central Pacific route, wouldn't he?

A. Always, yes.

Q. So on the theory of my friends here he was representing competitive lines, was he not?

A. I don't know what his theory is. Those are the two lines that he represented.

Q. One line is the Central Pacific line. That was a line of about 800 miles in length, wasn't it?

A. Practically that, Ogden to San Francisco.

Q. Extending from San Francisco to Ogden?

A. Yes, sir.

Q. And that was part of the so-called trans-continental line made up of itself and the Union Pacific and the other lines to the east?

A. Yes, sir.

Q. And that is what he was there standing for, wasn't he, representing whoever it was?

A. Well he did not forget at any time the other interests that he represented.

Q. And he was asking for a percentage for the Sunset route?

A. Always, yes, sir.

Q. And he was asking for a percentage for the other line of which the Central Pacific was a part?

A. My memory is not very clear in regard to that but I do not think there was any segregation of the percentage that the Southern Pacific asked for in this division of expenses and revenue.

449 Q. Could the Union Pacific get any percentage without the Southern Pacific sharing in it?

A. I don't know what the division of spoils was between the two lines.

Q. Any percentage that the Union Pacific got, that is for that line would be shared in by the Southern Pacific as owning the line from Ogden to San Francisco, would it not?

A. As I say, I do not know.

Q. You do not know?

A. No.

Q. How else could it get its portion of that percentage for its railroad?

A. Well the advocate for the Southern Pacific always spoke of his percentage as a unit for the line from Ogden to San Francisco and from San Francisco to New Orleans. I never heard any discussion that so much of it should be for the Central Pacific line and so much of it should be for the Sunset line. He might in his own mind have had a division, but so far as I ever heard it was not mentioned.

Q. If that percentage was made he would have to account with the Union Pacific for its proportion?

A. I don't know. I have no knowledge of that particular. It never was developed in any of the meetings that I remember of.

Q. The point is that in those conferences he was representing, whether as a separate interest or as a unit, those two lines?

A. Yes, sir.

Q. Have you any personal knowledge of the Chicago business, the legitimate Chicago business as you call it, that goes to California via New Orleans and the Sunset route?

A. I have not.

Q. That is pretty round about, isn't it? I think we have had it here given as 900 miles from Chicago to New Orleans?

A. I think so, I never went over the route, and I never worked for it particularly.

Q. Where would 900 miles from Chicago take it on its western journey?

A. Well, somewhat east—well, about 500 miles west of Omaha, 400 miles.

Q. If it went that route it would be 400 miles west of Omaha by the time it got to New Orleans?

A. Yes.

Q. And then it was about as far off from San Francisco

450 as when it started, isn't it?

A. I don't think that there is a great quantity of California freight that is sent that way. I think it mostly went by El Paso.

Q. That is from Chicago to El Paso?

A. Yes, sir.

Q. And then via the Southern Pacific.

A. Yes, sir.

Q. So that the Southern Pacific then got the haul on it from El Paso to San Francisco? That is, the traffic that would be gotten by the Rock Island and other roads running to El Paso either themselves or other connections.

A. I think so; yes, sir.

Q. And there delivered to the Southern Pacific?

A. Yes, sir.

Q. And as compared with going by the other lines and the Union Pacific, going on to the Southern Pacific and Ogden?

A. Yes, sir.

Q. So between the two roads the difference would be the difference of the haul between El Paso and San Francisco, and between Ogden and San Francisco, so far as the original Southern Pacific railroad was concerned?

A. Yes, sir, I should think so.

Commissioner LANE: Has there ever been an active and real competition between the Southern Pacific, the Sunset route, the Union Pacific with its connections, the Oregon Short Line to Portland, and the Northern Pacific for San Francisco business?

A. I don't think Mr. Lane I fully understand that.

Commissioner LANE: Has there ever been any competition from Eastern points to San Francisco between the three roads, one on the extreme south, the Sunset route, one in the center made up of the Union Pacific from Omaha west to Ogden, and from Ogden up to Portland and from Portland down to San Francisco by boat and the Northern Pacific from Duluth out to Puget Sound, and from there by boat down to San Francisco?

A. I don't know that there has ever been any competition between the Union Pacific, Oregon Short Line and the Oregon Railway & Navigation Company, or the Southern Pacific for San Francisco business as against the Sunset Route. The Northern Pacific has done, when its facilities enabled it to do so, quite an amount
451 of competitive business for San Francisco. We had a share, getting from six to eight per cent. of that business in the early days.

Commissioner LANE: Why is it no longer possible for you to get it?

A. Well the people won't patronize us. The Short rail lines I think are preferable.

Commissioner LANE: They prefer the short rail lines. What is the difference in distance between freight originating at Buffalo, going to New York by rail, and from New York around by water to Galveston, and Galveston to San Francisco by rail and freight originating at Buffalo, carried by the lakes to Duluth and from Duluth to Puget Sound and then down by water on the other hand?

A. Well I could not tell you without figuring it up but I think 1500 miles in favor of the line from Duluth via Portland, and the water down perhaps not over 1200.

Commissioner LANE: You have the water haul at the western end and the other people have the water haul on the eastern end.

A. Well yes, but the advantages of the Southern Sunset route on San Francisco business are very great. There is the water competition, they can take their business in New York, gather it up from the various producing points in New England and New Jersey and adjacent to New York, take it into their warehouses in New York and put it all on to one steamer, and have it all reach New Orleans or Galveston at one time. I have understood—it may be good service—but I have understood it was lack of facilities that forced them to take that business right off that very day and send it up to San Francisco in special trains, but unfortunately the all-rail routes cannot equal that service on 6,000 tons of freight that is ready to go on the same day. This whole 6,000 tons on the Sunset route gets there at one time. If it was not for that service all under one control I should feel quite like opening the line that you mentioned from Buffalo to the Puget Sound to the water and down to San Francisco, but I cannot do it because I have got to depend on a lot of lines between Buffalo and St. Paul to do that same service that they do with their boat direct to New Orleans.

452 Commissioner LANE: It is because of the superiority of the route and the superiority of the service that there is not active competition between the Northern Pacific and the Sunset, for San Francisco business.

A. We cannot equal that service.

Commissioner LANE: You cannot equal the service that they give?

A. No, sir.

Commissioner LANE: How long since you have tried?

A. Oh off and on for 20 years. Every time that the boat service on the Pacific has been a little better we thought we could get in and do some of it, but we have failed almost every time. We do some business down there, enough so that we are mentioned in the expenses of weighing, and so forth, but not very much.

The CHAIRMAN: You appear in the tariff, do you?

A. Yes.

Commissioner LANE: You have a through rate, have you?

A. Yes.

Commissioner LANE: Do you think that competitive conditions are the same between the trans-continental lines west running into San Francisco or connecting by boat with San Francisco from the Northern line that would exist, were they all under the same ownership?

A. I don't believe I understood that.

Commissioner LANE: Supposing that the Sunset route and the Santa Fe and the Union Pacific and the Central and the Short line and the Great Northern and the Northern Pacific were all owned by the same persons and all under a common direction as to traffic. We will say that Mr. Stubbs was the traffic Director. Do you think that the same competitive business would exist then that exists now, and that there would be practically the same condition of things?

A. I think so, yes, sir.

Commissioner LANE: No better and no worse.

A. I don't see how they could be. The rates are not made by the overline carriers in any respect.

Commissioner LANE: They are made by competition between the markets?

A. Very largely by water competition, the Pacific Coast
453 rates. Of course there is no one connected with that trade but what will agree with me I guess, in saying that we get all we can out of it every time.

Commissioner LANE: All you can on the freight?

A. Yes, and it is pretty nearly the cost of handling the business.

Commissioner LANE: So that so far as rates are concerned, or facilities are concerned and competition between the lines is concerned, your opinion is that that condition to-day would not be changed if all the lines were under a common ownership?

A. I don't think they would.

Commissioner CLEMENTS: Why is that so, is it because they all act in unison now?

A. I should hardly want to put it that way. Tariffs are made. I know of no two competing points in the United States where the tariff is different between points by different carriers over 24 hours or 30 days at least. Perhaps it might be now. Just as quickly as they can get them the same they must do of course, so that the tariffs are uniform. You cannot operate two roads having two sets of tariffs.

Commissioner CLEMENTS: Have there been conflicts and contests between competing carriers in years past in which the rates figure away down to almost nothing?

A. Some very disreputable ones that I have been concerned in myself.

Commissioner CLEMENTS: From time immemorial the public generally has believed that there was more vitality in competition and separate ownership, and separate action. Is that all a mistake? Has the policy of the Government been altogether mistaken in regard to that fact? Does it make no difference whether one man owns or controls everything or whether there is a dozen different independent managements existing and independent ownerships?

A. I think there has been a great deal of mistaken judgment in regard to that. I am not prepared to give a discourse on it myself.

Commissioner CLEMENTS: Don't you think your opinion is rather speculative and theoretical as to what would be the effect if
454 all of these roads were under one management?

A. No, I don't think so. It is based upon a pretty long and hard experience and I have never known anything but temporary war fare and struggles between carriers to get a larger percentage of the business, or something of that kind, that have made any very material difference in the rates, except that there has been a general decrease in them ever since I have been in the business.

Commissioner LANE: Is there more competition to-day between the Great Northern and Northern Pacific in the matter of facilities than there was ten years ago?

A. Why, I think it is a little stronger than it was. We have got more money to take care of them now than we had then.

Commissioner LANE: You are more aggressive in competition for business, and better prepared to take care of it than you were ten years ago?

A. I think so. We have spent a great deal of money in the last few years. We have built some very fine warehouses and have spent something like $300,000 in building warehouses on our tracks at Seattle, in order to get the business away from the Great Northern, because they are the only people there except ourselves.

Commissioner LANE: You had put in all your warehouses at Tacoma?

A. No, these are private warehouses that we lease and rent to tenants.

Commissioner LANE: You lease warehouses at Seattle to tenants?

A. Yes, we built some fine brick buildings there.

Commissioner LANE: What was the object in doing that?

A. To get them located on our tracks so that they would give us a preference in hauling the business.

Commissioner LANE: You had plenty of warehouses in Tacoma, didn't you?

A. None of that character. These gentlemen do business in those houses. They are commission men and so forth. We had plenty of warehouses for wheat, and warehouses to unload and
455 handle our own interchange business with connecting carriers and the ocean, but these are a different proposition.

Commissioner LANE: That is not the most notable achievement of your road in the way of competing with the Great Northern, is it?

Mr. HANAFORD: No, sir, we are spending fifty millions of dollars now to enable us to take care of the business that we have, in the way of double tracks, locomotives, and so forth.

Mr. SEVERANCE:

Q. Just a word about this answer that you made to Mr. Lane that you think conditions would be the same if all the railroads now competing with each other were under one management. You don't think, do you, that if there was no incentive given to these separate lines to give good service,—assuming the rates are uniform,—that the same situation would exist that does today?

A. I don't see why it should not.

Q. Well, self interest is the strongest thing to move people to do things in this world.

A. Yes sir.

Q. Now, if you own a railroad and I own a railroad and we are reaching the same points and I am trying to get the business and you are trying to get the business, although we may agree to charge the same rate, we will each try to give better service than the other.

A. We each ought to try to give the best service we can.

Q. If a shipper has a lot of commodities to transport and we are each after them and one of us is able to give the cars quicker than the other, he will get the business naturally?

A. Yes sir.

Q. Or, if he can give quicker service in transit.

A. Yes sir.

Q. You don't mean to say, do you, that if you eliminate all that activity, the situation will be just the same as it is now where that activity exists?

A. I don't know what you mean by eliminating the activity. The management of the Northern Pacific Railroad, the only one that I know intimately about, is putting on extra passenger trains to-day, locally, in Montana where we have no competition whatever,
456 because the people complain about waiting for our delayed overland train. We don't have to do that because there is any ownership except our own.

Q. You often travel between St. Paul and Chicago, don't you?

A. Yes sir.

Q. And you unfortunately I suppose sometimes have to travel between Boston and New York. Now, don't you think that that is a pretty good object lesson on the point that you have under discussion. When you compare the kind of trains that run between New York and Boston, those midnight horrors that they have, with the trains between here and St. Paul where there are four or five lines fighting for the business. Don't you see some difference in the condition resulting from common ownership, a different condition from the separate ownership that they have up here?

A. I did not suppose matters between New York and Boston were as bad.

Mr. MILBURN: You must have had a bad night.

Mr. SEVERANCE: I have had many a bad night on those trains.

Q. Isn't that the secret of the fine service that there is between here and St. Paul and Minneapolis, because there are four or five roads actively working for the business, don't that result in putting on fine trains and keeping up the equipment and giving good service?

A. I don't know. I should be ashamed if I was connected with the Milwaukee & St. Paul and had the passenger business between here and the Twin Cities that they have, not to give good service for it.

Q. Well, they do give good service, don't they?

A. I don't believe it is because somebody else is giving good service that they do it.

Q. You don't think it makes any difference if there are other lines preparing to take the business and give good service. You think the whole thing is done from a sense of duty and that competition does not cut any figure.

A. That is my view.

Q. Then I suppose that view explains to all branches of
457 industry, don't it? You regard the generous heart as being better than competition.

A. I don't know a damn thing about anything but the railroad business. I never did anything else.

Mr. KELLOGG:

Q. What is competition in railroads?

A. I don't know that I am intelligent enough to give you a

definition in a few words of that. I know what it is and I have felt its influence a great many times. I think where two roads are soliciting the same business between the same points, that they might be called competitors for that business.

Q. Now, you said all the lines west of Chicago reaching the Pacific Coast were competitors for trans-continental business?

A. Yes, sir.

Q. Now, what does that competition consist in?

A. Each trying to get it and carry it and get the revenue out of it.

Q. And it has in the past resulted many times in one of the lines cutting the rates, or reducing the rates by tariffs or otherwise?

A. Yes, when they thought they were not getting a fair share of it or when they thought someone else had got in before them.

Q. That is what you call competition, is that right?

A. That is competition or the effect of competition.

Q. Now then, you say if every railroad in the United States belonged to one corporation the competition would be just as great as it is today, do you?

A. I do if you think that cutting rates is the only thing that there is in competition.

Q. No, I am asking you the general question.

A. That is rather a larger proposition that I should want to answer.

Q. Well, all the trans-continental lines then.

A. I think the service would be as good as it is now and the rates would be practically the same.

Q. I asked you if the competition would be the same if they all belonged to one corporation?

A. I think so.

Q. There would be the same struggle for the business for each separate line?

A. Each one of them would have to have its corps of officers who would be compelled to get all they could for their line.

458 Q. The same reduction of rates to get business, as against each other.

A. It is pretty hard to reduce rates now. I do not know about that.

Q. You don't know about that?

A. I think reductions would be continually made, but you said reductions against each other.

Q. Yes, that is exactly what I said.

A. I don't know that there would be any reduction against each other.

Q. There would be no interest for doing it.

A. There would be a reduction to get the business.

Commissioner HARLAN: Would you, as traffic manager of the Northern Pacific, make a reduction as against Hanaford, the traffic manager of the Great Northern, in order to get business for the Great Northern.

Mr. HANAFORD: No, I don't think I would.

Commissioner HARLAN: In other words, if you represented the interests of both roads you would not make a reduction, would you?

Mr. HANAFORD: I think I would.

Commissioner HARLAN: On one as against the other.

Mr. HANAFORD: No, but on both at the same time.

Commissioner HARLAN: No, but I say on one as against the others.

Mr. HANAFORD: I don't know why I should make it on one as against the others.

Commissioner HARLAN: You would not do it because you represented both interests and that would be the reason, would it not?

Mr. HANAFORD: Well, I don't know, I should expect——

Commissioner HARLAN: How could Hanaford, of the Northern Pacific, reduce rates on Hanaford of the Great Northern, if he represented both interests?

Mr. HANAFORD: Not without both of them knowing it, surely.

Commissioner HARLAN: That is, Hanaford of the Great Northern would have to consent to it.

Mr. HANAFORD: Yes, I might do that.

Commissioner HARLAN: Isn't it manifest, Mr. Hanaford,
459 that the substitution of one rate maker on two roads, for two rate makers on two different roads eliminates the possibility of a difference of opinion between the two rate makers? In other words, I, of the Great Northern, may think the rate is too high and I would want to reduce it, and you, of the Northern Pacific, might think it was all right. If I reduce it you would have to meet it, wouldn't you?

Mr. HANAFORD: Yes, that is correct.

Commissioner HARLAN: Now, if you made the rates for both roads, you could not make it against your own judgment for the Northern Pacific.

Mr. HANAFORD: No, but I should probably be moved by the same influences as you as traffic manager of the Great Northern were moved to reduce it.

Commissioner HARLAN: I just want to get at this as a matter of logic and reason, whether you mean to say and mean us to understand that the ownership of all the railroads of the country in one corporation would not result in curtailing the competition as expressed in the form of the making the rates. Do you mean the country to understand that to be your answer?

Mr. HANAFORD: You mean, if I follow you correctly, that if the government owned the railroads of the United States, that the rates would be on a higher basis than they are now?

Commissioner HARLAN: Oh, no, no, we are not talking about Government ownership at all.

Mr. HANAFORD: Well, that is one ownership.

Commissioner HARLAN: Well, let us limit it to the Northern Pacific and the Great Northern.

Mr. HANAFORD: Limit it to two roads and I can perhaps grasp it.

Commissioner HARLAN: Well, limit it to those two roads the Northern Pacific and the Great Northern. Now, do you mean to say that the substitution of one rate maker for two rate makers for those two roads would have no effect upon the possible reduction of rates?

Mr. HANAFORD: I don't think it would. Assuming that the man handling them handled them to the best of his ability.

460 Commissioner LANE: Do you think in the matter of facilities that competition is of value?

Mr. HANAFORD: I suppose it has a certain bearing, but we have uniform rules for providing facilities. I suppose you mean by that side tracks?

Commissioner LANE: I mean for instance the providing of cars. Let me give you an illustration. We have recently held a hearing in Minneapolis and Chicago on the question of Car Shortage. We had reports for instance from Iowa that at their competitive points it was comparatively easy to get cars, but at the non-competitive points it is difficult; that in the northwestern country the elevators at competitive points had less difficulty in getting cars than the elevators at non-competitive points. Now, suppose that these non-competitive points were turned into competitive points and two roads were disputing for the traffic, would there not be a rivalry as to the furnishing of cars to those elevators in order to get the business?

Mr. HANAFORD: There might be. That would depend upon the person-el of the people who were handling the road. I don't want to put it in that way. I don't think you heard of anything of that kind on the Northern Pacific. I have asked some of the elevators at competitive points on our road if they would not use the other line anyway to help them get the grain out. The situation has been very bad with us, something that we have deplored considerably. We have taken cars of our elevators that could not get help from anybody else in preference to elevators at those junction points where there was more than one outlet.

Commissioner LANE: So that you do think then that there is a value in competition between roads in the securing by the shipper of facilities in transportation.

Mr. HANAFORD: Oh yes, some.

Commissioner LANE: That is, under the present condition of things it would be far better to have roads competing between each other than to have one road own all the transportation facil-

461 ities of the country, so far — the shipper getting his car is concerned?

Mr. HANAFORD: I would not want to say yes to that question just in that way. I think there are conditions under which competition perhaps—where a would-be shipper has got better service by their being two roads than where there was one. I think those are rather exceptional cases though. It depends largely on the management.

Mr. KELLOGG:

Q. You think the philanthropic gentlemen down in New York who control and own these railroads will in the very nature of things give the very best service possible whether there is competition or not.

Mr. HANAFORD: Well, I don't think they have but very little to do with the facilities and service that is given. I think the men that operate the roads will give the best they can.

Mr. MILBURN: Leaving the philant-rop*hy* out of it and taking yourself as manager of an extensive system that had previously consisted of independent lines, don't you think you could move your cars and your other facilities a great deal more effectively for the transaction of the business of the whole system than if the system consisted of many independent systems each holding on to its own cars at critical junctures, for operation.

Commissioner LANE: You mean, wouldn't it be beneficial to have a car-clearing house or pool?

Mr. MILBURN: Well, say a single management of a railroad.

Mr. HANAFORD: I think the free interchange of cars, a freer interchange of cars than we have had in the last six months would relieve the situation considerably?

Mr. MILBURN: Not that I am arguing in favor of it, but simply as getting at the natural results. Don't you think a big system comprehending a number of railroads facilitates the best use of all the facilities of that system rather than the same system broken
462 up into a number of separate concerns independently operated?

Mr. HANAFORD: Well, I should think so.

Commissioner LANE: Don't you think that it is possible for the railroads as individual systems, by co-operation to effect that same thing without any ownership whatever?

Mr. HANAFORD: Yes.

Mr. MILBURN: Then, you are eliminating competition to just that extent that you co-operate, are you not?

Commissioner LANE: Well, what is his answer to that?

Mr. HANAFORD: Why, yes.

Mr. MILBURN: If you co-operate for car service you are eliminating competition with respect to car service.

Mr HANAFORD: The road that has the most cars—there won't be any road that will have the most cars, of course, under those circumstances.

Commissioner LANE: Do I understand you to say that if all of the systems, we will say, in this part of the country united in a general car pool and by common direction the cars could be turned from one place where cars were not needed to another point where cars were needed, that that kind of co-operation would be an elimination of competition?

Mr. HANAFORD: In car service.

Commissioner LANE: In car service but not in competition for the business at all, would it?

Mr. HANAFORD: No, not at all.

Commissioner LANE: That is what we are talking of, isn't it, it is car facilities furnished to the shipper.

Mr. HANAFORD: You would have to be very careful about that because it cannot be confined to one locality. It would have to be a general proposition. Our cars are to-day away down in Florida and Alabama and we cannot interchange freely with those roads.

Commissioner LANE: Simply because you cannot get them back?

Mr. HANAFORD: Unless we could get them back.

463 Commissioner LANE: Because the other roads take them away from you and keep them. But that is not the trouble on your road, because you have over two thousand more cars than you are entitled to.

Mr. HANAFORD: I do not know about that.

Mr. MILBURN: I want to ask one question, Mr. Chairman, and then I will be through. Taking your line, as manager of the Northern Pacific, to-day, using all your forces to act as against your rivals and competitors, to get all the business that you can, to what extent does the change, of lawful rates I mean—lawful I mean now—cut any figure in that competition for business, do you get my point?

Mr. HANAFORD: No, I do not, Judge.

Mr. MILBURN: How much of a figure—as you are managing your railroad as you are conducting it and striving for business—how much of a figure does the change, the actual change in the lawful rates, a change in a lawful way of your rates? How much business in this competition do you get by changing your rates that you would not otherwise get, by lawfully changing your rates? How much of an agency is that in this business competition under present conditions?

Mr. HANAFORD: Well, it could be made considerable of an agency.

Q. As a matter of actual experience as the business is done? If you reduce your rates you know that your competitors will come to you.

Mr. HANAFORD: If I reduce without consulting with the gentleman that are going to be benefited by it, yes sir.

Mr. MILBURN: I am talking as the business is actually done, how much of a figure is this power of changing your rates lawfully?

Mr. HANAFORD: Why, I think it is a good deal of a figure.

Mr. MILBURN: You think it cuts a good deal of a figure, do you?

Mr. HANAFORD: Yes.

464 Mr. MILBURN: In getting business to-day, you all have the same rates.

Mr. HANAFORD: Not perhaps in getting competitive business as it is in building up business. You have got to adjust the rates in building up a business.

Mr. MILBURN: You all have the same rates to-day for your competitive business.

Mr. HANAFORD: Yes.

Mr. MILBURN: Haven't you?

Mr. HANAFORD: Yes.

Mr. MILBURN: You are striving for it under that system of things of common rates?

Mr. HANAFORD: Yes.

Mr. MILBURN: Or your competition is carried on with those common rates, is it not, to-day?

Mr. HANAFORD: Yes.

Mr. MILBURN: A power that you are not exercising is not helping you in your present competition.

Mr. HANAFORD: There is a power there that you can exercise you know.

Mr. MILBURN: You are not exercising it.

Mr. HANAFORD: Sometimes I am as far as I am requested.

Mr. MILBURN: Lawful change I mean, not unlawful.

Mr. HANAFORD: If it is made perhaps for unlawful purposes.

Commissioner LANE: That power to reduce rates is largely a power that is used as a threat and over other railroads.

Mr. HANAFORD: No, I don't think so. Very often it is a question of judgment with the manager of a certain road or a certain system of roads. He believes that the business can be materially increased in a direction perhaps where he needs the reduction of rates.

Commission LANE: Well, I can say to you, "If you cut down your rate on this traffic from that common point, I will cut my rate from another common point on another product," and that will prevent you from making the change which you contemplate.

Mr. HANAFORD: I will if I feel I am going to lose more
465 than I am going to gain by it. The day was when it would not, but I have got older now.

Commissioner LANE: You see the wisdom of acting in harmony.

Mr. HANAFORD: It would drive me out of any proposition of that kind if it was going to cost dollars and cents.

Commissioner LANE: Is that the reason you don't go into San Francisco market for business?

Mr. HANAFORD: No sir.

Commissioner LANE: It is not that you have practically agreed to divide the territory up and surrender San Francisco to the Southern Pacific?

Mr. HANAFORD: No sir, nothing of that kind, we have no arrangement with the Southern Pacific of any kind and we received no benefit from staying out of it.

Commissioner LANE: Do they leave you alone up in your territory?

Mr. HANAFORD: They cannot get up there very well unless under this new arrangement they have. We took that into the courts and put up a gate at Portland and shut them out from coming up there and the courts sustained it.

Commissioner LANE: Then they regarded that as your territory for a while, but now they are making an effort to break down the gate.

Mr. HANAFORD: No, I don't think—they didn't have anything to do with forming this new law. I am afraid it is going to break it down.

Commissioner LANE: You think they are likely to come up there?

Mr. HANAFORD: I think so.

Commissioner LANE: You think that would be injurious to the Southern Pacific?

Mr. HANAFORD: I think it would be injurious to the Northern Pacific. I would rather they would build a line up there.

Commissioner LANE: You would rather they did?

Mr. HANAFORD: Yes.

Commissioner LANE: You think now they will go in over your tracks?

466 Mr. HANAFORD: Well, there is a question about it. I am rather in hopes to have you gentlemen decide it favorably to my wishes. This proposition of making tariffs from any junction point and compelling any road to take its locals will let them do that because our locals from Portland to Puget Sound, by reason of water competition are very low. We built a road clear across the continent for the express purpose of carrying that business. We hope to take it down to Portland but we hate to take it down there at the low local rates that are made necessary in the Puget Sound region. There is no law, understanding or reason why they should not build a road up there if they want to, but I hate to have them use ours.

Commissioner LANE: Suppose you use the water and just get your road a little of the San Francisco business, they might compromise by not going up there.

Mr. HANAFORD: I don't think so. The rate from every point in the east to San Francisco is exactly the same as it is to Seattle, that is near enough for all practical purposes. The distances are about the same. Now, in cutting that we might get a small amount of business, on the small amount of business that we should get from San Francisco we would have to carry through a very large business on our own reduction of that rate. We cannot reduce the San Francisco rate without reducing the Puget Sound and Portland rate. If I could I think I should carry a larger percentage of the San Francisco business than I do, but I cannot do it. I have got to pay the penalty myself by cutting the rates on our own business.

Commissioner LANE: That is the reason I suppose that it is not wise for them to carry business up into your territory from San Francisco by water, because you have got to treat your terminal rates on San Francisco Bay and Puget Sound as sacred to yourselves.

Mr. HANAFORD: I don't know whether it behooves them any to do some of it or not, but there is not any understanding with us in regard to it.

Commissioner CLEMMENT: If you were traffic manager
467 for all the trans-continental roads and their earnings were going into the pockets of the same owners, no matter from which line the earnings came, you would still be under every inducement to make the best possible showing that you could for the Northern Pacific and earn all that you could for the property?

Mr. HANAFORD: I think so.

Commissioner CLEMMENT: If the owners called on you for increased earnings or increased dividends, would it not be much easier for you to produce that result than it would be if there were half a dozen different managers representing half a dozen different complicated ownerships in these several roads?

Mr. HANAFORD: I do not think so. I think if I was running one of them I could do that a good deal easier than I could if I was running all of them.

Commissioner CLEMMENT: You think you could increase the rates on your road and manage in competition with the others easier than you could if you managed all of them?

Mr. HANAFORD: Yes, because we could not raise the rates without your consent.

Commissioner CLEMMENT: You could not?

Mr. HANAFORD: Not very much. You would be sort of watching over that, I guess?

Commissioner CLEMMENT: We might be doing something about it. We don't make your rates.

Mr. HANAFORD: No, but you do not allow any raise of them without giving you thirty days' notice that we are going to, and people these days don't stand a raise very pleasantly.

Whereupon the further hearing of said matter was adjourned until the following day, January 10th, 1907, at 10 o'clock A. M.

468 CHICAGO, ILLINOIS, *January 10th*, 1907,
10 o'clock, a. m.

Present: Commissioners Knapp, (Chairman), Clements, Lane, Clark and Harlan.

The CHAIRMAN: Gentlemen, the Commission is obliged to announce that we can only sit during the morning session of today. Two of our members are compelled to leave at 6:30 tonight to be in Spokane to take up a case assigned for hearing there next Monday. We have been in session, as you know, long hours every day here and have been in consultation at night until nearly midnight. There are a number of things we must dispose of as the members of the Commission who are going west cannot get back to Washington under four or five weeks. We can, if desired, sit tomorrow forenoon here, but cannot hold a session this afternoon, as we are under the necessity of taking that time for other matters.

Mr. KELLOGG: We prefer to close here at this time at one o'clock.

The CHAIRMAN: Very well.

Mr. SEVERANCE: Mr. Hiland, will you take the stand.

J. H. HILAND, called as a witness, being duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Hiland, what is your official position?

Mr. HILAND: Third Vice President of the Chicago, Milwaukee & St. Paul Railway.

Mr. SEVERANCE: What branch of the railway business is under your jurisdiction?

Mr. HILAND: The traffic.

Mr. SEVERANCE: How long have you been in the traffic business?

Mr. HILLAND: Well, all of my railroad experience has been in that line.

Mr. SEVERANCE: How many years?

Mr. HILAND: Thirty-eight.

Mr. SEVERANCE: And during what part of that 38 years have you been engaged in the west?

Mr. HILAND: All of it.

469 Mr. SEVERANCE: With what different railroad companies?

Mr. HILAND: The Chicago, Milwaukee & St. Paul; the Chicago, St. Paul, Minneapolis & Omaha.

Mr. SEVERANCE: That is part of the Northwestern——

Mr. HILAND: And the affiliated lines which constituted the Missouri River Passenger Association in 1884 and 1885.

Mr. SEVERANCE: Now, during the last 20 or 25 years, you have been very familiar, have you not with the movement of traffic and the conditions surrounding the movement of traffic practically all over the United States and in a general way and particularly so as to points in the United States west of Chicago.

Mr. HILAND: Well, my experience has been entirely in the handling of traffic originating and destined to points served by the railroads I have mentioned.

Mr. SEVERANCE: That included traffic from the Atlantic to the Pacific and from the Pacific to the Atlantic.

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: And also from the Orient to the Atlantic and Middle States and from the Pacific to the Middle States?

Mr. HILAND: I would not want to say that I know very much about Oriental traffic. Therefore, I would rather exclude that entirely from my answer.

Mr. SEVERANCE: But Pacific Coast traffic you have had a great deal to do with?

Mr. HILAND: I have had more or less to do with it as a connecting link in the lines that formed the Trans-Continental Association.

Mr. SEVERANCE: Now, Mr. Hiland, prior to 1901, will you state whether the Southern Pacific Sunset Route was competitive for Pacific Coast business with the Union Pacific line?

Mr. HILAND: Prior to 1901?

Mr. SEVERANCE: Yes, sir.

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Did that include business from the Atlantic Seaboard?

470 Mr. HILAND: Yes, sir.

Mr. SEVERANCE: And from the Middle States, the Mississippi Valley?

Mr. HILAND: Well, as to the Middle States, I should say that it does not come north of the Ohio River to any very great extent—a little, perhaps, but not to any great extent.

Mr. SEVERANCE: Well, there is traffic over the Sunset by rail connection to Texas points?

Mr. HILAND: That is what I mean.

Mr. SEVERANCE: From Chicago freight moves that way, does it not?

Mr. HILAND: Oh, yes.

Mr. SEVERANCE: From Chicago and common points?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Now, Mr. Hiland, do you know anything about the movement of the wool business of California and Oregon to Boston—I believe Boston is the great wool market of the country?

Mr. HILAND: Boston and Philadelphia.

Mr. SEVERANCE: Yes. How does that business move?

Mr. HILAND: Well, that business moves in both direction-, that is, through both gateways, what we call the Gulf gateway and the Missouri River and Atlantic Seaboard gateway across the Mississippi River and Missouri River through Kansas City and Omaha, and some of the wool in the northern part of the Pacific Coast through the northern gateway. It moves through all channels, depending very largely where the wool originates in that district.

Mr. SEVERANCE: Take the wool of Oregon particularly. Oregon is a large wool growing State, is it not?

Mr. HILAND: I understand it is.

Mr. SEVERANCE: Wool comes from there over the Southern Pacific by the Gulf and also comes over the Oregon Railroad & Navigation Company and the Union Pacific, does it not—both ways?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Now, you say you do not know much
471 about Oriental business. You have had to do, however, with Asiatic business, have you not? You have received and handled it over your lines?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Coming both through Portland and San Francisco?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Now is there competition from Cincinnati, or is the business originating in Cincinnati and Trunk Line Territory competitive as between the Union Pacific route to the Coast and the Southern Pacific route by way of New Orleans and Galveston?

Mr. HILAND: It is particularly competitive in so-called Trunk Line Territory; to a lesser extent as you go west.

Mr. SEVERANCE: Now, Mr. Hiland, will you state whether or not you have found since 1901, as an officer of the Milwaukee & St. Paul Road, any more difficulty in getting traffic from Missouri River points, such as Omaha, than you experienced prior to that time—through business from the Coast?

Mr. HILAND: Well, you mean—I do not know that I quite catch your question there. You ask me if I experience more difficulty in getting business to and from Omaha.

Mr. SEVERANCE: Oh no, coast business coming by way of Omaha, coming off the Union Pacific, if you find any more difficulty getting that business to move over the line of the Milwaukee & St. Paul now than you did formerly?

Mr. HILAND: I should say, yes, a little more difficulty.

Mr. SEVERANCE: To what do you attribute that difficulty, Mr. Hiland?

Mr. HILAND: Well, from my standpoint it may be attributed to two or three causes; the Milwaukee & St. Paul Railway are projecting their line into that territory and that influence possibly, may be directed, or through connections and affiliations of lines that will be competitive with the Milwaukee & St. Paul Railroad west

of the Missouri River and lines that have been within com-
472 paratively recent years connected in the other direction, including lines which are and have been established for many years?

Mr. SEVERANCE: That is, the recent affiliations of certain lines?

Mr. HILAND: It may be so. The competitive conditions are more in the lines of the least resistance, so that the least resistance now takes the business; and our line being against the greatest resistance, perhaps, than heretofore, naturally feels the effect of it.

Mr. SEVERANCE: I see. So you do not consider the Milwaukee & St. Paul the line of least resistance between Omaha and Chicago, since the recent affiliations of different lines that have been brought out in the testimony?

Mr. HILAND: Well, that of course is a matter of judgment and is more or less of a personal opinion, and that is my opinion.

Mr. SEVERANCE: And it is based on information that has come to you in your position as the head of the traffic department of the Milwaukee & St. Paul Railroad?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Now, Mr. Hiland, take up this matter of competition. What are the elements, to your mind, which make up competition—I mean, applied to railroading?

Mr. HILAND: Well, that is a pretty broad question to answer, but I should say that the elements of competition are governed by at least three influences.

Mr. SEVERANCE: Well, what are they?

Mr. HILAND: First, and the important one is the rate question. Second, is the facilities, character of service and the manner of conducting, soliciting and serving the public.

Com'r CLEMENTS: What did you mention as the first?

Mr. SEVERANCE: Rates; second, facilities; and third, personal solicitation and serving the public. Now, Mr. Hiland, having in view your definition of the elements that make up competition, do you think that those three elements, that is competition in rates
473 and facilities and in solicitation for business—serving the public—would be as strong if all the railroads were controlled by one man or one company instead of being independent of each other?

Mr. HILAND: That depends on whether they were separate and distinct managements in the operation of the property and granting that they are separate and distinct managements, the competition then would, to my mind, resolve itself into one of personal rivalry and not in the nature of monetary considerations, and possibly it might also be said that the character of the service might be lessened and modified, and that while there might be competition, it would be governed entirely by the selfish motives of individual ownership, and that would, to a great extent limit competition or eliminate competition.

Mr. SEVERANCE: Now, Mr. Hiland, would you say that competition, as railroad business is transacted, could continue to be active if instead of separate commercial general agents, soliciting business

at large centers, those agencies were consolidated by different lines and the business put in the hands of one man?

Mr. HILAND: That would remove competition.

Mr. SEVERANCE: You may cross examine.

Mr. MILBURN: Mr. Hiland, the Chicago, Milwaukee & St. Paul, that is, your road has a line from Chicago to Omaha and what other points?

Mr. HILAND: Kansas City, Chamberlain, Evarts, the Twin Cities and Duluth.

Mr. MILBURN: And its, what I may call immediate parallel lines or competing lines in its system, in the territory of its system, not regarding it now as a link in longer lines, are what?

Mr. HILAND: What is that?

Mr. MILBURN: Are what companies? Its immediate rivals in the territory of its own system?

Mr. HILAND: I will commence on the north: The Wisconsin Central; the Chicago & Northwestern; the Chicago, Burlington & Quincy; the Chicago, Rock Island & Pacific; the Chicago Great Western; the Illinois Central; the Atchison, Topeka & Santa
474 Fe; the Chicago & Alton; the Iowa Central; and the Minneapolis & St. Louis. I guess I have got them all. I do not know.

Mr. MILBURN: Now, coming to the line between Chicago and Omaha, what are the immediate rivals of that line?

Mr. HILAND: I should have to name as rivals of that line all of the lines except the Wisconsin Central.

Mr. MILBURN: Then, all of those lines are—or each one of those lines rather, is a link in trans-continental service which passes through Omaha and Chicago?

Mr. HILAND: Not all of them. The Atchison, Topeka & Santa Fe runs through to destination. The others are links. Some of them are longer links and some of them are shorter.

Mr. MILBURN: But they are links in a trans-continental line which passes through Omaha and Chicago?

Mr. HILAND: Omaha, Chicago and St. Louis.

Mr. MILBURN: I was referring now particularly to Omaha and Chicago, and, say, Kansas City and Chicago.

Mr. HILAND: Yes, sir.

Mr. MILBURN: And those are the lines which are the rivals for all, which I would call trans-continental Union Pacific business at Omaha?

Mr. HILAND: Yes, sir.

Mr. MILBURN: It interchanges with those lines?

Mr. HILAND: Yes, sir.

Mr. MILBURN: With what companies, do you know, that it has through car arrangements between Omaha and Chicago?

Mr. HILAND: The Chicago & Northwestern and the Chicago, Milwaukee & St. Paul Railway through Omaha as to passenger traffic.

Mr. MILBURN: And freight?

Mr. HILAND: Well, there is an interchange, so far as I know with all of them.

Mr. MILBURN: With all?

Mr. HILAND: Yes, sir.

Mr. MILBURN: With what lines do you interchange
475 your trans-continental California traffic—trans-continental traffic?

Mr. HILAND: We exchange our trans-continental traffic with any line that we can get to handle it for us. In other words, our business is sent over the lines of the least resistance.

Mr. MILBURN: Well, which are those lines? Now, as a matter of experience, I am talking—taking the volume of your traffic from year to year which lines would the bulk of it go over, or which lines does the bulk of it go over?

Mr. HILAND: Well, if you ask which line the bulk of it goes over I should say that it goes by the Union Pacific Railroad, but if you ask in the general, as I understood you, in taking the whole year's business it is fluctuating. It may, as I say, go very largely at times over what we would consider a weak line for California traffic and that weak line might possibly be a strong line at times caused by the influences I have described as competitive.

Mr. MILBURN: Well, the bulk of your business, taking it by lines, trans-continental business is over the Union Pacific?

Mr. HILAND: Yes, sir.

Mr. MILBURN: You spoke of the elements of great resistance and least resistance in connection with changes that you have noticed since 1901; that your line had been the line of great resistance which had affected conditions as compared with some other lines of least resistance. Will you be a little more particular about that?

Mr. HILAND: Well, did I answer exactly in that way?

Mr. MILBURN: Well, I dare say not.

Mr. HILAND: I would like to have the reporter repeat just what I did say.

Mr. MILBURN: Well, perhaps we can avoid the time.

Mr. HILAND: All right.

Mr. MILBURN: The time of searching the notes. You were asked by Mr. Severance if you had noted changes in the volume of
476 your trans-continental business since 1901.

Mr. SEVERANCE: That is not quite what I asked. I asked whether he discovered any change in the difficulty of getting business.

Mr. MILBURN: Yes, that is right—since 1901, and you said you had, and the reason for it was that traffic took the line, or business took the line of least resistance, and yours had been the line of great resistance.

Mr. HILAND: Well, if I conveyed any impression of that kind, I probably conveyed an exaggerated one in your mind. Now, the lines of least resistance that I had in mind when I answered that have been constituted by reason of the elimination of secret and preferential rates since the so-called injunction of—I think that was in 1902, and the influences that have governed since that period, especially among trunk lines that have adhered more closely to what we call good, honest business methods; that the lines of least resistance are the lines that have been not as particular perhaps, in their methods of conducting the business, and that naturally in the

creating of a route to be selected by the shipper, the shipper takes the line that is the most desirable from every point of view. I do not know whether I have made that quite clear to you or not.

Mr. MILBURN: The lines that you referred to as affected by the injunction in 1902, which lines were those?

Mr. HILAND: I do not recall all of them. I know the Milwaukee & St. Paul Railroad was one.

Mr. MILBURN: Well, now, perhaps I can concentrate what I want to get at in a single question, Mr. Hiland, and that is this: Was the ownership of the Southern Pacific by the Union Pacific one of the elements you had in your mind in your statement of the reasons for your greater difficulty in getting trans-continental traffic at Omaha since 1901?

Mr. HILAND: Yes, sir.

Mr. MILBURN: How?

Mr. HILAND: By reason of self interest, as I view it, and
477 the fact that it is more profitable I assume, in getting the long haul of the business, the greater revenue through the southern route on certain classes of traffic. If you will recall the questions that were asked of me, you will find that a certain particular commodity was alluded to and that particular commodity I had in my mind when I answered the question and when I answered yours now.

Mr. MILBURN: Well, then, as I understand you, it is the fact of the Southern Pacific Route and its greater dominance that has created a difficulty at Omaha?

Mr. HILAND: I will not put it that way. It is the fact that business moves in that direction. Now, what dominates that I do not know.

Mr. MILBURN: It moves in the direction of the Southern Pacific route?

Mr. HILAND: Yes, sir.

Mr. MILBURN: You do not know what it is that dominates that?

Mr. HILAND: I do not know of my own knowledge what dominates it.

Mr. MILBURN: You, then, could bring in the other part of your answer that in your opinion it is the ownership by the Union Pacific that may be one of the causes of that condition.

Mr. HILAND: I only judge that and in framing that answer I judge by myself if I owned that property what I would do with it. I would make it earn the limit.

Mr. MILBURN: But it might make a difference if you owned 40 per cent. of that property and owned the whole of your other property, how far you would discriminate against the property of which you owned the whole, would it not?

Mr. HILAND: Not necessarily; if the 40 per cent. yielded to me more than the other, then the 40 per cent. would control.

Mr. MILBURN: On that assumption?

Mr. HILAND: Yes, sir.

Mr. MILBURN: That is pretty obvious.

478 Mr. SEVERANCE: You might increase that 40 per cent. a little, might you not?

Mr. MILBURN: How much is it?

Mr. SEVERANCE: Close to 50 per cent.

Mr. MILBURN (addressing Mr. Lovett): How much is it.

Mr. LOVETT: About 45.

Mr. MILBURN: Mr. Hiland, do you draw any distinction between the power of a link in a trans-continental line over rate- and the power of that same company in control of its own line?

Mr. SEVERANCE: What is that question?

(The question was repeated by the stenographer.)

Mr. HILAND: I will answer that question the way it appeals to me. I may not get your meaning, and therefore I want the answer to conform to the way I understand it. The C. M. & St. P. Railway, is a link in the formation of the trans-continental line and does business, interchanges. That link has nothing whatever to say about the rates in either direction. It, however, does, as a portion of the link, solicit business for the through line in order to increase the movement over the particular link that it forms in the line to and from trans-continental territory.

Mr. MILBURN: You were referring to competitive trans-continental business between the Union Pacific and the Southern Pacific prior to 1901; that was competition between a trans-continental line made up of the various links of railway extending from the Atlantic to the Pacific, for instance, and taking one in the case of the Union Pacific, it would be a trunk line, an Atlantic Seaboard Trunk Line, and your road or some other road to Omaha, and the Union Pacific from Omaha to Ogden, and from Ogden the Southern Pacific to San Francisco. So, the Southern Pacific would be a link in that line, would it not?

Mr. HILAND: Yes, sir.

Mr. MILBURN: And the other route would be the Southern Pacific by steamer from New York to New Orleans or Galveston and thence by the Sunset Route to San Francisco.

479 Mr. HILAND: Yes, sir.

Mr. MILBURN: So that the Southern Pacific was the whole of one line and a link in the other?

Mr. HILAND: Yes, sir.

Mr. MILBURN: That is all.

Mr. SEVERANCE: Mr. Hiland, you stated in answer to one question of counsel that the Milwaukee & St. Paul had felt the result of this amalgamation by reason of the diversion of shipments to the Southern Pacific. Now, I do not know whether you discovered anything of the kind, but I will ask you whether in your opinion the large stock interest of the Union Pacific in the Illinois Central has had any effect on the business of the roads this side of Omaha?

Mr. HILAND: I have not any opinion on that.

Mr. SEVERANCE: You have no opinion on that subject?

Mr. HILAND: No.

Mr. SEVERANCE: That is a very recent acquisition?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: Mr. Hiland, you say the Milwaukee & St. Paul has nothing to say about the rates to the Coast on trans-continental

business. That is because the rates are made by the so-called Pacific lines, is it not, and you take your division?

Mr. HILAND: Yes, sir; made by what is known as the trans-continental lines.

Mr. SEVERANCE: And the Union Pacific is one of those lines?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: And there are a number of different lines this side of Omaha that are competing for the haul this side of Omaha and you are one of them?

Mr. HILAND: Yes, sir.

Mr. SEVERANCE: And you have to take whatever division is given you?

Mr. HILAND: Well, we take the customary divisions. They are the same by all lines.

Mr. SEVERANCE: Certainly, but the rates are made by the trans-continental line, the Union Pacific?

Mr. HILAND: Yes, sir.

480 Mr. SEVERANCE: All trans-continental business that goes over the Union Pacific does not go by the Central Pacific to San Francisco, does it? There is also business going over the Short Line and the Oregon Railroad & Navigation Company—that is in the northern part? Some moves over the Short Line and allied lines and not over the Central Pacific at all?

Mr. HILAND: I do not understand that it does. I do not know just exactly where the connection is made. My understanding is that the Oregon Short Line connects with the Union Pacific Railroad and the Central Pacific is in no way an intervening link. That is my understanding.

Mr. SEVERANCE: That is right. Do you send business to the Pacific Coast by way of Kansas City and thence through the connections of the Sunset Route?

Mr. HILAND: Very little.

Mr. SEVERANCE: Some?

Mr. HILAND: Some.

Mr. SEVERANCE: Do you also send it to Kansas City and to the Coast over the Santa Fe?

Mr. HILAND: Some. Very little, however, through that route and it is business that originates in a territory where the Kansas City route is the most natural route for it to take.

Mr. SEVERANCE: That is, you do not force it either way?

Mr. HILAND: No, sir. No, if we were going to take the business at all, we would take it to the northern gateway.

Mr. SEVERANCE: Take it to St. Paul and Minneapolis?

Mr. HILAND: No, we would take it to Omaha and through that way to California trans-continental business, because the service and facilities and all that sort of thing would afford the best service for other business.

Mr. SEVERANCE: But there have been times in the past when rates have been changed by these different trans-continental lines in the effort to get business, and that has diverted business from its natural orderly movement into other lines, has it not?

481 Mr. HILAND: That always has occurred when there has been an opportunity for the fluctuation of rates not covered by a tariff. That is varying.

Mr. SEVERANCE: That is all.

Mr. MILBURN: The trans-continental rates are all the same, are they not, Mr. Hiland, on all lines?

Mr. HILAND: As I understand.

Mr. MILBURN: And cannot be changed by any one without complying with the law and giving notice to all the others?

Mr. HILAND: That is right.

Mr. MILBURN: Just one question, and I am through. You said about the rate making—now, assume that the Southern Pacific and Union Pacific are independent of each other; that is, there is no ownership of one by the other, and as to trans-continental San Francisco business: You have a line made up of the Southern Pacific to Ogden, the Union Pacific from Ogden to Omaha, the Chicago, Milwaukee & St. Paul from Omaha to Chicago, the Lake Shore from Chicago to Buffalo and the New York Central from Buffalo to New York. Now, the Union Pacific would not as a link be the rate making power of that line, would it, as the link from Ogden to Omaha?

Mr. HILAND: Not solely.

Mr. MILBURN: Why would it be any more than any other—more than your line from Omaha to Chicago?

Mr. HILAND: I think my answer says "not solely the rate making power."

Mr. MILBURN: The rate making power would be all of those elements, would it not?

Mr. HILAND: No, sir.

Mr. MILBURN: Who would? Would the New York Central cut any figure?

Mr. HILAND: I said the so-called trans-continental lines, and when I said the trans-continental lines, it is well known that the lines west of the Mississippi River, from St. Paul west on the one hand and from the Missouri River, Kansas City, south on the other absolutely makes the rates in both directions.

Mr. MILBURN: Then, in that case it would be the Southern
482 Pacific and Union Pacific that would make the rate?

Mr. HILAND: Well, I presume all of the lines in the territory described would all have a voice in the making of the rates.

Mr. MILBURN: Yes, all the lines?

Mr. HILAND: Yes, sir.

Mr. MILBURN: But I am talking now—eliminate for a moment all the other lines and say they were making a rate over the line, a trans-continental rate I have described. You say that that rate would be made by the lines west of the Missouri River over that line, and that rate would be made by the Southern Pacific and Union Pacific, as the lines west of the Missouri River?

Mr. HILAND: Well, to answer that question would be entirely hypothetical, because a condition of that kind does not exist and cannot exist by reason of the fact that the lines are there and therefor you cannot suppose something that does not exist and cannot exist.

Mr. MILBURN: It did exist prior to 1901, did it not? The Southern Pacific was independent of the Union Pacific?

Mr. HILAND: And the rates were made then substantially the same as they are now.

Mr. MILBURN: The rates were the same.

Mr. HILAND: Were made the same.

Mr MILBURN: And were the same? They were made by the Union Pacific and Southern Pacific, were they not?

Mr. HILAND: Not entirely, no.

Mr. MILBURN: That is all.

The witness was excused.

JULIUS KRUTTSCHNITT, being duly sworn, testified as follows:

Mr. KELLOGG: Mr. Kruttschnitt, prior to 1901, what position did you hold with the Southern Pacific Railway?

483 Mr. KRUTTSCHNITT: I was—prior to 1901 I was Vice-President in charge of operation.

Mr. KELLOGG: Vice-President in charge of operation. Where were your headquarters?

Mr. KRUTTSCHNITT: From 1895 to 1901 they were in San Francisco.

Mr. KELLOGG: That was the headquarters of the Southern Pacific system?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: That system is substantially as Mr. Stubbs described it yesterday?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: I do not care to go over that again. When did you become an official of the Union Pacific Company—about when?

Mr. KRUTTSCHNITT: I think it was the first of April, 1904

Mr. KELLOGG: The first of April, 1904. Since that time you have occupied what position with the Union Pacific Railroad?

Mr. KRUTTSCHNITT: Director of Maintenance and Operation.

Mr. KELLOGG: You are the director of maintenance and operation of what lines?

Mr. KRUTTSCHNITT: Of the Southern Pacific Lines and of the Union Pacific System, taking in the Oregon Railroad & Navigation Company and the Oregon Short Line.

Mr. KELLOGG: Your headquarters are where?

Mr. KRUTTSCHNITT: In Chicago.

Mr. KELLOGG: Your jurisdiction extends over those lines in what respect?

Mr. KRUTTSCHNITT: I have charge, as the title would indicate, of operating matters and maintenance of the property.

Mr. KELLOGG: Maintenance of the property and operation of the property, and Mr. Stubbs has charge of the traffic?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Now, have you an assistant director of operation and maintenance?

484 Mr. KRUTTSCHNITT: I have.

Mr. KELLOGG: Who is he?

Mr. KRUTTSCHNITT: Mr. Scott.

Mr. KELLOGG: His jurisdiction is co-extensive with that of yours, under your directions?

Mr. KRUTTSCHNITT: It is.

Mr. KELLOGG: Now, describe to the Commission the operating officials who report to you upon various systems and who work under your direction generally?

Mr. KRUTTSCHNITT: Well, briefly they are the general managers of the Union Pacific, Oregon Short Line, and Oregon Railroad & Navigation Company and Southern Pacific Company.

Mr. KELLOGG: Do the steam engineers of those lines report directly to you or to the general managers of the local lines?

Mr. KRUTTSCHNITT: To the general managers of the different systems.

Mr. KELLOGG: Now, who is the general manager of the Union Pacific?

Mr. KRUTTSCHNITT: Mr. Mohler.

Mr. KELLOGG: His jurisdiction extends from what place to what place?

Mr. KRUTTSCHNITT: From Omaha and Kansas City to Denver and Green River.

Mr. KELLOGG: Green River is a station on the Union Pacific main line to Ogden, is it?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: And about how far east of Ogden?

Mr. KRUTTSCHNITT: About 176 to 180 miles or thereabouts.

Mr. KELLOGG: The balance of the Union Pacific's railroad from Green River to Ogden is under the charge of what official?

Mr. KRUTTSCHNITT: Mr. Bancroft.

Mr. KELLOGG: His position is what?

Mr. KRUTTSCHNITT: He is Vice-President and General Manager of the Oregon Short Line and he is General Manager of that part of the Union Pacific from Green River to Ogden and of the Southern Pacific from Ogden to Sparks, Nevada.

485 Mr. KELLOGG: Sparks, Nevada, is how far west of Ogden?

Mr. KRUTTSCHNITT: 555 or 560 miles.

Mr. KELLOGG: He reports to you, does he not, Mr. Bancroft?

Mr. KRUTTSCHNITT: He does.

Mr. KELLOGG: He has charge of all the Short Line Railroad extending to Butte and west as far as Huntington?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: The Oregon Railway & Navigation Line, which is controlled by the Union Pacific, extends from Huntington to Portland and generally from Portland up the river to Spokane, does it not?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: The Southern Pacific line commences at Portland and runs south to San Francisco, east from Ogden and from San Francisco generally—I am speaking of those controlled by the Southern Pacific—generally through California, Arizona, New Mexico, Texas and Louisiana? I am speaking of their control simply. That is correct, is it not?

Mr. KRUTTSCHNITT: Yes, that is correct.

Mr. KELLOGG: Now, who has charge of the maintenance of way and operation in Oregon of the Short Line and of the Southern Pacific line—in that State?

Mr. KRUTTSCHNITT: Mr. O'Brien, who is Vice-President and General Manager of the O. R. & N.

Com'r LANE: I cannot hear you.

Mr. KRUTTSCHNITT: I say, Mr. O'Brien, who is Vice President and General Manager of the O. R. & N.

Mr. KELLOGG: What is his first name?

Mr. KRUTTSCHNITT: J. P.

Mr. KELLOGG: He has charge of the Oregon Railroad & Navigation Company and of the Southern Pacific Lines in Oregon.

Mr. KRUTTSCHNITT: Yes, sir; as far south as Ashland.

Mr. KELLOGG: How far is that from the State line of Oregon, if you recollect?

486 Mr. KRUTTSCHNITT: 430 miles—Oh, from the State line of Oregon?

Mr. KELLOGG: Yes.

Mr. KRUTTSCHNITT: Oh, about 30 miles.

Mr. KELLOGG: That is a division, I suppose?

Mr. KRUTTSCHNITT: A division point.

Com'r LANE: North of the State Line; about 30 miles north of the State line?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: And about how far is it to Portland?

Mr. KRUTTSCHNITT: 430 miles.

Mr. KELLOGG: That branch of the line is the Southern Pacific's Line; that part of the line from Portland south?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Now, who has charge of the next division—oh, yes, does Mr. O'Brien report to you?

Mr. KRUTTSCHNITT: He does.

Mr. KELLOGG: What is his title?

Mr. KRUTTSCHNITT: Vice-President and General Manager, and General Manager of the Southern Pacific lines in Oregon.

Mr. KELLOGG: He is Vice-President and General Manager of the Oregon Railroad and Navigation Company, and General Manager of the Southern Pacific lines?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Now, south of that, who is the next man in the division?

Mr. KRUTTSCHNITT: E. E. Calvin.

Mr. KELLOGG: Where is his headquarters?

Mr. KRUTTSCHNITT: San Francisco. He is Vice-President and General Manager of the Pacific System, of the Southern Pacific Company.

Mr. KELLOGG: How far does his territory extend?

Mr. KRUTTSCHNITT: From Ashland on the north to El Paso on the south and east, and to Sparks, Nevada, on the west.

Mr. KELLOGG: Then the lines in Texas, who has charge of those lines?

487 Mr. KRUTTSCHNITT: They are in charge of their respective presidents.

Mr. KELLOGG: Each line having—Is the President of each line the general manager?

Mr. KRUTTSCHNITT: He is not.

Mr. KELLOGG: No. Mr. Harriman is the president of some of them, is he not?

Mr. KRUTTSCHNITT: Mr. Harriman is president of the Galveston, Harrisburg and San Antonio, and of the Texas & New Orleans.

Mr. KELLOGG: Who has charge of the maintenance of way and operation of those lines, reporting to you?

Mr. KRUTTSCHNITT: No one.

Mr. KELLOGG: What is your jurisdiction over the lines in Texas?

Mr. KRUTTSCHNITT: I have none.

Mr. KELLOGG: Do you consult with them?

Mr. KRUTTSCHNITT: I do not.

Mr. KELLOGG: Under your direction, does the purchasing agent purchase the equipment for them?

Mr. KRUTTSCHNITT: He does not.

Mr. KELLOGG: In Louisiana, who has charge of the lines?

Mr. KRUTTSCHNITT: You mean immediately in charge?

Mr. KELLOGG: Yes.

Mr. KRUTTSCHNITT: Mr. Fay, who is the general manager, and he has a general superintendent.

Mr. KELLOGG: He reports to you?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Now, does Mr. Thorne who is the purchasing agent of the lines of the Pacific system—he buys engines and materials in large quantities, and cars, etc., for the entire system, does he not?

Mr. KRUTTSCHNITT: He buys cars and engines for all of the systems, over which I have jurisdiction, and I think for the others.

Mr. KELLOGG: Now, who makes out—who authorizes the requisition for those engines, for instance, that you are going to buy during this present year?

Mr. KRUTTSCHNITT: The requisition of all the lines, except
488 the Texas lines, are made on me; I approve them and send them with a favorable recommendation to the President, who has the purchases made.

Mr. KELLOGG: Now, in purchasing engines for the Texas lines, have any been ordered for this year?

Mr. KRUTTSCHNITT: I think so.

Mr. KELLOGG: You haven't heard of it, directly or indirectly, officially?

Mr. KRUTTSCHNITT: Only in this way, Mr. Lovett is president of some of the lines and Mr. Harriman of some of the others, and they frequently correspond with me, asking my opinion about those matters.

Mr. KELLOGG: And in the purchase of engines and equipment for

those lines, Mr. Harriman and Mr. Lovett, who are respectively the presidents of those lines, consult with you?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: And are these engines bought separately from the engines of all the systems, or are they all ordered together by Mr. Thorne?

Mr. KRUTTSCHNITT: That I don't know. Mr. Thorne, I expect, would have to tell that. I don't know how he orders them.

Mr. KELLOGG: Well, now, the engines for those lines come out of the common stock ordered for the system, don't they?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: In other words, if you are placing an order for the Pacific System for fifty engines, you place an order for 46 of them, and Mr. Harriman for two for a certain line, and Mr. Lovett for two more for another line, do they not; is that the way you do it?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: You divide it up?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: What is the object of that?

Mr. KRUTTSCHNITT: I don't know.

Mr. KELLOGG: You don't know?

Mr. KRUTTSCHNITT: You had better ask Mr. Lovett or Mr. Harriman; I don't know.

Mr. MILBURN: You can tell him.

489 Mr. KELLOGG: Now, do you keep track—in the estimating and making of provision for money to improve the lines in Texas, does Mr. Harriman and Mr. Lovett consult you, or do they consult you?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: They take your opinion as to how much money should be expended on the Texas lines and where it should be expended?

Mr. KRUTTSCHNITT: I expect you would have to ask them about it. I don't know whether they do or not.

Mr. KELLOGG: Well, they ask your opinion, then?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Perhaps that is more proper. Whether Mr. Harriman takes it or not, you don't know?

Mr. KRUTTSCHNITT: No, sir.

Mr MILBURN: I don't want Judge Lovett left out of that Presidential business, you know.

Mr. KELLOGG: Oh, no; I am not going to leave the Judge out.

Mr. MILBURN: I have a president here, you know.

Mr. KELLOGG: Well, in making up your estimates for the improvements and betterments of various lines, you do this, do you not?

Mr. KRUTTSCHNITT: No. The general managers do it.

Mr. KELLOGG: Well, I mean they are approved by you?

Mr. KRUTTSCHNITT: Yes, sir; they are submitted to me, with the exceptions to which I have called attention.

Mr. KELLOGG: With the exceptions of the Texas lines, these estimates for improvements and betterments of the lines during the year

are made up by the general managers first, and then they are submitted and approved by you, with the exception of the Texas Line?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Or disapproved; approved or disapproved?

Mr. KRUTTSCHNITT: Passed on by me.

Mr. KELLOGG: Now, then, as to the Texas lines those are
490 made up by the respective general managers of those lines in Texas.

Mr. KRUTTSCHNITT: Yes.

Mr. KELLOGG: And they are considered by the Presidents of those lines?

Mr. KRUTTSCHNITT: Yes.

Mr. KELLOGG: And those presidents confer with you as to the advisability of making those improvements and betterments on those lines?

Mr. KRUTTSCHNITT: Yes.

Mr. KELLOGG: The estimates for the improvements of those lines are submitted to you then, are they not?

Mr. KRUTTSCHNITT: I think so. I don't know whether they submit all.

Mr. KELLOGG: Now, in the selection of the division superintendents, and important officials in the immediate operation of Texas lines, are you consulted by Mr. Harriman and by Mr. Lovett?

Mr. KRUTTSCHNITT: I think so.

Mr. LOVELL: And I suppose you give your advice?

Mr. KRUTTSCHNITT: Yes.

Mr. LOVETT: So that practically you are the director of maintenance and operation of all of the Pacific System that you have described, except the lines controlled by the Southern Pacific in Texas, and advisory as to those?

Mr. KRUTTSCHNITT: Well, I have no official connection with them.

Mr. KELLOGG: You are not a regularly appointed official?

Mr. KRUTTSCHNITT: I am not a regularly appointed official.

Mr. KELLOGG: Do you exercise an advisory position over them?

Mr. KRUTTSCHNITT: As I have already explained.

Mr. KELLOGG: In the appointment of the various officials under the general manager, excluding the Texas lines, what authority do you exercise?

Mr. KRUTTSCHNITT: For all the lines, excluding the Texas lines?

Mr. KELLOGG: Yes.

491 Mr. KRUTTSCHNITT: Supervisory.

Mr. KELLOGG: If a general superintendent is to be appointed, you approve it or disapprove it?

Mr. KRUTTSCHNITT: Yes. The general manager appoints him, subject to approval.

Mr. KELLOGG: The appointment is not announced until his approval by you, is it?

Mr. KRUTTSCHNITT: No, sir.

Mr. KELLOGG: And is that the case of any official below the division superintendent?

Mr. KRUTTSCHNITT: No. I hardly think they would submit anyone below the grade of division superintendent.

Mr. KELLOGG: Then, the general superintendents and the division superintendents are submitted and approved by you before they are announced?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: Now, how often do the general managers make reports to you?

Mr. KRUTTSCHNITT: As far as the general report goes each general manager writes what we call a monthly letter, stating about what has been done on the line under his charge during the month; the general condition of the property; it is a letter of general information. In addition to that there is of course correspondence which would be initiated by the general manager at such times as might seem to him proper.

Mr. KELLOGG: Now, under Mr. Bancroft in Utah there is a general superintendent or a division superintendent—what is it?

Mr. KRUTTSCHNITT: Bancroft has a general superintendent and an assistant general superintendent.

Mr. KELLOGG: Now, the general superintendent under Mr. Bancroft has jurisdiction over the same lines of the Southern Pacific, the Union Pacific, and the Short line that Mr. Bancroft has?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: And subject to his orders?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: And reports exclusively to Mr. Bancroft?

492 Mr. KRUTTSCHNITT: Yes, sir. So does the assistant.

Mr. KELLOGG: So does the assistant?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: All the division superintendents on those lines report exclusively to Mr. Bancroft, do they?

Mr. KRUTTSCHNITT: No. To the general superintendent.

Mr. KELLOGG: Well, then, to the general superintendent, then, and that is the case over all the lines excluding the Texas line?

Mr. KRUTTSCHNITT: Yes, sir, with a few modifications. The Southern Pacific has two general superintendents; but that arrangement is substantially the same on all the lines.

Mr. KELLOGG: Have you anything to do with the steamship lines, Mr. Kruttschnitt?

Mr. KRUTTSCHNITT: With the Morgan Steamship Lines only.

Mr. KELLOGG: You have general charge of the maintenance and operation of the Morgan Line?

Mr. KRUTTSCHNITT: Yes.

Mr. KELLOGG: From New York to New Orleans and Galveston?

Mr. KRUTTSCHNITT: Yes, sir.

Mr. KELLOGG: And to Havana, it runs?

Mr. KRUTTSCHNITT: To Havana.

Mr. KELLOGG: Who has charge of the Portland & Asiatic Steamship Company?

Mr. KRUTTSCHNITT: Mr. Schwerin.

Mr. KELLOGG: Does he report to you?

Mr. KRUTTSCHNITT: He does not.
Mr. KELLOGG: He is in San Francisco?
Mr. KRUTTSCHNITT: Yes, sir.
Mr. KELLOGG: He has also charge of the Portland and San Francisco line?
Mr. KRUTTSCHNITT: No.
Mr. KELLOGG: Who has charge of that?
Mr. KRUTTSCHNITT: You mean the rail line?
Mr. KELLOGG: Oh, no; the steamship line.
Mr. KRUTTSCHNITT: Oh, the Portland——
493 Mr. KELLOGG: The boats that run between Portland——
Mr. KRUTTSCHNITT: Mr. Schwerin has also.
Mr. KELLOGG: And he has also charge of the Pacific Mail Lines?
Mr. KRUTTSCHNITT: Yes, sir.
Mr. KELLOGG: And the Occidental and Oriental Steamship Lines?
Mr. KRUTTSCHNITT: I don't know whether he runs that or not; whether he controls that or not.
Mr. KELLOGG: These men do not report to you?
Mr. KRUTTSCHNITT: They do not.
Mr. KELLOGG: To whom do they report?
Mr. KRUTTSCHNITT: Well, Mr. Schwerin reports to Mr. Harriman.
Mr. KELLOGG: Mr. Harriman direct?
Mr. KRUTTSCHNITT: Yes.
Mr. KELLOGG: Now, who originated this plan of dividing up the Pacific Systems into divisions under a director of maintenance and operation, irrespective of the mileage owned by each line?
Mr. KRUTTSCHNITT: I don't know who the originator was.
Mr. KELLOGG: Wasn't it Mr. Harriman?
Mr. KRUTTSCHNITT: I suppose so; I don't know.
Mr. KELLOGG: So far as you know, it was?
Mr. KRUTTSCHNITT: So far as I know.
Mr. KELLOGG: You didn't do it?
Mr. KRUTTSCHNITT: No, sir.
Mr. KELLOGG: You received your directions from Mr. Harriman?
Mr. KRUTTSCHNITT: I received my appointment and directions from him.
Mr. KELLOGG: Did he map out this plan of having the Pacific System divided up into divisions and under the control of operating officials, irrespective of the mileage owned by each line?
Mr. KRUTTSCHNITT: If you mean whether he prescribed the mileage under each general manager, yes. Now, as to the limits of the divisions and the jurisdiction of the officials under them, no.
494 Mr. KELLOGG: You did that.
Mr. KRUTTSCHNITT: Yes, sir; I did that.
Mr. KELLOGG: Did you talk that over with Mr. Harriman?
Mr. KRUTTSCHNITT: In a very general way only.
Mr. KELLOGG: That is all.
Mr. MILBURN: No questions.
(Witness excused.)

E. O. McCORMICK, called as a witness, having been duly sworn, testified as follows:

Mr. KELLOGG: Mr. McCormick, what is your position with the Pacific System?

Mr. McCORMICK: Assistant Traffic Director.

Mr. KELLOGG: Have you charge particularly of passenger business?

Mr. McCORMICK: Both passenger and freight.

Mr. KELLOGG: Well——

Mr. McCORMICK: Under Mr. Stubbs.

Mr. LOVETT: Speak a little louder, please.

Mr. McCORMICK: Both passenger and freight, under Mr. Stubbs.

Mr. KELLOGG: Well, I think Mr. Stubbs stated that you were more familiar with the passenger business than the other assistant directors.

Mr. McCORMICK: Because I had longer association with it.

Mr. KELLOGG: What was your position previous to being assistant traffic director of the Pacific System?

Mr. McCORMICK: Passenger Traffic Manager of the Southern Pacific.

Mr. KELLOGG: With headquarters where?

Mr. McCORMICK: San Francisco.

Mr. KELLOGG: How long?

Mr. McCORMICK: From May, 1899, until April, 1904.

Mr. KELLOGG: You had exclusive charge of all the passenger business of the entire Pacific System, the Southern Pacific System, I mean, during that time?

Mr. McCORMICK: Well, mainly the Pacific System, but what we called the Southern Pacific.

Mr. KELLOGG: That included the lines controlled by the
495 Southern Pacific Railway Company, or the Southern Pacific Company, I should say?

Mr. McCORMICK: Yes, for through business to New Orleans and locally on the Pacific Coast.

Mr. KELLOGG: Did you also have charge of the passenger business of the steamship line?

Mr. McCORMICK: No.

Mr. KELLOGG: You didn't?

Mr. McCORMICK: No.

Mr. KELLOGG: Well, so far as you know there were no common passenger officials prior to 1901, between the Union Pacific and the Southern Pacific? I don't mean a mere ticket agent; I mean passenger officials?

Mr. McCORMICK: You mean above the rank, say, of general passenger agent?

Mr. KELLOGG: Yes; passenger agent or assistant general passenger agent, or anything of that kind.

Mr. McCORMICK: No.

Mr. KELLOGG: When were you appointed assistant traffic director of the Pacific Line?

Mr. McCORMICK: In April, 1904.

Mr. KELLOGG: April, 1904?

Mr. MCCORMICK: Yes.

Mr. KELLOGG: Since that time your office, either you or Mr. Stubbs, have had charge of the passenger business on all the lines?

Mr. MCCORMICK: Supervising, yes, sir.

Mr. KELLOGG: Now, do the local passenger agents of the various divisions report to your office—to Mr. Stubbs, I mean?

Mr. MCCORMICK: The general passenger agents?

Mr. KELLOGG: Yes.

Mr. MCCORMICK: Periodically.

Mr. KELLOGG: Mr. Lomax, of the Union Pacific, has charge of the passenger business of the Union Pacific?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: What part of the Union Pacific?

Mr. MCCORMICK: All of it.

Mr. KELLOGG: As far west as Green River?

Mr. MCCORMICK: On through business, yes; as far as Ogden.

496 Mr. KELLOGG: Do you mean——

Mr. MCCORMICK: Locally, I would say that he handled the business to Green River.

Mr. KELLOGG: Now, on through business, of course, he would arrange for through business running clear through to the Coast, wouldn't he?

Mr. MCCORMICK: Well, no, he would arrange up to Ogden on through business, and then Mr. Fee from there on.

Mr. KELLOGG: Who reports to your office—Mr. Lomax?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: Who has charge of the passenger business locally on the lines covered by Mr. Bancroft's jurisdiction, as described by Mr. Kruttschnitt?

Mr. MCCORMICK: Mr. Burleigh.

Mr. KELLOGG: With headquarters at Salt Lake?

Mr. MCCORMICK: Salt Lake.

Mr. KELLOGG: He has charge of the lines from Ogden to Sparks, on the Union Pacific, and *been* Green River and Ogden and of the Short Line?

Mr. MCCORMICK: Yes.

Mr. KELLOGG: I believe your entire Short line?

Mr. MCCORMICK: Yes.

Mr. KELLOGG: He reports to your office?

Mr. MCCORMICK: ——.

Mr. KELLOGG: Who has charge of the passenger business in the territory covered by the general manager in Oregon?

Mr. MCCORMICK: Mr. McMurray.

Mr. KELLOGG: He reports to your office?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: He has charge of the Southern Pacific in Oregon, north of Ashland, and of the Oregon Railroad and Navigation Lines?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: Who has charge of the passenger business on the Southern Pacific Lines in California?

Mr. MCCORMICK: Mr. Fee.

Mr. KELLOGG: How far does his jurisdiction extend?

Mr. MCCORMICK: To El Paso, Texas, on the south, and
497 to Ashland, and to Sparks, as described, for the transportation department and on the through business to Ogden?

Mr. KELLOGG: He reports to your office?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: Who has charge of the Louisiana lines?

Mr. MCCORMICK: Mr. Batturs, with headquarters at New Orleans.

Mr. KELLOGG: What is his title?

Mr. MCCORMICK: General passenger agent.

Mr. KELLOGG: Of the lines in Louisiana?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: And he reports to your office?

Mr. MCCORMICK: Yes, in a way.

Mr. KELLOGG: And does he cover the Morgan Line also, the Morgan Line of steamships?

Mr. MCCORMICK: Yes, sir, as an assistant to Mr. Nutting, in New York.

Mr. KELLOGG: What advisory capacity does your office occupy in relation to the Texas Lines?

Mr. MCCORMICK: None whatever, except on requests.

Mr. KELLOGG: On request?

Mr. MCCORMICK: Yes, sir. At times I have been asked to represent them, possibly, at a meeting, when it was not convenient for them to come here, but we have no direct control and no advisory capacity unsolicited.

Mr. KELLOGG: But your office has charge of through business to and from New Orleans, through Texas, does it not?

Mr. MCCORMICK: Yes, sir. By consent of Mr. Dunlap, who is the chief traffic official of the Texas Lines. That is, if a through rate were made he signifies his assent to be a participant in that through rate.

Mr. KELLOGG: Is Mr. Dunlap the traffic director of all the Texas Lines?

Mr. MCCORMICK: I don't think he is. I could not be positive without looking at the guide. He is of the G. H. & S. A.

498 Mr. KELLOGG: How many passenger agents have you got; general passenger agents in Texas?

Mr. MCCORMICK: We have one, Mr. Anderson, under Mr. Dunlap, and then—I am not sure just where Mr. Anderson's jurisdiction extends as to the other Texas Lines. They are divided up there and I haven't had much to do with them.

Mr. KELLOGG: Does Mr. Anderson consult your office?

Mr. MCCORMICK: No.

Mr. KELLOGG: Never?

Mr. MCCORMICK: No.

Mr. KELLOGG: Mr. Dunlap does it?

Mr. MCCORMICK: Mr. Dunlap would probably do it over his name, if there was a necessity.

Mr. KELLOGG: There has been at times a necessity?

Mr. MCCORMICK: Oh, yes. Just recently, a day or two ago.

Mr. KELLOGG: You represented them at a meeting?

Mr. MCCORMICK: Yes, sir; at his request.

Mr. KELLOGG: You often do that?

Mr. MCCORMICK: Very seldom; very rarely.

Mr. KELLOGG: And you route business from Texas both ways?

Mr. MCCORMICK: Yes, sir; on the through line. Operate a through train service that way.

Mr. KELLOGG: Now, Mr. McCormick, the rates for passenger service—take what is known as the Northern tourists business, it is a large business, isn't it?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: Generally speaking, the travel is toward California in the early winter, and back in the spring?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: The heaviest travel?

Mr. MCCORMICK: The heaviest.

Mr. KELLOGG: But there is more or less winter tourist business all winter long, both ways?

Mr. MCCORMICK: Yes, sir; and more or less tourist business the year around, so that it compels the Southern Pacific, for instance, to be a participant in the all-year round-trip rate which is some-
499 thing unusual in any other territory; which rate is open alike to every road in the country.

Mr. KELLOGG: Now, all the rates for passenger business, for this business, for all the territory east of the Missouri River, to California and return by all the lines are the same, are they not practically?

Mr. MCCORMICK: Well, yes. Some routes are slightly higher than others, but on account of the situation of the two rate-making points in California the Southern Pacific has what you might call a free rate for 482 miles between Los Angeles and San Francisco. It gets nothing for a portion of its route. It must make the same rate to San Francisco as it makes to Los Angeles; and then the Southern Pacific opens its road to every connection for divers routes; it does not demand that they send it back and forth over one line, but it is open to everybody in that way.

Mr. KELLOGG: And the Union Pacific does the same thing?

Mr. MCCORMACK: The Union Pacific does the same thing. The Santa Fe Company does the same.

Mr. KELLOGG: So that the passenger business from the eastern territory, east of the Missouri River, can go to and from all California points at practically the same rate.

Mr. MCCORMICK: At practically the same rate; and by reason of the consent of the Southern Pacific Road, with practically the same conditions as instanced now by the Milwaukee & St. Paul, and the Northwestern. The Chicago, Milwaukee & St. Paul operate through car service with the Southern Pacific via Omaha to Denver and to California, and in addition to that the Milwaukee and St. Paul are permitted to operate through car service by way of Kansas City, turning it over there to the Missouri Pacific Road, and then to the

D. & R. G., and it is taken again by the Southern Pacific at Ogden; and the Northwestern operate a through service. The Rock Island operate a through service by way of El Paso, etc.

500 Mr. KELLOGG: And there is also a through service by the San Pedro?

Mr. MCCORMICK: There is also a through service with the Northwestern and the Union Pacific and the San Pedro.

Mr. KELLOGG: Now, the lines extending from Chicago to California, connecting at El Paso; for instance, the Rock Island, they run a through service with the Union Pacific?

Mr. MCCORMICK: It is afforded the same facilities, as well as the Texas and Pacific, which is a part of the Gould System, officered over by Mr. Jeffery. And each line also is afforded through service by way of Ogden to such an extent that the Southern Pacific has not a single train over its road that Mr. Jeffery's line has not through cars on; no train. We even handle them on the overland limited now.

Mr. KELLOGG: Now, take another case. The rates on passenger business, winter tourists business, from St. Paul and Minneapolis, through Kansas City, and southwest, connecting with the Southern Pacific to California, are the same as by the Union Pacific, are they not?

Mr. MCCORMICK: I didn't quite catch that. You mean from St. Paul?

Mr. KELLOGG: St. Paul and Minneapolis; and tourists cars are operated from St. Paul and Minneapolis tri-weekly?

Mr. MCCORMICK: Yes, sir. There are tourist cars from St. Paul and Minnepolis out over the Southern Pacific, and via Kansas City and the Santa Fe, and the other lines to California.

Mr. KELLOGG: At the same rates?

Mr. MCCORMICK: I mean, for instance, the Omaha line had a tourist sleeper from Omaha, and then over the Union Pacific and the Southern Pacific.

Mr. KELLOGG: And also by way of Texas?

Mr. MCCORMICK: I am not sure whether we have that now, a through car from St. Paul by way of El Paso, or not, but we have had.

Mr. KELLOGG: You had in the past?

501 Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: Two years ago, for instance, the Chicago Great Western operated that way.

Mr. MCCORMICK: They never closed those gateways to any one.

Mr. KELLOGG: So that the entire passenger business of this country practically to the Missouri River, can to a greater or less extent, and does go via the Southern Pacific or the Union Pacific, as the passengers wish to go or come?

Mr. MCCORMICK: The entire passenger traffic in the territory described could at will select any one of the lines, the Southern Pacific the Union Pacific, the Rio Grande and the Santa Fe; and those lines have through service for the same rates.

Com'r LANE: Does that include the Northern Pacific and the Great Northern as well?

Mr. McCORMICK: If a passenger goes out by way of St. Paul and Portland, and over what is called the Shaster route of the Southern Pacific, and back, there is another—there is an arbitrary charge for that 778 miles between Portland and San Francisco, a higher rate than if he went direct.

Com'r CLEMENTS: What does that amount to?

Mr. McCORMICK: That would be a little less than 2 cents a mile for the round-trip; about $15 to the round trip, I think $7.50 for a one way ticket, on account of the excessive haul; a little less than 2 cents a mile.

Mr. Kellogg: Hasn't that been in existence all the time?

Mr. McCORMICK: Yes, sir.

Mr. KELLOGG: So that a passenger cannot go by way of the Northern Pacific at the same price?

Mr. McCORMICK: It has not been changed to my knowledge—the passenger rates to the coast have not been materially changed, to my knowledge in 25 years.

Mr. KELLOGG: But the rates via the Union Pacific and the San Pedro lines are the same?

Mr. McCORMICK: Yes.

502 Mr. KELLOGG: And the rates via the Union Pacific and the Navigation Lines to Portland are the same?

Mr. McCORMICK: How is that?

Mr. KELLOGG: And the rates via the Union Pacific and the Navigation Line to Portland are the same?

Mr. McCORMICK: Well, the Union Pacific and the Navigation around over the Union Pacific through to Portland?

Mr. KELLOGG: Yes; they are the same as the rates via the Southern Pacific?

Mr. McCORMICK: You mean around that way to San Francisco?

Mr. KELLOGG: Yes.

Mr. McCORMICK: No.

Mr. KELLOGG: They are not the same?

Mr. McCORMICK: No. There is a difference in that rate, an arbitrary on account of the Shaster route, by reason of that excess of 778 miles haul.

Mr. KELLOGG: Has that always existed?

Mr. McCORMICK: Yes. It was higher——

Com'r LANE: Did I understand you to say that the passengers rate to California had not changed in 25 years?

Mr. McCORMICK: No. I mean this way, that the method of applying the rates has not changed materially. But they have changed very greatly because since 1901 we have had a fifty dollar round trip rate to the Coast freely, and then since 1901 we have had a remarkably low colonists' rate, as may be evidenced by the increased sale of land and business there; rates as low as $25; and now I believe ordinarily $33 through, the lowest through rates in the world.

Mr. KELLOGG: Prior to 1901 there was at times a very sharp competition by the various Pacific Lines for this business, was there not; and rates at times were reduced very much?

Mr. McCORMICK: Well, prior to 1901 I was connected with the Vanderbilt system, the Big Four Lines, in a strongly competitive

territory from here, and we furnished business for the Southern as well as the Northern route via Union Pacific as it does today,
503 and prior to that time on one occasion there was quite a severe rate war that I remember between the Santa Fe and the Southern Pacific Lines and its connections. Ordinarily the rates to the coast have been fairly firm, with the exception of surrepti-ous cutting, because they are very low; the round-trip to the coast has always, since it was $110, been less than 2 cents a mile that is very low, taking into consideration the service performed.

Mr. KELLOGG: That is on the long haul?

Mr. MCCORMICK: Well, the lowest rates in the world exist in California itself. The Southern Pacific Road didn't get 2 cents a mile for some of it, and rarely got 3 cents a mile; while the rate between Philadelphia and New York is 3 cents and between Chicago and Buffalo is 3 cents a mile.

Mr. KELLOGG: You mean locally in California they do not get 2 cents?

Mr. MCCORMICK: Locally in California; in fact, they don't get 3 cents a mile locally in California to-day on some of their rates.

Mr. KELLOGG: Now, the emigrant business from eastern seaports to California points is quite large at times isn't it?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: And that is a business which the railroads have in the past years had sharp competition for, isn't it?

Mr. MCCORMICK: Well, yes; territorically speaking I would say so, but not in the past number of years to California. There has been no particular competition for that, because when there was competition there were such crimes committed by people, hotel keepers and runners in New York, that an attempt was made to control that business and have it in the hands of the United States Government officials at the Island, and they sent it out over various lines, *giving* them from the assault and robbery that had been committed so that there has never been very much of a competition on that business.

Mr. KELLOGG: Well, there used to be years ago?

504 Mr. MCCORMICK: It is a long time ago.

Mr. KELLOGG: You don't remember, do you, prior to 1901, during those years when the Southern Pacific was making a struggue to open its line as a popular California route, there was a great deal of competition in those rates at that time; don't you remember that?

Mr. MCCORMICK: You mean emigrant?

Mr. KELLOGG: Oh, in all kinds of business?

Mr. MCCORMICK: To the coast?

Mr. KELLOGG: Yes; to and from California points.

Mr. MCCORMICK: I don't think I quite catch that; because the Southern Pacific was the old and direct line to the coast.

Mr. KELLOGG: I am talking now about the Sunset route.

Mr. MCCORMICK: Well, I mean via that line. The Southern Pacific has always opened its line to its connections in a most peculiar manner; even when it was the only line to the coast, its divisions were practically on a mileage basis via Ogden, just as they are to-day.

Mr. KELLOGG: I am speaking of the Sunset route, not the Ogden Line.

Mr. MCCORMICK: It was the same with the Sunset route.

Mr. KELLOGG: I know that they opened their line to all eastern lines, in fact invited the eastern lines by the most liberal allowances, didn't they, to use that line?

Mr. MCCORMICK: No. I don't think any one has ever accused them of excessive liberality.

Mr. KELLOGG: I thought you said that it made very liberal mileage divisions.

Mr. MCCORMICK: Not liberal, not excessively liberal.

Mr. KELLOGG: What do you mean by liberal?

Mr. MCCORMICK: What I said was that it was practically on a mileage basis.

Mr. KELLOGG: You said liberal divisions.

Mr. MCCORMICK: I may say that they are liberal divisions, but I never heard that charge specifically, that they were excessively liberal in naming divisions.

505 Mr. MILBURN: This is the first time that I have ever heard the charge of liberality resented.

Mr. KELLOGG: Then they were not liberal; is that it?

Mr. MCCORMICK: Yes; they were fairly liberal, because they were on a mileage basis. If you run up to the connection of the road and you have the use of that road beyond that point on a mileage basis, it is just as good as if you had your own road. You couldn't do it any better; you escape the maintenance of that road, and you gain the benefit of it.

Mr. KELLOGG: Who has the advertising for all these lines, the passenger lines?

Mr. MCCORMICK: Each officer of each line individually.

Mr. KELLOGG: Doesn't Mr. Stubbs have general charge of the advertising?

Mr. MCCORMICK: No, sir.

Mr. KELLOGG: Isn't it divided up, any expense?

Mr. MCCORMICK: Oh, is a division made?

Mr. KELLOGG: Yes.

Mr. MCCORMICK: I can give you it definitely. Once a year our lines meet and decide on what they will have to have for the next year in an advertising way, and they ask for an appropriation, and they get it, and they must say at the time what they propose to use it for, and then they are held to a strict use of the money in that way.

Mr. KELLOGG: Who do they ask for this appropriation; that is the point?

Mr. MCCORMICK: The appropriation—the request comes to Mr. Stubbs for approval.

Mr. KELLOGG: And Mr. Stubbs has to approve or disapprove it?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: And he makes the division of the expense between the various Pacific Lines?

Mr. MCCORMICK: No, he does not.

Mr. KELLOGG: That has appears.

Mr. MCCORMICK: No, it doesn't appear. Mr. Fee asks
506 for his money and Mr. Lomax asks for his money.

Mr. KELLOGG: You say there is no common expense that is divided by Mr. Stubbs between the lines, do you?

Mr. MCCORMICK: Regarding advertising matter, no sir.

Mr. KELLOGG: None whatever?

Mr. MCCORMICK: No, sir. Not only is that taken into consideration, but our connections also confer regarding the advertising of through trains. For instance, I have a request now from the Milwaukee & St. Paul Road, to whose through service I have just referred, asking if we would participate with them in the expense of this through advertising.

Mr. KELLOGG: Well, the requisitions have to go to Mr. Stubbs for approval or disapproval?

Mr. MCCORMICK: Yes, sir.

Mr. KELLOGG: Have you seen a letter which was put into evidence in New York where Mr. Stubbs divided up certain advertising expenses and proportioned them to each line for the year? You haven't seen that letter?

Mr. MCCORMICK: No, sir.

Mr. KELLOGG: Well, if he did that you would not deny it?

Mr. MCCORMICK: Well, I wouldn't deny anything that Mr. Stubbs did.

Mr. KELLOGG: I didn't think so. That is all.

Mr. MILBURN: It is quite conceivable, isn't it that as these local officials make their requisitions on Mr. Stubbs, that he should submit to the executive committee of these companies in New York for approval the aggregate appropriation, and show in that statement the division that had been made in the manner you have indicated, isn't it?

Mr. MCCORMICK: That is just the way it was done.

Commissioner CLEMENTS: Now, in respect to the regular passenger traffic, how do the rates now compare with what they were ten years ago, leaving out the immigrants and the homeseekers and traffic of that kind.

507 Mr. MCCORMICK: They are lower, because recently our lines in Utah, Wyoming, California, Arizona and New Mexico reduced their rates. The facilities were better and the traffic was larger and they were reduced from five cents to four cents locally.

Commissioner HARLAN: What about the reduction of through rates, did that enter into it?

Mr. MCCORMICK: No, it did not figure to any very great extent in the through rates.

Commissioner HARLAN: How do the through rates to-day compare with the through rates ten years ago?

Commissioner CLEMENTS: Say from New York to San Francisco, or the eastern territory.

Mr. MCCORMICK: Well, I think the through rates, say one-way passenger rate, and the round trip tourist rate, which grants to everyone stop overs, *ad libitum,* during the last fifteen years the rates have

been so very greatly reduced by reason of these very many round trip convention rates, that I would say the aggregate rates for the last fifteen years for through business have not been two-thirds as high as they were before.

Commissioner CLEMENTS: Leaving out the conventions and the homeseekers and the immigrants, and all those special classes, how about the regular passenger rates for ordinary travel?

Mr. MCCORMICK: I do not think that the through rate from the River to California on the one way ticket has been reduced in that period. I am not sure when the last reduction did take place, but Mr. Lomax can give you that definitely.

Mr. LOVETT:

Q. All those rates that you put in are open to all connections, are they not?

A. Very freely to all connections.

Q. Prior to 1901, which seems to be the date which Mr. Kellogg takes as eventful in this examination, how did the Union Pacific work its California passenger business, over what lines?

A. Over the Southern Pacific.

Q. From Ogden?

A. From Ogden.

508 Q. Has there been any change in that condition since then?

A. None whatever.

Q. Has there been any change in the policy respecting the interchange of business, joint passenger business and joint passenger rates with connecting lines since 1901?

A. None that I know of. They were free and open to all connections in 1901 as they are to-day.

Q. And prior to 1901?

A. And prior to 1901, even when the Southern Pacific was the only line into California.

Q. And this rate war that you referred to as having occurred at one time between the Atchison and the Southern Pacific, on which side was the Union Pacific in that contest?

A. Well, I should say very strongly on the Southern Pacific side.

Q. On the Southern Pacific side?

A. Yes, sir, as to connections, as it would be to-day.

Q. It would be impossible, consistent with its interests, to take sides with the Atchison in any such contest would it not?

A. Yes, sir, it would be physically impossible. It could not do so at all.

Mr. LOVETT: I believe we have no further questions.

(Witness excused.)

J. A. MUNROE, called and sworn as a witness was examined by Mr. Severance and testified as follows:

Q. What is your official position Mr. Munroe?

A. Freight Traffic Manager of the Union Pacific lines east of Green River.

Q. How long have you held that position?
A. I do not recall the exact date, two or three years.
Q. Prior to that what was your position?
A. Freight Traffic Manager of the U. P. R. R.
Q. How far west did your jurisdiction go then?
A. Ogden.
Q. You lost jurisdiction over the lines west of Green River, two or three years ago?
A. Partially I did, but not entirely so.
Q. What relation have you to the business west of Green River now?

509 A. Mr. Reeves as General Freight Agent of the Oregon Short Line has jurisdiction locally over the U. P. lines subject to my general approval. I leave these local matters very largely in his hands, but as to other business I am at liberty to confer direct with the lines west of Ogden, the Southern Pacific.

Q. Mr. Reeves——
A. J. A. Reeves.
Q. Does he have jurisdiction over the Southern Pacific as far west as Sparks?
A. I understand so.
Q. He also has jurisdiction over the Union Pacific as far east as Green River?
A. He does.
Q. And over the Short Line?
A. Yes, sir.
Q. How many years were you General Freight Agent of the Union Pacific?
A. Well, I have been Freight Traffic Manager of the Union Pacific since the organization of the present company, February 1st, 1898, and I was also Freight Traffic Manager during the Receivership, back in 1893 and have been associated with their Traffic Department as far back as 1882.
Q. What was your position prior to 1893, were you General Freight Agent?
A. I have been General Freight Agent. I do not recall just the date that my title was changed from G. F. A. to Freight Traffic Manager.
Q. How many years have you been in charge of the Union Pacific traffic locally, there at Omaha, as either General Freight Agent, or General Freight Traffic Manager?
A. Well, I have been identified with the Traffic Department, as I said before, since 1882, the latter part.
Q. But at first, what was your position?
A. Assistant General Freight Agent.
Q. When were you made General Freight Agent?
A. I do not even recall that date, but I can give you those dates if you want them.
Q. It was a very short time after 1883?
A. No, in October 1884 I was transferred to Kansas City and made first Assistant General Freight Agent making a specialty of

the Kansas Division lines as then in operation. I remained there until January 1st, 1886, and on my return to Omaha I was
510 made General Freight Agent. Just how long that continued until I became Freight Traffic Manager I am not clear on at this moment.

Q. You have been General Freight Agent or Freight Traffic Manager since the first of January 1886?

A. Yes, sir.

Q. The first of January, 1886?

A. 1886.

Q. Now to whom do you report?

A. Mr. Stubbs.

Q. And you have done so since July 1st, 1901?

A. I have.

Q. Prior to that time, to whom did you report?

A. To Mr. Burt as President.

Q. As President of the Union Pacific?

A. Yes, sir.

Q. Previous to that time you commenced reporting to Mr. Stubbs, previous to the time you commenced doing that, and after you had been made General Freight Agent, you had at all times reported either to the General Manager or to the President of the Union Pacific itself, had you not?

A. I reported to the receivers during the receivership, and to President Burt subsequent thereto.

Q. And prior to the receivership?

A. To the General Manager or the Vice President.

Q. So that you did not, until July 1st, 1901, you did not report to any person who was an officer of any other railroad system outside of the Union Pacific?

A. I did not.

Q. What is the nature of the reports which you make to Mr. Stubbs, and how frequently do you make reports to him?

A. We have no specific dates for making reports to him. I undertake to keep him advised of conditions and fully posted as to what is current in the way of events, and what is going on.

Q. That is, you keep him as fully advised as you formerly did the General Manager, when you were under his supervision?

A. I do.

Q. So that Mr. Stubbs is at all times kept in close touch with all operations?

A. He is.

Q. Now, Mr. Munroe, prior to the time that Mr. Stubbs took charge of the traffic, it was your custom was it not to represent the Union Pacific at freight meetings with other roads?

A. I did often.

511 Q. For very many years?

A. Yes, sir.

Q. You remember, do you not, prior to 1887 (the time the Interstate Law was enacted) that there had been a pool of the trans-continental lines?

A. I did not come in close contact or have any discussion about

those pool matters. Trans-continental business, under those conditions, was not within my purview. I do not know anything about it, and did not have anything to do with it.

Q. Well you knew about it, didn't you?

A. I had a very general knowledge, but it was so superficial, that I could not give any information of any value on it. In fact I paid no attention to that business at that time.

Q. So you did not attend the meetings at which these matters were discussed?

A. I did not on the pool.

Q. But, after January 1st, 1886, down to the time Mr. Stubbs took charge, you did usually represent the Union Pacific at their freight meetings.

A. I did at some of the freight meetings, and more especially what we call the trans Missouri meetings referring to the traffic of Utah, Colorado and East. The trans-continental meetings were largely attended by my superior officers. I did attend some.

Q. After you became Traffic Manager you attended the meetings?

A. Yes, I attended several.

Q. Now in those meetings you represented no one but the Union Pacific interests did you?

A. That is all.

Q. At those meetings the Southern Pacific was separately represented was it not?

A. Let me correct that a little bit there. Prior to the Receivership of the Union Pacific (which was October 13th, 1893) we did represent the line from Granger on to Portland.

Q. That is the Portland line?

A. But I have had no direct connection with the O. R. & N. Company since July 4th, 1894. Nor have I had any connection
512 with the Oregon Short Line since the date of the formation of the new company. I do not recall the exact date, but it is several years.

Q. But the Southern Pacific was represented in those meetings by another gentleman when Mr. Stubbs was not there, was it not, represented by Mr. Stubbs, or some one for him?

A. Some of the Southern Pacific officials.

Q. Now, since Mr. Stubbs' appointment and his coming here, has it not been customary for him, or one of his assistants, to represent both the Union and the Southern Pacific at these meetings?

A. No, there has been no material change in the representation. Each company has had its representative at the meetings. I am referring now to the trans-continental matters.

Q. And you come to the meetings as well?

A. I come or Mr. Wood or someone, as the case may be. We always endeavor to have direct representation of the Union Pacific road at each one of those trans-continental meetings.

Q. But of course you are under the supervision and direction of Mr. Stubbs?

A. Certainly.

Q. And any suggestion he would make to you as to the attitude you were to assume at these meetings, of course you would follow?

A. Certainly.

Q. Now I think you just stated that you had nothing to do with the freight business of the Short Line or the Oregon Railroad and Navigation Company?

A. I have not.

Q. But you had formerly?

A. Under the old organization, prior to 1898, but not for a number of years.

Q. Do you have a General Freight Agent under you?

A. I do.

Q. At Omaha?

A. At Omaha.

Q. Who is that?

A. Elmer H. Wood.

Mr. LOVETT:

Q. Has there been any change in your relations to these conferences since Mr. Stubbs' jurisdiction was extended over the Union Pacific, Mr. Munroe?

A. There has not.

513 Q. You attend as many, or as great a percentage of them, since as before?

A. Precisely.

Q. Over what line does the California business or the trans-continental business of the Union Pacific move?

A. Largely over the line from Council Bluffs west, through Green River, and to Oregon, in connection with the Southern Pacific and as to California trans-continental business for Oregon points, via Green River, Granger and Huntington and also for Southern California points via the Union Pacific to Salt Lake and San Pedro and points south thereof.

Q. When was the San Pedro line opened for through business?

A. About two years ago.

Q. In 1905?

A. That is my recollection.

Q. The line was then competing——

A. May 1st, I think, 1905.

Q. Has there been any change in the movement of that traffic, I mean excluding the San Pedro line, leaving that out.

A. No, sir.

Q. How long has it moved that way?

A. Ever since I had anything to do with the Union Pacific.

Q. No change has been made in the movement since the jurisdiction of Mr. Stubbs was extended over the Union Pacific?

A. Some of the business that is moved down by way of the San Pedro line giving the Union Pacific tonnage by reason of it on account of the inability of the line via Sacramento to haul that business, but the relation to the pro-rating arrangements via Ogden, as between the Union Pacific and Southern are the same as they were.

Q. The only change being that resulting from the completion of the San Pedro line?

A. That is it.

Q. You testified I believe, that prior to the receivership of the Union Pacific line (which occurred I think you stated in October 1903), your jurisdiction extended over the line to Portland, over the Oregon Short Line and the Oregon Railroad & Navigation Company?

A. Yes, sir.

Q. At that time, how did you move your trans-continental business?

514 A. Our California business moved by way of Ogden, and the other business by the way of Granger and Huntington.

Q. Has there been any change since then?

A. No.

Q. Did any considerable amount of traffic for San Francisco or other California points ever move by way of Portland, and then by steamer?

A. It did not.

Q. Is that a practicable route and a feasible route for the Union Pacific, Mr. Munroe, as against the connection with the Central Pacific?

A. We never have so considered it.

Q. Why?

A. Because we have always felt it would always cost us more to route San Francisco traffic via Portland, that we would lose more than we would make by it. The line is unnatural in this, that when you arrive at Portland, you are about as far from San Francisco as you are at Ogden. Again, San Francisco is the only point on the Pacific Ocean from which the boats from Portland, or at which boats from Portland touch. There are in California a number of points in common with San Francisco, to which a very large and handsome tonnage is attached, and we always felt that our possible gain by using the Portland route for San Francisco business would be much more than off set in value to the Union Pacific by the resultant action. There was a large business eastbound—I am giving you the thoughts that occurred to me at the time. If I am too long about it stop me.

Q. No, I wish you to make it as full as possible.

A. There were at that time about 8000 car loads of perishable fruit at points substantially local to the Southern Pacific, the routing of which to the Missouri River we satisfied ourselves they could control, and we had hard enough work to hold our share of it anyway. We did not wish to add to our burdens and we felt that the line by way of Portland was not on a parity in service with the line via Ogden; that we would have to have a differential to San Francisco to do any business and the bad effects of the differential would cost us more than the business which we would gain by the Portland route would represent. To illustrate, we have never

515 felt that it would be wise to accord to San Francisco a lower rate via Portland and water, than we accorded Portland direct for the all-rail service. We did not care to advocate what we

thought, an unnatural freight rate basis of adjustment by charging the Portland man for less service more than we charged the San Francisco man for the greater, when both competed more or less in the territory intermediate as between Portland on the North, and San Francisco on the south. Those are some of the reasons which actuated us not to open the Portland line for business.

Q. If you were to attempt to open the Portland line even by a reduced rate to San Francisco, I suppose, of course, that the reduction would be met by the Central Pacific?

A. Certainly.

Q. And the same relative facilities would continue?

A. They would.

Q. Well now, the interchange as to the volume of traffic, the interchange with the Central Pacific at Ogden, and the amount of revenue derived from that; how would that compare with the volume and the amount that under any conceivable practicable conditions you could hope to get by way of Portland.

A. Oh very much larger.

Q. What do you know of the organization of the Oriental and Occidental Steamship Companies, Mr. Munroe?

A. Scarcely anything. Oriental traffic as far as the Union Pacific is concerned, is left in the hands of our direct western connection serving the port of San Francisco.

Q. How long has that been the case?

A. Always.

Q. You mean the Southern Pacific?

A. I do.

Mr. KELLOGG:

Q. All of it?

A. There is a limited amount of that Oriental traffic which is moved by way of Portland; limited, for the reason that the Portland sailings have averaged about one a month, sometimes an extra ship here and there, but there has been no regularity of the
516 sailings via Portland, as there has been via San Francisco. We have had an average sailing from San Francisco of about one every ten days, and we have had at times nine first class ships in that service.

Mr. LOVETT:

Q. What ships from San Francisco for the Asiatic ports have you worked?

A. The Pacific Mail, The Oriental & Occidental and the Japanese lines.

Q. You have worked all of those lines?

A. Yes, sir.

Q. In handling such Asiatic traffic as comes to you, as originates on your line, or comes to you from the east, have you always worked that by way of San Francisco?

A. Always. We had some, as I said, a limited amount by Portland.

Q. Has that amount that has gone by way of Portland—is that

substantial or insignificant? I want to know something about the relative amount.

A. It is very small compared with that which moves via San Francisco.

Q. How long has that condition been in existence?

A. Always as far as I know, except this, that the Portland line is more or less of a new creation. It has not been in operation I should say, beyond the last ten or twelve years. The San Francisco line has been in operation for years prior to that.

Mr. SEVERANCE:

Q. How are the rates by the San Pedro line over to the East from your line, from Southern California points, as compared with the rates via the Southern Pacific to Sacramento?

A. They are uniform.

Q. They are just the same?

A. They are.

Q. But at the present time you say you get a larger percentage of the revenue by sending the stuff over the San Pedro.

A. No, I said we were getting some increased business by reason of having the shorter line. To explain that, the distance from Ogden to Los Angeles via Sacramento is substantially 1100 miles, whereas it is a few hundred miles shorter via Salt Lake.

517 Q. Quite a number of miles shorter, isn't it?

A. About 300. The Union Pacific found that business very sharply competitive. The strongest competitor is the Atchison line via Albuquerque and the longer line via Sacramento has ruled us out of a large amount of it in the past because we could not equal the service of the Atchison road. With the San Pedro line we are better fixed and we can duplicate it.

Q. Then there has been competition down there between the Santa Fe and the Southern Pacific in the way of quick service, even if there has been no competition in rates.

A. There has always been competition in Los Angeles.

Q. Now do you get the same division of the through rate with the San Pedro that you do with the Southern Pacific on Los Angeles business.

A. They are in different groupings.

Q. Well, take Los Angeles, that group.

A. There may be some variance, I would not want to testify from memory on those percentages. We have a group I know, that Los Angeles group as far as the Southern Pacific is concerned, which commences up in Central California. There may be some variation at specific points.

Q. The Southern Pacific have to haul commodities 300 miles further than the San Pedro to deliver them to you. Does the Southern Pacific get any more for doing that than the San Pedro does for hauling it the lesser distance?

A. The original basis, as I recollect it, was a mileage pro-rate from Omaha, via Sacramento and Los Angeles. The application of that same principle, via the shorter line, would give the Union Pacific proper of course more money on an individual shipment.

Q. Is it divided on the mileage basis, or does the San Pedro line get the same amount of revenue?

A. My recollection is that it is a mileage basis.

Q. That the through rate is just the same?

A. The through rate is just the same.

Q. Consequently if you can divert traffic via San Pedro
518 you get the same money out of it?

A. Yes, sir.

Q. Could you make up a statement of that, showing those divisions?

Commissioner LANE: You have the division tables in your office, have you not?

Mr. MUNROE: I presume we have.

Mr. SEVERANCE:

Q. Now, Mr. Munroe, you have stated in answer to Judge Lovett that no substantial amount of the California traffic ever moves by Portland. Now the divisions with the Central Pacific line were satisfactory to you, were they not, from the standpoint solely of the Union Pacific?

A. Yes, sir.

Q. Now don't you know it to be a fact that the possession of that line to Portland, would be influential in preventing the Southern Pacific (if it was independent from you) from making an unfair demand on you as to dividends?

A. I don't think I catch the idea.

Q. As a railroad man, don't you know that the possession of a through line to the coast so that you could go into that San Francisco business, if you saw fit, by way of Portland, was a strong weapon in your hands to prevent the Southern Pacific from making an unfair demand on you as to divisions?

A. No, I don't think it would be.

Q. You do not think it was of any value whatever?

A. I think there was a small value to the Union Pacific in that fact that they have a line from Ogden to Portland, via Sacramento, but the total amount of business to and from the east and Portland handled by the Shasta Route was so insignificant as compared with the direct lines that I do not think it would have any influence at all upon the Southern Pacific, on their traffic.

Q. You do not understand my question. My question is, was not the fact that the Union Pacific in the old days, when it was not
519 amalgamated with the Southern Pacific, that the Union Pacific had a line composed of itself, the Oregon Short Line and the Oregon Railroad & Navigation Company; and a line of steamers from Portland to San Francisco, the fact that it possessed such a line, was not that a weapon in its hands which would prevent by self interest, the Southern Pacific from demanding an undue or unfair share of the through rate from the Union Pacific?

A. I do not think it would prevent the Southern Pacific from very materially advancing their division on the Union Pacific interchange.

Q. Will you answer my question just as I *answered* it.

A. Well I will have to say no.

Q. You say no?

A. I do.

Q. You do say then that the possession of a through route to the coast, to Portland, with steamships from there to San Francisco is of no value whatever to the Union Pacific as a weapon against an unfair exaction on the part of the Central Pacific?

A. I don't say it is of no value, I say it is of a minimum value.

Q. You said a moment ago——

A. Pardon me. You ask me if I thought I could use that as a club, against an unfair division. I say I do not think it is possible. I do not think the possession by the Union Pacific of a Portland-San Francisco line would make it possible for that company to prevent the Southern Pacific from materially advancing their percentages of the through rates for the service west of Ogden.

Q. Now let us see. The route to San Francisco by way of Portland, and the sea, is not nearly so round about a route as the route to San Francisco by the Sunset line and the Morgan steamers, isn't that true? There is not naturally near the difference?

A. It is about twice as far from Ogden to San Francisco, as it is direct.

Q. That is not anywhere near as much additional mileage as there is by the Morgan line, around the south coast of Florida, to the Southern Pacific, up to San Francisco as against the straight line across the continent.

A. I will admit——

Q. Isn't that so? It is not anywhere near as great a differ-
520 ence in mileage?

A. No, you are not correct on that.

Q. I am not?

A. No.

Q. What is the difference in mileage between the Sunset route, taking in the Morgan line of steamers to New York and a straight line by rail across from New York to San Francisco?

A. My recollection is that the distance by sea from New York to New Orleans, is 1,800 miles, and from New Orleans to San Francisco, 2,500; in round numbers 4,300 miles. From New York via Chicago and Omaha, to San Francisco, it is 912, 488 and 1,003 and 794.

Q. That is 3,100 then, a difference of 1,200 miles?

A. Whatever it may be.

Q. Is there a difference of 1,200 miles in favor of the route from Ogden direct to San Francisco as against the route around via Portland.

A. There is not.

Q. Then I was correct, and you were incorrect?

A. No.

The CHAIRMAN: It is 1,800 miles from New York to New Orleans.

Mr. MUNROE: And 2,500 miles from there to San Francisco. I understood your question (without wishing to argue this) that the distance was "many times greater" or something of that nature.

Mr. SEVERANCE:

Q. Now, for many years there has been a competition via the Sunset route and that line of steamers, not only to the extent of putting in the same rates from New York, but in addition the Southern Pacific interests have paid the freight from points out nearly to Pittsburg and Buffalo into New York and taken it around, and that would be a difference of 400 miles more to that haul, would it not?

A. It would.

Q. Now with that object lesson in front of you, don't you think that a good active working of that line via Portland and boats in-
San Francisco would have made it impossible from motives of self-
interest alone for the southern Pacific to have demanded an
521 unfair division of the through rate as against the Union
Pacific?

A. No.

Q. You are still of the same opinion, are you?

A. I am.

Q. Now you say that the Portland and Asiatic Company does carry some Oriental traffic?

A. It does.

Q. Does that come to you?

A. Part of it.

Q. Where does the rest of it go?

A. They have a large local traffic from Portland in flour, which represents the bulk of their outward bound tonnage. Their inward tonnage consists of the products of the Orient, notably tea and rice, curios and silk occasionally, and that is scattered all the way from Portland east according as the point of consumption varies.

Q. And you bring that over your lines?

A. We handle it over our line.

Q. The bulk of it?

A. The bulk of it; that is, the Portland part of it.

Q. That has been the case—east of Portland the Asiatic company or its predecessors—that has been the case for a period of 10 years or so?

A. Approximately.

Q. For several years prior to 1901?

A. Yes, sir.

Q. The effort was made, was it not, to send as much traffic as could be sent over that line because the O. R. and N. owned the line.

A. Yes; they tried to fill their ships.

Q. Both ways. How often did you say the sailings were?

A. About once a month.

Q. You advertise them once every 20 days, do you not?

A. I have not seen the advertisement recently, and I do not know what it is now.

Q. Did you not find prior to 1901 that the Southern Pacific was competitive with the Union Pacific, the Short Line and the Oregon Railroad and Navigation Company in to Portland?

A. Just the same as it is now.

Q. Is it competitive now?

A. It is.

Q. Then there is competition?

A. There is.

Q. Then it is not a fact, as was suggested by Mr. Stubbs yesterday, that there never had been any competition between the South-

522 ern Pacific and the Union Pacific. You think there is competition now, do you?

A. I think there is competition between various lines.

Q. Business moves from New York and Atlantic seaboard points by the Sunset route up to Portland?

A. I cannot testify as to that, I do not know.

Commissioner LANE: I did not understand Mr. Stubbs to say that there was not any competition.

Mr. SEVERANCE: He said both. He said at one time that there never had been any, and at another time, I think he said, that there was still competition. It will all be found in the record.

Mr. MILBURN: To the record we appeal.

Commissioner CLEMENTS: Is there any pool or committee or agency or official to which the several transcontinental roads, or some of them report their tonnage or their business, either on the basis of mileage or revenue or tonnage or something of that kind so that each one of you may know approximately about what percentage of the whole you are getting?

Mr. MUNROE: No, sir.

Commissioner CLEMENTS: Has there ever been such an institution?

Mr. MUNROE: There used to be years ago a statistical compilation of figures, but there has not been now as I recollect for several years.

Commissioner CLEMENTS: Do you have any idea from time to time as a representative of the Union Pacific road, what your competitors on each side of you are doing, whether their business is growing or decreasing, I mean their proportion of the through business east and west?

Mr. MUNROE: We watch it with very great care through solicitors actively in the field, both at the points of destination and points of origin. That is part of our business to keep just as close tab on them as we can by every legitimate method.

Commissioner CLEMENTS: But there is no system of reporting one to the other?

Mr. MUNROE: None whatever.

Commissioner CLEMENTS: Or to any agency?

523 Mr. MUNROE: No, sir.

Commissioner CLEMENTS: Whereby the various officers can be kept posted.

Mr. MONROE: No, sir.

Commissioner CLEMENTS: How long since that was done?

Mr. MONROE: Why, several years, I don't know the exact date.

Commissioner CLEMENTS: Has it been done since 1900?

Mr. MUNROE: I do not think it has.

Commissioner CLEMENTS: Well do you know whether or not the proportion or percentage generally of the Union Pacific line, as you represent it, is greater or less than it was in 1900?

Mr. MUNROE: I know that our business has been steadily increas-

ing both in the total and in specific cases. I satisfy myself with that showing, and such information as I can get from other sources as to what our competitors are doing.

Commissioner CLEMENTS: Do you think you are getting a greater proportion out of it now than before?

Mr. MUNROE: I think we are.

Commissioner CLEMENTS: Can you approximate about how much your proportion has increased in that time?

Mr. MUNROE: No, sir, I cannot.

Commissioner CLEMENTS: Can you make any estimate about it?

Mr. MUNROE: Why, I would think that our west-bound takings of the trans-continental trade in percentage would be five to ten per cent. more than they used to be.

Commissioner CLEMENTS: Than they were how long ago?

Mr. MUNROE: Ten years ago.

Commissioner CLEMENTS: Do you have any basis for a like estimate in regard to the Sunset route?

Mr. MUNROE: No, sir, I have not any information as to the Sunset.

524 Mr. SEVERANCE:

Q. You say that through your commercial agents you keep tab on your competitors as far as you can?

A. Yes, sir.

Q. What roads do you mean by your competitors?

A. I mean,—well, of course, it depends on the business.

Q. We are talking about trans-continental business.

A. Speaking now of the San Francisco business for the purpose of illustration, all lines east of Ogden, other than the Union Pacific; all lines east of El Paso, including the through route of the Sunset line from New York to San Francisco, and incidentally, of course, all the lines operating via the northern gateways.

Q. Now, you say that you go to some trouble and expense to have your commercial agents put you in touch with all the information they can get with reference to the business done by those competitors of yours. That is true, isn't it?

A. It is.

Q. You regard that as of advantage to you in conducting competition, don't you?

A. We do.

Q. And you regard it as of advantage to you to keep that information as far as possible from your competitors, don't you?

A. Although I have——

Q. As to your own line I mean.

A. We do not announce it to them, but we have no idea but what they get it.

Q. They get it if they can?

A. Certainly.

Q. You don't want them to get it?

A. I would not offer it to them.

Q. In the case of one of those competitors, the Southern Pacific

that you call a competitor, you have the same commercial agent at Chicago, the same commercial agent at Pittsburg, the same at Cincinnati busily engaged in covering up this information. They are also engaged in gathering up this information for you in reference to the business of your competitors. You don't try to keep that information then from the Southern Pacific, do you?

A. We do not regard the Sunset line as a competitor on Chicago business.

Q. Oh that is it.

A. No, sir, and we never have.

Q. It is a fact, is it not that you don't make any very great
525 effort to keep this information from the Sunset management, or the Southern Pacific management, not any such effort as you do to keep it from the Atchison? and you don't have to hunt half as far to find out what the Sunset is doing, as you do to find out what the Atchison is doing, do you?

A. We don't ask anything about the Sunset. I do not recollect an average of one communication a month to a Sunset man. They are just as separate and distinct from us as the Atchison road is.

Q. And I suppose Mr. Niemeyer is very separate and distinct too?

A. No, he is a joint agent.

Q. He is not separate and distinct?

A. He is not.

Q. You think that he finds out as agent of the Sunset what Mr. Niemeyer as agent of the Union Pacific is doing?

A. I don't think I ever asked Mr. Niemeyer for a bit of information as to the Sunset takings in his territory, because——

Q. Now then, sir, don't you know——

Mr. LOVETT: Just a moment. Because what.

Mr. MUNROE: In the first place as I have said, we have never regarded the Sunset line as a competitor on Chicago business.

Mr. SEVERANCE:

Q. Did you hear the testimony to the effect that a large amount of traffic has moved via the Illinois Central to New Orleans and thence to the Coast.

A. Under abnormal conditions I recognize that the Illinois Central has taken some business. I say the Illinois Central simply as a line between here and New Orleans, but they have taken it for the reason, almost by 100 per cent., of the congested conditions by the normal and direct line. I never can be convinced that when you have to carry the freight from Chicago to New Orleans and when you get to New Orleans you are further away from San Francisco than when you started, that that line will be an active competitor of the Council Bluffs-Union Pacific-Ogden route.

Q. What about the lines from Kansas City to El Paso?

526 A. The lines from El Paso are much more a competitor.

Q. They are competitive to the Union Pacific?

A. They are.

Q. Chicago traffic moves that way, doesn't it?

A. It does, and we recognize that competition as an active and controlling force.

Q. Then as to Chicago business, the Union Pacific on the one hand, and the lines made up from here to El Paso and the Southern Pacific from there on are competing lines?

A. They are.

Commissioner CLEMENTS: Isn't there some territory somewhere south of this where both of these lines would naturally be competing?

A. The line naturally falls about the Ohio River.

Q. Anything that originates south of the Ohio River would naturally get better service via New Orleans, than via Omaha, and anything that originates north of there would go via Omaha.

Commissioner CLEMENTS: Cincinnati is about on the dividing line?

Mr. MUNROE: About on the dividing line.

Mr. KELLOGG:

Q. You call that a natural dividing line, do you?

A. I do.

Q. And business north of that line has at times moved via the El Paso gateway and business south of that line via Ogden?

A. Occasionally.

Q. And Pittsburg would be pretty strongly competitive territory then wouldn't it, as it is right on that line?

A. Pittsburg is very strongly competitive.

Q. As between the Southern Pacific and the Union Pacific?

A. As between all the gateways.

Q. Is it not a fact that all points east of Kansas City on each side of that dividing line, to the Atlantic seabord are competitive territory for those two lines?

A. To a limited extent the territory south of the Ohio River is competitive, and the territory north of the Ohio naturally moves by the northern gateways. Most of those places move on parallels.

527 Q. It don't always?

A. It don't always, there is no inflexible rule.

Mr. LOVETT:

Q. What are the lines leading from Chicago that take business between California and El Paso?

A. The direct line is the Rock Island system in connection with the El Paso and Southwestern; then the lines radiating from El Paso; the Texas Pacific, with their various connections via such points as Texarkana, Iron Mountain, Ft. Worth and the M. K. & T.

Q. When those lines competing by way of El Paso get that business what do they do with it?

A. Deliver it to the Southern Pacific.

Q. Is there any other way for them to get it to California?

A. I do not know whether any of them have pro-rate arrangements with the Atchison for the back haul or not, but I think not. In practice it is almost entirely Southern Pacific.

Q. The Atchison has its own line from Chicago to California?

A. It has.

Q. When you get this business from them, that is in competition with them, and you get it to Ogden, what do you do with it?

A. Deliver it to the Southern Pacific for California points.

Q. The Southern Pacific has the Pacific coast end of both of those roads, hasn't it?

A. It has.

Q. You cannot make a rate to California without the consent of the Southern Pacific, can you?

A. We cannot.

Q. Now this Portland business that is in competition between the Oregon Railroad & Navigation Company, and the Southern Pacific of about what volume and importance is that? That has been in competition between the Southern Pacific and the Oregon Railroad & Navigation Company is it large or small in volume?

A. Very small.

Q. In this contest or possible contest between the Union Pacific and the Southern Pacific that Mr. Severance assumes in his questions to you, giving you the Portland route as a club to use on the
528 Southern Pacific on the question of divisions at Ogden and giving the Southern Pacific as a club to use on you, the Denver & Rio Grande, which do you think would get the worst of that contest, the Union Pacific or the Southern Pacific?

A. The Union Pacific.

Q. Your loss and sufferings would be many fold greater than the Southern Pacific in that contest?

A. It is very evident to my mind that they would.

The CHAIRMAN: The further hearing of this matter will be continued at the United States Court room in Seattle, Washington, on the 21st inst., at 10 o'clock A. M.

The Commission adjourned.

529 SEATTLE, WASHINGTON, *January* 21, 1907—10:00 a. m.

Present: Commissioner Lane.

Com'r LANE: Gentlemen, come to order, please. The Interstate Commerce Commission continues here its hearing begun in New York and continued at Chicago, with regard to the intercorporate relations of the Union Pacific and Southern Pacific and allied lines. Mr. Severance represents the commission. Judge Lovett, Mr. Dunne and Mr. Cotton the Southern Pacific System. Call your first witness, Mr. Severance.

B. CAMPBELL was called on behalf of the Commission, and after having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Campbell, where do you live?

Mr. CAMPBELL: St. Paul.

Mr. SEVERANCE: And what is your business?

Mr. CAMPBELL: Fourth Vice President of the Great Northern Railway.

Mr. SEVERANCE: And how long have you occupied that position?

Mr. CAMPBELL: Two years.

Mr. SEVERANCE: And what particular department of the railroad business is under your jurisdiction?

Mr. CAMPBELL: Traffic.

Mr. SEVERANCE: Prior to the time you came to the Great Northern what was your railroad experience,—well, we will say for fifteen years prior to that time?

Mr. *Severance:* General Freight Agent and Traffic Manager, and Assistant Traffic Director of the Oregon Railroad & Navigation Company, and the Union Pacific.

530 Mr. SEVERANCE: That is, you were the General Freight Agent and the Traffic Director of the O. R. & N. and its predecessors before the receivership, and were for a time the Assistant Director of Traffic of the Union Pacific, Oregon Short Line, Oregon Railroad & Navigation Company, and Southern Pacific, were you not?

Mr. CAMPBELL: That states it about right.

Mr. SEVERANCE: Yes; you were assistant to Mr. Stubbs at Chicago?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And how long were you with Mr. Stubbs in Chicago; when did you go there and when did you leave?

Mr. CAMPBELL: Two years. I went there in the early part of 1902 and left at the end of 1904.

Mr. SEVERANCE: And were you succeeded there by Mr. Store or Mr. McCormick?

Mr. CAMPBELL: By Mr. Store.

Mr. SEVERANCE: During the time you were with Mr. Stubbs what were your duties?

Mr. CAMPBELL: Supplementary to those of Mr. Stubbs.

Mr. SEVERANCE: Well, if we knew what Mr. Stubbs' duties were that would be a good answer, but could you give us a little fuller answer?

Mr. CAMPBELL: Well, he was in general charge of the traffic of the Union Pacific and I was his assistant.

Mr. SEVERANCE: Well, not only the Union Pacific but of the other lines that I have mentioned, wasn't he?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And under Mr. Stubbs you had supervision of the traffic of these four roads; that is, the Southern Pacific, the Union Pacific, the Oregon Short Line and the Oregon Railroad & Navigation Company?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Were your duties connected particularly
531 with either the freight or the passenger department, or with both?

Mr. CAMPBELL: With both in a general way.

Mr. SEVERANCE: Now immediately prior to going to Chicago with Mr. Stubbs, what was your position?

Mr. CAMPBELL: Traffic manager of the O. R. & N.

Mr. SEVERANCE: And your headquarters were where?

Mr. CAMPBELL: At Portland.

Mr. SEVERANCE: And how long did you occupy that position?

Mr. CAMPBELL: About seven or eight years.

Mr. SEVERANCE: And before that you were General Freight Agent, were you?

Mr. CAMPBELL: General Freight Agent.

Mr. SEVERANCE: With largely the same duties as you had as Traffic Manager?

Mr. CAMPBELL: Except jurisdiction over the passenger department—had to do with freight exclusively.

Mr. SEVERANCE: But you had jurisdiction over passenger as well as freight when you were the Freight Manager?

Mr. CAMPBELL: Yes—no, when I was Traffic Manager.

Mr. SEVERANCE: I mean Traffic Manager?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: The Oregon Railroad & Navigation Company in your day, when you were at Portland, owned or operated what transportation lines?

Mr. CAMPBELL: The rail lines extending into Oregon and Washington, probably a thousand miles; certain steamboat lines on the Willamette, Columbia and Snake Rivers; a line of steamships between Portland and San Francisco, and between Portland and the Orient.

Mr. SEVERANCE: Now, Mr. Campbell, your main line of railroad extended from Portland to Huntington, did it not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And at Huntington you connected with what line?

532 Mr. CAMPBELL: With the Oregon Short Line.

Mr. SEVERANCE: And that in turn at Ogden or Granger both connected with the Union Pacific?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And there was a through freight service, was there not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And a through passenger service?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Through Council Bluffs, in fact from Chicago by way of the Northwestern, there was a through passenger service to Portland, was there not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And a through freight service from Council Bluffs and points east by connecting lines?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Now you speak of certain steamboats on the rivers; where did the boats run on the Willamette River?

Mr. CAMPBELL: Between Portland and Corvallis.

Mr. SEVERANCE: How far up the river is that from Portland?

Mr. CAMPBELL: Substantially a hundred miles.

Mr. SEVERANCE: How frequent a service did you have with those boats?

Mr. CAMPBELL: It varied according to the stage of the water.

Mr. SEVERANCE: Well, between what?

Mr. CAMPBELL: Daily service as far as navigation would permit,

say as far as half of the distance, and irregular service beyond that.

Mr. SEVERANCE: And did that line do both passenger and freight business?

Mr. CAMPBELL: It did.

Mr. SEVERANCE: Both up into the country and back from the river?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Now, your steamship line you say, one steamship line ran from Portland to San Francisco?

533 Mr. CAMPBELL: I did; yes.

Mr. SEVERANCE: Those ships were owned by the Oregon Railroad and Navigation Company, were they not?

Mr. CAMPBELL: They were.

Mr. SEVERANCE: How many ships did you have?

Mr. CAMPBELL: There were three for the most part.

Mr. SEVERANCE: Do you remember the tonnage capacity?

Mr. CAMPBELL: About twelve and fifteen hundred tons each.

Mr. SEVERANCE: And were those ships engaged in both passenger and freight traffic?

Mr. CAMPBELL: They were.

Mr. SEVERANCE: Carrying passengers from Portland to San Francisco, and bring- passengers up from San Francisco to Portland.

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And freight likewise?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Did these steamers take down to San Francisco some of the traffic that originated up the Willamette River and which was brought into Portland by your steamboats?

Mr. CAMPBELL: They did.

Mr. SEVERANCE: What is the nature of that traffic?

Mr. CAMPBELL: Chiefly farm products.

Mr. SEVERANCE: Well, a little more definite, what kind of farm products?

Mr. CAMPBELL: Wheat, oats, potatoes, hay—well, not much hay; some paper manufactured on the Willamette River; those were the chief items.

Mr. SEVERANCE: Did any hops move by steamers, or did they go by rail?

Mr. CAMPBELL: Principally by rail.

Mr. SEVERANCE: Did any go by steamers?

Mr. CAMPBELL: Occasionally some; yes.

Mr. SEVERANCE: Now as to that traffic along the Willam-

534 ette which you brought in from the country was your line of steamships competitive with the Southern Pacific line running south from Portland?

Mr. CAMPBELL: No.

Mr. SEVERANCE: In no particular?

Mr. CAMPBELL: No. The Southern Pacific did not assume or undertake to meet the competition of the ocean line.

Mr. SEVERANCE: I am not speaking of the ocean line; I am asking you——

Mr. CAMPBELL: No. The through line from the Willamette Valley points and the Southern Pacific were not competitors.

Mr. SEVERANCE: Well now, what you mean by competitors, is they did not make the same rates?

Mr. CAMPBELL: Did not make the same rates?

Mr. SEVERANCE: But they were both soliciting to some extent the same class of business and carrying the same class of business, were they not?

Mr. CAMPBELL: I don't think the Southern Pacific solicited the business actively or if it carried any of it. Up to the time I was familiar with the situation the Southern Pacific did not attempt to make rates from that territory south that were low enough to compete with the ocean, with the all-water carrier.

Mr. SEVERANCE: Now, let's see, Mr. Campbell. We will first take up the Willamette Valley boats. Wasn't the business transacted by the boats on the Willamette Valley competitive with the Southern Pacific into Portland?

Mr. CAMPBELL: It was.

Mr. SEVERANCE: Yes; as to practically all of the traffic, wasn't it?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And from Portland on that traffic moved largely by steamer, did it?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: You say that there were potatoes brought down by that steamboat line on the Willamette River to Portland?

Mr. CAMPBELL: Yes, sir.

535 Mr. SEVERANCE: Is it not a fact that potatoes also moved from that same region south to San Francisco over the Southern Pacific?

Mr. CAMPBELL: I do not think to any considerable extent where it was in competition with the all-water route.

Mr. SEVERANCE: I will ask you whether as a matter of fact, from that same region that was tapped by these steamboats on the Willamette, did not potatoes move south over the Southern Pacific?

Mr. CAMPBELL: I do not think so; not to my knowledge.

Mr. SEVERANCE: You don't know of any?

Mr. CAMPBELL: No.

Mr. SEVERANCE: Did any potatoes move south over the Union Pacific from that part of Oregon; I mean the Southern Pacific?

Mr. CAMPBELL: Oh, when it was beyond the reach of the all-water carrier, say south—I think Salem was a point, or Eugene, the upper Willamette Valley points, yes.

Mr. SEVERANCE: Well, boats ran to Salem, didn't they?

Mr. CAMPBELL: Yes. From Salem south, no, or from Salem north, no.

Mr. SEVERANCE: Well, take Salem as a point; didn't potatoes move both ways from Salem?

Mr. CAMPBELL: Yes; I don't think they moved by rail from Salem to San Francisco.

Mr. SEVERANCE: They didn't?

Mr. CAMPBELL: I don't think so.

Mr. SEVERANCE: Did they from anywhere within the vicinity of Salem?

Mr. CAMPBELL: Yes, from points farther south where they were remote from the all-water route, I think they did.

Mr. SEVERANCE: But you think there was no substantial competition between that water route, I mean up the Willamette, on potatoes as against the Southern Pacific to San Francisco?

536 Mr. CAMPBELL: Generally speaking, I think not. I think the all-water route virtually controlled the business.

Mr. SEVERANCE: But there was some?

Mr. CAMPBELL: Oh there may have been some.

Mr. SEVERANCE: But not a great amount?

Mr. CAMPBELL: That could only be determined by reference to the records. I could not tell you from memory because I really don't know.

Mr. SEVERANCE: Now take the item of hops. Were hops carried by the boat at all?

Mr. CAMPBELL: To a limited extent.

Mr. SEVERANCE: And were they also carried south by rail?

Mr. CAMPBELL: We carried through to the seaboard by rail. They didn't as a rule go to San Francisco by rail.

Mr. SEVERANCE: Well, that is what I mean.

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: The hops originating in the Willamette Valley moved to the seaboard over the Sunset route, did they not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And they also moved to the seaboard by the Union Pacific route, did they not?

Mr. CAMPBELL: Yes.

Mr. LOVETT: What do you mean by the seaboard, the Atlantic seaboard?

Mr. SEVERANCE: Yes; and to points west of the Trans-Atlantic seaboard; that is true, is it not, Mr. Campbell?

Mr. CAMPBELL: I suppose it is; I cannot tell you as a matter of fact whether any went west of the seaboard or not.

Mr. SEVERANCE: But they did to the seaboard?

Mr. CAMPBELL: They did to the seaboard.

Mr. SEVERANCE: And did they also to some extent move by this steamship route to San Francisco and thence transferred by rail to the seaboard?

537 Mr. CAMPBELL: I think not; I do not know of any such case.

Mr. SEVERANCE: You do not know anything of that?

Mr. CAMPBELL: No.

Mr. SEVERANCE: But they did move as far as San Francisco at a time by boat?

Mr. CAMPBELL: To a very limited extent.

Mr. SEVERANCE: Yes, but to some extent?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Now, how did your passenger traffic from Portland to San Francisco,—is there a considerable amount of that over these boats of the Oregon Railroad & Navigation Company?

Mr. CAMPBELL: No; except between Portland and San Francisco probably.

Mr. SEVERANCE: That is what I am asking about.

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: There was a large traffic in that, wasn't there?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And there was also a passenger traffic between Portland and San Francisco by rail?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And as to that business, the line of steamers that was run by the O. R. & N. and the all-rail route of the Southern Pacific were strictly competitors, weren't they?

Mr. CAMPBELL: They were competitors.

Mr. SEVERANCE: Now, Mr. Campbell, as to business originating in the east destined to Portland, that is originating in the Atlantic seaboard territory, didn't that business, some of it, a considerable amount perhaps—I won't ask you to give the amount, but some of it at least moved to Portland by the Sunset Route, did it not?

Mr. CAMPBELL: A small quantity of it did?

Mr. SEVERANCE: Yes; and the Sunset Route was made up of the Morgan line of steamers from New York to Texas points, and then all rail line of the Southern Pacific from that point to Portland?

538 Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And business from that same territory, in fact the larger part of the business from that same territory came to Portland all rail over the Union Pacific, Oregon Short Line and Oregon Railroad & Navigation Company, and other eastern connections, did it not?

Mr. CAMPBELL: And the Northern Pacific.

Mr. SEVERANCE: Yes.

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: So that there were the three systems there that were handling the Portland traffic from the seaboard territory?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: How were the rates upon these three lines of communication to the seaboard, I mean the ordinary published rates, were they the same?

Mr. CAMPBELL: They were generally equal.

Mr. SEVERANCE: Generally equal, yes; now it is a fact, isn't it, Mr. Campbell, that years ago, say ten years ago, the Southern Pacific, Sunset Route, cut the rates in competing for that Portland business as against the Union Pacific line and the Northern Pacific?

Mr. CAMPBELL: Not to my knowledge they never did.

Mr. SEVERANCE: Did you never know of rates being cut to Portland from the Atlantic seaboard territory?

Mr. CAMPBELL: I have been told that they were, but as a matter of fact I do not know that they were.

Mr. SEVERANCE: That is you did not pay the cut rate?

Mr. CAMPBELL: No, and no other rate.

Mr. SEVERANCE: But you know as a practical matter as a railroad man, and you found out in your experience also in competing with

the Southern Pacific that they were making lower rates at times in an effort to get that business, didn't you, Mr. Campbell?

Mr. CAMPBELL: Well, we will say for the sake of progression, that they were.

539 Mr. SEVERANCE: Yes, that is what I thought. And that business for which they were competing in that way was merchandise and things of that character coming through from the seaboard territory?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: They not only cut the rate as you believe, from what you have heard and competed for the business, but they got considerable by doing so, didn't they?

Mr. CAMPBELL: I think not at any time more than from three *and* five per cent. of the Portland competitive business.

Mr. SEVERANCE: That is your best judgment, based upon your general knowledge of the situation?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Did the O. R. & N. in thos days maintain eastern commercial agencies or were they represented by the Union Pacific?

Mr. CAMPBELL: Well, a short portion of the time they maintained one agent in Chicago, but generally speaking they relied upon the Union agencies.

Mr. SEVERANCE: To secure the business?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Now you spoke of a steamship line to the Orient. You remember, don't you, Mr. Campbell that somewhere about 1897, a line of boats was established in connection with the Oregon Railroad & Navigation Company, known as the Dodwell?

Mr. CAMPBELL: There was such a line operated prior to 1901; I presume it was in 1897; they operated for three years.

Mr SEVERANCE: Yes, they operated three years. They operated down to 1900, didn't they, or perhaps nearly the beginning of 1901.

Mr. CAMPBELL: Well, probably yes.

Mr. SEVERANCE: Where did those ships touch in the Orient?

Mr. CAMPBELL: Regular ports of call in Japan and China.

Mr. SEVERANCE: The same ports to which the ships of the

540 Pacific Mail and the San Francisco lines proceed?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Did the Oregon Railroad & Navigation Co. maintain commercial agents in the Orient and solicit traffic for that line?

Mr. CAMPBELL: No, sir.

Mr SEVERANCE: How did you get your traffic?

Mr. CAMPBELL: Through Dodwell & Co.

Mr. SEVERANCE: Oh, they maintained agencies.

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Dodwell & Co. owned the ships, didn't they, or at least chartered them?

Mr. CAMPBELL: They had them under charter, I believe.

Mr. SEVERANCE: Had them under charter, and they were operating under a contract with the Oregon Railroad & Navigation Company?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And the cargoes that they brought to the port at Portland from the Orient in so far as they were destined to points in the east were delivered to the Oregon Railroad & Navigation Company, were they not?

Mr. CAMPBELL: They were.

Mr. SEVERANCE: And they went east over that line and the Oregon Short Line and the Union Pacific?

Mr. CAMPBELL: They did.

Mr. SEVERANCE: And they were distributed, were they not, over the middle west, and in fact all the country east of the Missouri River and perhaps some territory west of there?

Mr. CAMPBELL: Generally speaking, east of the Missouri River.

Mr. SEVERANCE: Yes and as far as the seaboard?

Mr. CAMPBELL: Yes.

Mr SEVERANCE: Would you mind naming those ports of call that you spoke of in Japan and China?

Mr. CAMPBELL: Yokohama, Kobe, Nagasaki, and Shanghai and Hong Kong.

541 Mr. SEVERANCE: Were you at that time familiar with the line of steamships going out of San Francisco known as the Occidental and Oriental line?

Mr. CAMPBELL: I know that there was such a line.

Mr. SEVERANCE: And that also proceeded to the same ports of call in the Orient, did it not?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: What lines were they?

Mr. SEVERANCE: The Occidental and Oriental. It did, didn't it?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: After the Dodwell boats ceased running there, that is after the contract expired you had some boats for a short time operated by a company controlled by Mr. Graham, didn't you?

Mr. CAMPBELL: They were operated some way in connection with it. There was an irregular service operated for a short time by vessels which a man by the name of Graham claimed to have under his control.

Mr. SEVERANCE: And after Graham quit or perhaps before the Oregon Railroad & Navigation Company organized a corporation of its own, did it not, to handle the steamship business, called the Portland & Asiatic?

Mr. CAMPBELL: It did.

Mr. SEVERANCE: That was in 1900, wasn't it?

Mr. CAMPBELL: I believe so.

Mr. SEVERANCE: And those ships, the ships of that line are still running, are they not, as far as you know; they were when you left the service of the Union Pacific Company, were they not?

Mr. CAMPBELL: Yes, when I left the service of the company they were.

Mr. SEVERANCE: And did that line of boats make the same ports in the Orient as the Dodwell line?

Mr. CAMPBELL: They did.

Mr. SEVERANCE: Did the O. R. & N. have commercial agencies in the Orient soliciting business for those boats?

542 Mr. CAMPBELL: It had a general agency.

Mr. SEVERANCE: Where was that?

Mr. CAMPBELL: At Hong Kong.

Mr. SEVERANCE: And who was the agent?

Mr. CAMPBELL: Mr. Cameron.

Mr. SEVERANCE: Mr. Cameron; do you know where Mr. Cameron is now?

Mr. CAMPBELL: He is in London, I believe.

Mr. SEVERANCE: Do you know what his position is at present?

Mr. CAMPBELL: He is European agent for the Canadian Pacific.

Mr. SEVERANCE: When did he leave the service of the Portland & Asiatic Company, if you remember?

Mr. CAMPBELL: I think within the year.

Mr. SEVERANCE: Did he have sub-agencies at the other ports, or don't you know about that?

Mr. CAMPBELL: Yes, had two or three.

Mr. SEVERANCE: One thing I forgot to ask you, Mr. Campbell, when we were talking about these boats on the Willamette River; did they carry passengers also?

Mr. CAMPBELL: In a limited way, yes.

Mr. SEVERANCE: From Salem down to Portland?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Salem is a point on the Southern Pacific?

Mr. CAMPBELL: It is, yes.

Mr. SEVERANCE: Now as to the passenger business on these steamships between Portland and San Francisco, during the summer months were the rates practically the same as the all-rail rates over the Southern Pacific?

Mr. CAMPBELL: No, they were substantially the same both winter and summer on the ocean.

Mr. SEVERANCE: Both winter and summer?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: The rates were substantially the same?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Now, Mr. Campbell, coming down to the

543 spring of 1901 when the Union Pacific purchased the stock of the Southern Pacific road, you still continued there in Portland as the Traffic Manager of the O. R. & N., did you not?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: But you had in addition, did you not, to your duties with the O. R. & N., some kind of relation to the Southern Pacific that you held?

Mr. CAMPBELL: In an advisory way.

Mr. SEVERANCE: In an advisory way; and did you report after that time, that is when the bureau was established to Mr. Stubbs in Chicago?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Who is Mr. R. B. Miller?

Mr. CAMPBELL: Present General Freight Agent of the O. R. & N.

Mr. SEVERANCE: And how long has he occupied that position?

Mr. CAMPBELL: About five years, I think.

Mr. SEVERANCE: Previous to that what was his position?

Mr. CAMPBELL: General Freight and Passenger Agent of the Southern Pacific lines in Oregon for a short time.

Mr. SEVERANCE: And previous to that?

Mr. CAMPBELL: Assistant General Freight Agent of the O. R. & N.

Mr. SEVERANCE: That is, he was—in the first place he was Assistant when you were General Freight Agent?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And then he went from you to the Southern Pacific and then came back to the O. R. & N.?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And hasn't he also at this time a connection with the Southern Pacific lines in Oregon?

Mr. CAMPBELL: I don't know that.

Mr. SEVERANCE: You don't know what his position is?

544 Mr. CAMPBELL: No.

Mr. SEVERANCE: Well, we can prove that otherwise. Now Mr. Campbell, was there an agent by the name of Morse?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: What was his business?

Mr. CAMPBELL: Soliciting Freight Agent in Portland for the O. R. & N.

Mr. SEVERANCE: Was there a man by the name of Coman?

Mr. CAMPBEEL: Yes, sir.

Mr. SEVERANCE: What was his position?

Mr. CAMPBELL: I have almost forgotten his movements; he was for a time General Freight and Passenger Agent of the Southern Pacific lines in Oregon. I think for a time prior to that he was——

Mr. LOVETT: At Salt Lake?

Mr. CAMPBELL: Salt Lake City, yes, sir.

Mr. SEVERANCE: For the Southern Pacific?

Mr. CAMPBELL: For the Oregon Short Line.

Mr. SEVERANCE: Do you know a man down there by the name of McCusker?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: What was his business?

Mr. CAMPBELL: He was Soliciting Freight Agent for the Southern Pacific lines in Portland.

Mr. SEVERANCE: Do you recall, Mr. Campbell, that some time after the purchase of the Southern Pacific stock by the Union Pacific, that you called these various gentlemen that I have named, or at least a part of them, into a conference in your office in Portland and told them in substance that in the soliciting of business for these lines they should solicit the Atlantic seaboard business for the Sunset Route and business west of seaboard territory for the Union Pacific Route unless the shipper was particularly anxious to have the staff the other way, or in substance that?

Mr. CAMPBELL: There was such a conference, but no such instructions were given.

545 Mr. SEVERANCE: What was stated at that conference?

Mr. CAMPBELL: The instructions were given that each representative should work for his own road in preference; failing to get the business that way, to work it for the other.

Mr. SEVERANCE: Wasn't it stated in that conference that the effort should be made to get the business from the seaboard routed over the Sunset Route?

Mr. CAMPBELL: I don't think so. I don't think any such instructions were given, because I am sure that the Union Pacific was not put out of the seaboard business with its connecting lines.

Mr. SEVERANCE: That is not what I am asking you, Mr. Campbell. I am asking you whether as a matter of fact in that conference you did not either instruct or advise, I don't care which you call it, that the business from the seaboard territory should be secured if possible, without offending the shipper or disobliging him, over the Sunset Route?

Mr. CAMPBELL: To the best of my memory, no, sir.

Mr. SEVERANCE: Didn't you yesterday, Mr. Campbell, tell me in your room at the hotel, that you stated that to these gentlemen?

Mr. CAMPBELL: No, sir, I don't remember that I stated any such thing in*to* the hotel yesterday.

Mr. SEVERANCE: What did you say, if you did not say that?

Mr. CAMPBELL: I did not finish saying very much about it yesterday.

Mr. SEVERANCE: I asked you about that, didn't I?

Mr. CAMPBELL: You did, and I told you there was such a conference and you described the nature of that conference, what was said there and so forth, and I did not—I don't think I confirmed, did not intend to confirm, did not mean to confirm what you stated had been the instructions given at Portland.

Mr. SEVERANCE: Well, Mr. Campbell, you did say this, didn't you——

546 Mr. CAMPBELL (interrupting): But to the best of my recollection the instructions were as I have stated them here this morning, that each man would work for his own interest; failing to get the business that way, to help out the other fellow. But I am quite positive in the nature of things that have existed, as they have existed since that time and up to the time I was last familiar with the workings of the lines, I am quite confident that the Union Pacific—that the instructions which you describe were not given.

Mr. SEVERANCE: Well now, Mr. Campbell, in this conversation, this informal conversation I had with you yesterday, you say that I described it; I described it to you as I have asked it, in the main, didn't I?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And you certainly led me to understand that that was the fact; you did disaffirm that, did you?

Mr. CAMPBELL: No, I don't think so.

Mr. SEVERANCE: No.

Mr. CAMPBELL: I don't think so.

Mr. SEVERANCE: You do remember such a conference, that is you remember a conference with those gentlemen, that you called

together after the acquisition of the Southern Pacific stock by the Union Pacific?

Mr. CAMPBELL: I do indistinctly remember the calling of such a conference.

Mr. SEVERANCE: Yes. Now prior to that time, Mr. Campbell, you as Traffic officer of the O. R. & N. had never assumed to give any instructions, had you, to the Southern Pacific soliciting agents?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: But you did assume to do so, at least advise them at that time?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And by whose authority were you acting, in giving advice to the Southern Pacific agents?

547 Mr. CAMPBELL: In that particular case I think on my own initiative.

Mr. SEVERANCE: Well, in general.

Mr. CAMPBELL: In general of course the directions emanated, the general instructions emanated from Mr. Stubbs' office.

Mr. SEVERANCE: And were your general instructions from Mr. Stubbs' office that as to the business at Portland you were in chief control so that you could call any Southern Pacific men and give them advice or instructions?

Mr. CAMPBELL: Well, I should think yes would be a proper answer to that.

Mr. SEVERANCE: Yes. You had a name, didn't you, for the Sunset Route there; you called it the Hundred Per Cent route, didn't you?

Mr. CAMPBELL: Why, I have heard it called that. Any line that gets the entire—the entire length of any line is usually described as the hundred per cent route.

Mr. SEVERANCE: Yes. Well you have heard at Portland the Sunset Route, seaboard route described as the hundred per cent route, haven't you?

Mr. CAMPBELL: I would say yes to that.

Mr. SEVERANCE: Yes. Now as to the business originating on the seaboard, if it came by the Sunset route a hundred per cent of the revenue, of course, came to the Southern Pacific, did it not?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Now, in order to get that business, isn't it a fact that the Southern Pacific absorbed the rate into New York,—from points in New York State and Pennsylvania?

Mr. CAMPBELL: I think they did as far up as an arbitrary of fifteen or twenty cents per hundred lbs. would take them.

Mr. SEVERANCE: And they did that for the purpose of getting the business away from the all-rail routes?

Mr. CAMPBELL: That I presume was the purpose of it.

Mr. SEVERANCE: Yes; the all rail routes to the north-

548 west here were the Great Northern, the Northern Pacific and Union Pacific, were they not?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: About the territory around Cincinnati, Mr. Campbell, which way did the stuff move from there, both ways?

Mr. CAMPBELL: I think to San Francisco it moved both ways, but most largely through the northern gateways to Portland. I think it moved wholly by the northern gateways.

Mr. SEVERANCE: Now, Mr. Campbell, did traffic come from the east over the Santa Fe to San Francisco and thence up to Portland over the boats of the O. R. & N.?

Mr. CAMPBELL: I don't think there was ever any such arrangement.

Mr. SEVERANCE: None at all?

Mr. CAMPBELL: I think not.

Mr. SEVERANCE: You never heard of any; you don't recall ever hearing of any?

Mr. CAMPBELL: I do not recall any, no, sir.

Mr. SEVERANCE: Were there at one time boats running from Portland to Sound points?

Mr. CAMPBELL: For a short time, yes sir.

Mr. SEVERANCE: About what year was that, if you remember?

Mr. CAMPBELL: It was the year of the Seattle fire, but I cannot tell you what year that was.

Mr. COTTON: Eighty-nine.

Mr. CAMPBELL: 1889.

Mr. SEVERANCE: Only that one year?

Mr. CAMPBELL: I think that is all.

Mr. SEVERANCE: At the present time you are the Traffic Manager, that is the Vice President in charge of traffic for the Great Northern?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: You published rates into San Francisco from the Sound points?

Mr. CAMPBELL: From Sound points, no, sir.

Mr. SEVERANCE: I mean through rates?

549 Mr. CAMPBELL: Through rates, yes, sir.

Mr. SEVERANCE: Through rates to San Francisco?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Going by rail over your line and then from Sound points down to San Francisco by boats?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: By what steamers does traffic move, if any?

Mr. CAMPBELL: The Pacific Coast Steamship Company.

Mr. SEVERANCE: Does the Northern Pacific publish rates the same way?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And does that move over the Pacific Coast Steamship Company?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Do you happen to know whether any traffic moves to Sound points from San Francisco originating on the line of the Union Pacific or its connections or the Sunset Route by way of these boats of the Pacific Coast Steamship Co.?

Mr. CAMPBELL: I do not know of any, no, sir.

Mr. SEVERANCE: You do not know whether there is any; do you know whether there is any?

Mr. CAMPBELL: I do not know whether there is any.

Mr. SEVERANCE: You do not know that. How long ago was that company organized, if you know?

Mr. CAMPBELL: Which company?

Mr. SEVERANCE: The Pacific Coast Steamship Company.

Mr. CAMPBELL: Longer ago than I have any knowledge.

Mr. SEVERANCE: That has been running a long time?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Are you an officer or director in it?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: Does the O. R. & N. make a junction with your road at Spokane?

Mr. CAMPBELL: Yes, sir.

550 Mr. SEVERANCE: And does business move to Portland from eastern points by way of the Great Northern and Spokane and thence over the O. R. & N.?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: From what portions of the east?

Mr. CAMPBELL: Throughout the east generally, east of the Missouri River meridian.

Mr. SEVERANCE: Do you happen to know, Mr. Campbell, whether any business moves from here to points in Utah, such as Salt Lake by way of your line to Spokane and thence by the O. R. & N., and thence down over the Short Line?

Mr. CAMPBELL: Perhaps some lumber and shingles. Maybe a little salmon, but I think nothing beyond that.

Mr. SEVERANCE: Does lumber move to the east by the O. R. & N. from Portland and that region?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And does it also move to the east by the Sunset Route?

Mr. CAMPBELL: I do not know.

Mr. SEVERANCE: Does it move, did it formerly move to the east by way of the Ogden gateway going from Portland to Sacramento that you know of?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And at the same time moved to the Ogden gateway by the O. R. & N. and the Short Line?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Thence went on to the east in those days there over the Rio Grande or the Union Pacific?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Was there a time during your connection with the Short Line, I mean with the O. R. & N., that it was independent of the Union Pacific?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: When was that?

Mr. CAMPBELL: The first control secured by the Union Pacific I think was in 1889; I am not very certain of those figures; afterwards the Union Pacific receivership lost control of the O. R. & N. in 1894.

551 Mr. COTTON: I might suggest, Mr. Campbell, that Mr. O'Neil! was appointed receiver on the 4th day of July, 1894.

Mr. CAMPBELL: Yes, that is what I have in mind.

Mr. COTTON: Is that the time when you meant the change took place?

Mr. CAMPBELL: That is the time I understand the segregation was made.

Mr. COTTON: That was on the 4th day of July, 1894.

Mr. SEVERANCE: And when was the control resumed by the Union Pacific?

Mr. CAMPBELL: I have forgotten the year.

Mr. COTTON: The O. R. & N. was organized on August 17, 1896. It had a capital stock of $35,000,000, eleven millions preferred, twenty-four millions of common. The eleven millions preferred under a voting trust, elected ten directors, the twenty-four millions of common stock elected five. The majority of the common stock was owned by the Oregon Short Line, the preferred stock largely owned by the consolidated mortgage bondholders of the old company. The preferred stock, therefore, elected the majority of the directors. The voting trust was dissolved by the guarantee of dividends in 1897 or 1898 at which time the stock then voted equal; that is, for the entire fifteen directors, and afterwards at a date which I do not know, there was some transfer of stock; I do not know, Mr. Lovett, what are the facts about that.

Mr. LOVETT: The Union Pacific took hold of the Oregon and Southern stock in 1899.

Mr. SEVERANCE: Now during the time that the stock ownership of the O. R. & N. was not in the Union Pacific, or during the time that it was operated by the receiver, Mr. O'Neill, you still maintained your close relations on eastern business with the Short Line, did you not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Necessarily that was your outlet to the east, that and the Great Northern and the Northern Pacific by Spokane?

552 Mr. CAMPBELL: Yes, the two routes, particularly the Great Northern and the Oregon Short Line; the third route was via Wallula and the Northern Pacific.

Mr. SEVERANCE: What is that?

Mr. CAMPBELL: The third route, the route of less importance was via Wallula and the Northern Pacific.

Mr. SEVERANCE: Now your agents, after the Union Pacific had acquired control, in soliciting eastern shipments, solicited them over the O. R. & N., the Short Line and the Union Pacific?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: One thing I forgot to ask about that steamship traffic between Portland and San Francisco. Didn't the steamships pick up at San Francisco commodities that were brought from New York by the way of the Isthmus of Panama?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Consigned to Portland?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: They were brought up by ship from Panama?

Mr. CAMPBELL: Yes.

Mr. LOVETT: Mr. Campbell, when did your connections with the O. R. & N. commence?

Mr. CAMPBELL: In 1886.

Mr. LOVETT: In 1886; and in what capacity?

Mr. CAMPBELL: General Freight Agent.

Mr. LOVETT: And you held that position from 1886 until what time?

Mr. CAMPBELL: That and Traffic Manager until 1901, the latter part of 1901.

Mr. LOVETT: And then you became——

Mr. CAMPBELL: In 1901 or 1902, I guess it was; yes, the latter part of 1902.

Mr. LOVETT: Spring of 1902?

Mr. SEVERANCE: Oh, there is one question I did want to ask. I had forgotten; will you pardon me?

Mr. LOVETT: Yes.

Mr. SEVERANCE: Mr. Campbell, when was it if you know that the steamships between Portland and San Francisco were taken
553 out of the O. R. & N., and put into a separate corporation?

Mr. CAMPBELL: Sometime, I think, in 1903.

Mr. SEVERANCE: In 1903.

Mr CAMPBELL: Yes.

Mr. SEVERANCE: That was after control of the Southern Pacific had passed into the Union Pacific hands?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And who was placed in charge of those boats?

Mr. CAMPBELL: Mr. Schwerin.

Mr. SEVERANCE: Of San Francisco?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And he was also placed in charge of the Portland & Asiatic line, wasn't he?

Mr. CAMPBELL: He was since that time, I think.

Mr. SEVERANCE: Since that time, and he is also in charge of the Pacific Mail?

Mr. CAMPBELL: I believe so.

Mr. SEVERANCE: Yes, but he would know better about that than you?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: But you think it was 1903 they were put in a separate corporation?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Do you know who owns the stock of that corporation, or did at the time it was organized?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: Since that time the O. R. & N. as a corporation has not run a line of steamers to San Francisco; that has been run by this other corporation?

Mr. CAMPBELL: That is without my knowledge.

Mr. SEVERANCE: Well, we will find out later by somebody else. Go on.

Mr. LOVETT: So that from 1886 to the spring of 1902 you were

the chief officer in charge of the freight traffic of the Oregon Railroad & Navigation Company?

Mr. CAMPBELL: Yes, sir.

554 Mr. LOVETT: And in 1902 you became Assistant Traffic Director and had headquarters in Chicago, and held that position for the Union Pacific and the Southern Pacific?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: Were there any other boats operated between San Francisco and Portland at the time the Oregon Railroad & Navigation Company operated that line, Mr. Campbell?

Mr. CAMPBELL: There were at varying times, yes, sir, other steamship lines.

Mr. LOVETT: When did the O. R. & N. put on that line?

Mr. CAMPBELL: Well, that is farther back than I can remember.

Mr. LOVETT: It was in operation when you went to the company?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: How many boats were they operating?

Mr. CAMPBELL: Three, I think.

Mr. LOVETT: Could you call their names?

Mr. CAMPBELL: The Elder, Columbia and Oregon.

Mr. LOVETT: And boats of what capacity each?

Mr. CAMPBELL: I think about fifteen hundred tons. The Columbia may have been eighteen hundred; I have forgotten.

Mr. LOVETT: Wasn't their cargo southbound almost entirely products of Oregon and lumber, Mr. Campbell?

Mr. CAMPBELL: Almost wholly of farm products.

Mr. LOVETT: Did they carry much lumber?

Mr. CAMPBELL: Not a great deal; some.

Mr. LOVETT: Farm products originating in the Willamette Valley?

Mr. CAMPBELL: And along the line of the O. R. & N.

Mr. LOVETT: And along the line of the O. R. & N. I think you testified on direct examination that the Southern Pacific line did not seriously attempt to compete for that traffic along the Willamette River?

555 Mr. CAMPBELL: It did not for San Francisco.

Mr. LOVETT: For San Francisco. Any competition that it engaged in with the boat line was to Portland?

Mr. CAMPBELL: Yes.

Mr. LOVETT: That was between points wholly within the State of Oregon, wasn't it?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: The passenger traffic that moved over that line [illegible]s the rate an important factor in that competition, or was it a m[illegible]ter of choice and preference on the part of the passenger for the sea?

Mr. CAMPBELL: In the winter season it was a question of choice,—well, both winter and summer it was a question of choice with the passenger.

Mr. LOVETT: For the sea as against rail line?

Mr. CAMPBELL: Yes. In the winter time they preferred the rail line and in the summer time more of them preferred the water.

Mr. LOVETT: You understand that the rate was an important factor in that or was it largely a matter of preference for method of travel?

Mr. CAMPBELL: I don't think the rate was an important factor. It was a limited factor, to be sure.

Mr. LOVETT: Do you know whether there was any substantial change in the course of that business after the Union Pacific acquired the stock of the Southern Pacific in 1901?

Mr CAMPBELL: Which business do you mean?

Mr. LOVETT: The business of these boat lines and the Southern Pacific lines to San Francisco.

Mr. CAMPBELL: So far as my knowledge goes there was no appreciable change.

Mr. LOVETT: Either in the rates or the character of the traffic.

Mr. CAMPBELL: No.

Mr. LOVETT: Up to the time that your connection with these properties ceased in 1903,—conditions have continued about the same as before?

Mr. CAMPBELL: Yes, sir.

556 Mr. LOVETT: Did I understand you to testify that the percentage of Portland business that moved via the Sunset route from the east was about three or four per cent., what was the statement as to that?

Mr. CAMPBELL: My recollection is that we usually classed the Sunset and Gulf route as a three to four per cent. route.

Mr. LOVETT: Now what was the relative distance via that route as against the all rail lines that handled the bulk of the business?

Mr. CAMPBELL: Well, it is as far from New Orleans to Portland as it is from New York; then there was the water haul in addition from New York to New Orleans.

Mr. LOVETT: That was as to Portland business from the Atlantic seaboard, it was virtually an impracticable route, wasn't it?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: What is that, you say it was an impracticable route?

Mr. LOVETT: Virtually from Atlantic seaboard to Portland.

Mr. COTTON: Via Sunset.

Mr. LOVETT: That is what I mean, via Sunset.

Mr. SEVERANCE: And Mr. Campbell said yes to that?

Mr. LOVETT: Yes, of course.

Mr. SEVERANCE: All right.

Mr. LOVETT: Now, with reference to these steamship lines, Mr. Campbell, what was the first line that operated from Portland to Asiatic ports in connection with the O. R. & N., or that was promoted or established at the instance of the O. R. & N.?

Mr. CAMPBELL: Samuel Samuels & Co. put on a line—no, Frank Upton put on a line, oh, I guess as far back as 1885.

Mr. LOVETT: Did the O. R. & N. Co. own that line?

Mr. CAMPBELL: No.

Mr. LOVETT: Will you please state, beginning with the first line,

just what lines were established and what were the reasons
557 of the line and what arrangements existed between such lines and the O. R. & N. Co.

Mr. CAMPBELL: Well, Frank Upton first started a line, I think in 1885, and following him was Samuel Samuels & Co.

Mr. LOVETT: When did they commence?

Mr. CAMPBELL: Probably in 1887 or '88. I would not undertake to be at all definite on these dates because I don't remember them.

Mr. LOVETT: Well approximately. Why did Frank Upton quit, do you know?

Mr. CAMPBELL: Because there was no money in the business.

Mr. LOVETT: Then the Samuel Samuels line?

Mr. CAMPBELL: They quit for the same reason; and Dodwell following them quit for the same reason; and after that the O. R. & N. organized its own company.

Mr. LOVETT: Meaning the Portland & Asiatic?

Mr. CAMPBELL: The Portland & Asiatic.

Mr. LOVETT: What had been the result of the operations of the Portland & Asiatic up to the time your connection with it ceased, had it been profitable or otherwise?

Mr. CAMPBELL: It was unprofitable.

Mr. LOVETT: Lost money every year, didn't they?

Mr. CAMPBELL: Yes.

Mr. LOVETT: Why were those lines established?

Mr. CAMPBELL: Solely for the purpose of affording an outlet at Portland for the products, agricultural products, produced along the line of the O. R. & N. as against the competition of the Northern Pacific, bringing those products into Puget Sound where they could find an outlet.

Mr. LOVETT: What was the principal product?

Mr. CAMPBELL: Wheat.

Mr. LOVETT: Wheat.

Mr. CAMPBELL: Yes, wheat and wheat product,—flour.

Mr. LOVETT: That flour moves largely to Asiatic points?

558 Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: Now if those lines had not been established as I understand, that wheat originating,—wheat and other farm products originating on the rail lines of the O. R. & N. Co., would have gone very largely to Puget Sound and sought an outlet that way?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: Reaching the Sound by the Northern Pacific lines?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: Then the O. R. & N. Co. felt that it could recoup itself somewhat for the loss of the steamship lines by holding this traffic to its rail lines; is that the idea?

Mr. CAMPBELL: That was the principle on which they acted.

Mr. LOVETT: What was the arrangement between the O. R. & N. and the Dodwell line about which Mr. Severance spoke?

Mr. CAMPBELL: An arrangement for interchange of traffic on a division of the through rate.

Mr. LOVETT: The O. R. & N. did not charter the boats, did it?
Mr. CAMPBELL: No, sir.
Mr. LOVETT: And did not own the boats?
Mr. CAMPBELL: No, sir.
Mr. LOVETT: And had no interest in the profits of the boats?
Mr. CAMPBELL: No, sir.
Mr. LOVETT: Did it make any guarantee against losses?
Mr. CAMPBELL: No, sir.
Mr. LOVETT: In other words, it was a connecting rail and steamship line under separate management but with arrangements for through rates and interchange of business?
Mr. CAMPBELL: Yes, sir.
Mr. LOVETT: And that arrangement continued for about three years?
Mr. CAMPBELL: About three years, yes, sir.
559 Mr. LOVETT: Was the arrangement with the Samuel Samuels line of substantially the same character?
Mr. CAMPBELL: It was, yes.
Mr. LOVETT: And the Upton line substantially the same?
Mr. CAMPBELL: Substantially the same.
Mr. LOVETT: And each of these lines after trying the business for a while, they quit because they could not make any money?
Mr. CAMPBELL: That is the reason, yes, sir.
Mr. LOVETT: Was the Portland & Asiatic Company organized by the O. R. & N. because it could not arrange with others satisfactorily to maintain a line there?
Mr. CAMPBELL: That was the reason.
Mr. LOVETT: The O. R. & N. made a guarantee for a time to the Samuel Samuels line, didn't it, particularly on flour?
Mr. CAMPBELL: Yes, sir.
Mr. LOVETT: Well, did it lose anything by that guarantee, or did it have to pay anything on account of it?
Mr. CAMPBELL: It had to pay the amount of the guarantee.
Mr. LOVETT: How often were the sailings of these ships, Mr. Campbell, if you recall?
Mr. CAMPBELL: Monthly.
Mr. LOVETT: Monthly?
Mr. CAMPBELL: Yes, sir.
Mr. LOVETT: Wasn't it impossible for them sailing only monthly to compete with Asiatic ports, particularly from points east, with the lines via San Francisco, the Pacific and O. & O.?
Mr. CAMPBELL: They handled practically no business from the east.
Mr. LOVETT: The demands of the flour traffic had the first call on the tonnage of the vessels didn't it?
Mr. CAMPBELL: Yes, sir.
Mr. LOVETT: And then handled practically no tonnage from east of the Missouri River?
560 Mr CAMPBELL: Practically none, very little.
Mr. LOVETT: Now for the return trip, I suppose what we

would call the eastbound trips of the line of steamers, they handled some, picked up some business in Asiatic ports?

Mr. CAMPBELL: They did.

Mr. LOVETT: For the various ports of the United States?

Mr. CAMPBELL: Yes.

Mr. LOVETT: The volume of that was very small wasn't it, Mr. Campbell?

Mr. CAMPBELL: I think it would not exceed an average of a thousand tons a month.

Mr. LOVETT: Yes. The ships sometimes came in ballast, or do you know as to that?

Mr. CAMPBELL: Well, I cannot say as to that.

Mr. LOVETT: What was the relative amount of the westbound business of those ships, as compared with the eastbound, approximately; of course I know you cannot be exact?

Mr. CAMPBELL: Well, about ninety per cent. westbound and ten percent. eastbound, I should say.

Mr. LOVETT: I believe you testified in answer to questions by Mr. Severance that the Great Northern Railway Company has in rates via Portland—was it Puget Sound? What is the name of those boat lines?

Mr. SEVERANCE: The Pacific Coast Steamship Company.

Mr. LOVETT: To San Francisco via the Pacific Coast Steamship lines?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: Does any business really move under those rates, Mr. Campbell?

Mr. CAMPBELL: Substantially none, that is, far eastern business.

Mr. LOVETT: What do you mean by far eastern?

Mr. CAMPBELL: Business east of St. Paul and Minneapolis. There is business moves west of these points, eastern Washington and Montana.

561 Mr. LOVETT: But other points east of the Missouri River?

Mr. CAMPBELL: Substantially none.

Mr. LOVETT: How long have these rates been in?

Mr. CAMPBELL: I do not know.

Mr. LOVETT: They were there when you were there?

Mr. CAMPBELL: Yes.

Mr. LOVETT: You have in similar rates via the O. R. & N. and steamers down by way of Portland, haven't you, to San Francisco?

Mr. CAMPBELL: I think so; we did have.

Mr. LOVETT: Are those rates in yet?

Mr. CAMPBELL: I think they are.

Mr. LOVETT: What is the result via that line, Mr. Campbell?

Mr. CAMPBELL: Nothing, our eastern business,—I don't know that we handled even any Montana business that way. I guess they are practically—I guess the business is practically *nil* via that route.

Mr. LOVETT: I understood Mr. Severance to ask you whether lumber formerly moved from Portland via the Southern Pacific to Ogden and points east of Ogden; or did you mean to testify that there was lumber moved from Portland via that line?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: To what points east of Ogden?

Mr. CAMPBELL: Chiefly to points reached on and by the Rio Grande road and some of the Union Pacific. My testimony was based on what I knew to be the situation say prior to two years ago. I do not know whether it moves that way today or not.

Mr. LOVETT: And that business originated at Portland proper, not at points south of Portland?

Mr. CAMPBELL: Some of it originated at Portland proper.

Mr. LOVETT: What was the amount of that business; was it considerable or insignificant, Mr. Campbell?

Mr. CAMPBELL: Well, I think it was moderate; I do not remember just what the volume was; I do not think it was heavy.

562 Mr. LOVETT: Wasn't there an abundant supply of lumber on the Southern Pacific lines south of Portland?

Mr. CAMPBELL: Yes.

Mr. LOVETT: To move that way it had to be carried over two ranges of mountains, didn't it?

Mr. CAMPBELL: Four of them.

Mr. LOVETT: Four. I am not very familiar with the geography of that section. You cannot give any definite idea, Mr. Campbell, as to the volume of that traffic from Portland proper?

Mr. CAMPBELL: No, I do not think it was excessively larger, I think it was moderate.

Mr. LOVETT: Mr. Campbell, of course you are familiar with the location of the Union Pacific with reference to the Central Pacific and Southern Pacific lines?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: You testified I believe, that while you were with Mr. Stubbs you had jurisdiction over both those lines, of course, as his assistant?

Mr. CAMPBELL: Yes, sir.

Mr. LOVETT: Assuming that the Union Pacific lines and the Southern Pacific were entirely separate with reference to ownership, and that the Oregon Short Line and the O. R. & N. Co. are a part of the Union Pacific, treating that as one line—I believe at one time prior to the receivership that the Union Pacific interests, those lines were all operated by the Union Pacific under one common control, were they not?

Mr. CAMPBELL: Yes.

Mr. LOVETT: Do you know whether that line made up of the Union Pacific and the Oregon Short Line and the O. R. & N. to Portland and thence via boats to San Francisco, ever competed at any time prior to 1901?

Mr. CAMPBELL: They did not.

Mr. LOVETT: With the Union Pacific?

Mr. SEVERANCE: Well, wait a minute; let him ask the question.

Mr. LOVETT: Competed for business with the Southern Pacific for California points?

563 Mr. CAMPBELL: It did not.

Mr. LOVETT: Why, Mr. Campbell?

Mr. CAMPBELL: It was an impracticable route at even rates and

the Union Pacific, to open such a route would stand to lose more from diversion of business than the Southern Pacific or Central Pacific could make to its competitors, than it would gain by opening the Portland route.

Mr. LOVETT: If you were in charge of the traffic of the Union Pacific and the Oregon Short Line and the O. R. & N., and were working in the interest of these lines alone without any regard to the interest of the Southern Pacific lines, how would you work that business?

Mr. CAMPBELL: If I was in charge of all?

Mr. LOVETT: If you were in charge of the traffic of the Union Pacific and the O. R. & N. and Oregon Short Line, and without any interest at all in the Southern Pacific Company?

Mr. CAMPBELL: I would work it by way of Ogden.

Mr. LOVETT: You would consider it to the interest of your lines to manage it that way, wouldn't you?

Mr. CAMPBELL: Yes.

Mr. LOVETT: Wouldn't it be practically suicidal from the railroad standpoint to try to work that business by way of Portland?

Mr. CAMPBELL: I should think so, yes, sir.

Mr. LOVETT: It has always been worked by way of Ogden ever since you have known those lines, hasn't it?

Mr. CAMPBELL: Yes.

Mr. LOVETT: If the Commissioner please, I would like permission for Mr. Cotton to ask Mr. Campbell a few questions with reference to the local situation.

Mr. COTTON: Referring to these steamboats on the Willamette River, Mr. Campbell, that operated above Salem, tell us about the size of the skimming dish that we used to operate up there?

Mr. CAMPBELL: I think it had a capacity of 75 tons.

Mr. COTTON: And about how often did she run?

564 Mr. SEVERANCE: Pardon me, what was the question?

(Question read.)

Mr. SEVERANCE: Skimming dish?

Mr. COTTON: Yes.

Mr. SEVERANCE: Have holes in the bottom?

Mr. COTTON: Well, most of the time. She had holes in the bottom most of the time.

Mr. SEVERANCE: It ought to have had a rest? It must have been a dangerous draft.

Mr. COTTON: About how often did she run, Mr. Campbell?

Mr. CAMPBELL: I think about once a week.

Mr. COTTON: What was her draft?

Mr. CAMPBELL: Six inches light.

Mr. COTTON: What was the occasion of this light draft?

Mr. CAMPBELL: Shallow water.

Mr. COTTON: What is the character of the river as to Snags?

Mr. CAMPBELL: It is full of them.

Mr. COTTON: And how often did she sink?

Mr. CAMPBELL: You have got me; I cannot tell you. I know she wrecked; I was on her once when she got wrecked.

Mr. SEVERANCE: In six inches of water?

Mr. COTTON: No, she drew six inches.

Mr. SEVERANCE: She must have had eight inches of water then.

Mr. COTTON: Well, that is about what they had. That is the object of my question, to show the extent of this competition. Did she always have water enough to operate above Salem during the entire year?

Mr. CAMPBELL: No.

Mr. COTTON: For about how long each year on an average, would you say, since you knew her, she was compelled to tie up entirely?

Mr. CAMPBELL: Well above Salem, I should say she tied up about nine months of the year above Independence.

Mr. COTTON: The principal trade that she engaged in,
565 Mr. Campbell, was simply in coming up to little landings and picking up stuff that was delivered to her almost any place along the river, wasn't it?

Mr. CAMPBELL: Yes.

Mr. COTTON: There were other boats when you left, and are still engaged in that same business?

Mr. CAMPBELL: Yes, sir.

Mr. COTTON: Our little boat, what became of her, if you know?

Mr. CAMPBELL: She was wrecked, I understand.

Mr. COTTON: And she has not been operated for how many years?

Mr. CAMPBELL: I do not know.

Mr. COTTON: Do you remember her name?

Mr. CAMPBELL: "Gypsy," wasn't it?

Mr. COTTON: Yes.

Mr. CAMPBELL: Yes.

Mr. COTTON: How many boats did we operate below Salem?

Mr. CAMPBELL: I have forgotten, but I think three.

Mr. COTTON: And speaking about competing for passengers, how far is Salem from Portland?

Mr. CAMPBELL: Fifty miles by rail, and about seventy-five by river.

Mr. COTTON: How long did it take these boats to go down and make all the landings, leaving Salem, what time did they leave Salem in the morning, about?

Mr. CAMPBELL: It took them all day.

Mr. COTTON: They would leave about six and get in about four-thirty in the afternoon, didn't they?

Mr. CAMPBELL: Sometimes, yes; generally, yes.

Mr. COTTON: And fifty miles by rail. They did do more or less business from Oregon City didn't they?

Mr. CAMPBELL: Yes.

Mr. COTTON: And from Salem?

Mr. CAMPBELL: Yes.

Mr. COTTON: That was the business of the Portland Flouring Mills and the Oregon City Paper Company, wasn't it?

566 Mr. CAMPBELL: You are talking about freight business, now?

Mr. COTTON: Yes.

Mr. CAMPBELL: Yes.

Mr. COTTON: And that was from Oregon City for the Paper Company, and Salem for the flour mills?

Mr. CAMPBELL: Yes, sir.

Mr. COTTON: The Flouring mills ran elevators along our line, didn't they, the Railway-Navigation line?

Mr. CAMPBELL: Warehouses, yes, sir.

Mr. COTTON: Yes, warehouses; and was engaged with the Navigation-Railway line in doing other business?

Mr. CAMPBELL: Yes, sir.

Mr. COTTON: These rates in the Willamette Valley were established how many years ago, that is, these boat rates?

Mr. CAMPBELL: Longer ago than I know anything about.

Mr. COTTON: They have been practically permanently maintained during the whole entire period that you know of, haven't they?

Mr. CAMPBELL: Yes.

Mr. COTTON: Have there been any breakwaters between the railroad and the Willamette River boats to any extent?

Mr. CAMPBELL: I think not.

Mr. COTTON: By "longer ago than you can remember," is that prior to 1886 or when?

Mr. CAMPBELL: Prior to 1886.

Mr. COTTON: In fixing up the subsidy with the Samuel Samuels line, was anybody else a party to the subsidy contract?

Mr. CAMPBELL: Yes.

Mr. COTTON: Whom?

Mr. CAMPBELL: The Portland Flouring Mills?

Mr. COTTON: They were interested in the line for what reason?

Mr. CAMPBELL: For an outlet for their flour.

567 Mr. COTTON: Did they own mills on the lines of the O. R. & N.?

Mr. CAMPBELL: Yes, sir.

Mr. COTTON: State whether it is or is not a fact that the Portland Oriental line was established mainly for the accommodation of that particular mill?

Mr. CAMPBELL: Practically altogether on that account.

Mr. COTTON: It had no other reason really for its existence other than that?

Mr. CAMPBELL: No.

Mr. COTTON: That is all.

Mr. SEVERANCE: Mr. Campbell, where is this mill located, concerning which Mr. Cotton has been asking you?

Mr. CAMPBELL: The largest mill is at East Portland.

Mr. SEVERANCE: Have they a series of mills along the line?

Mr. CAMPBELL: They have mills at Spokane and Dayton; those were the mills they owned when I was familiar with the situation.

Mr. SEVERANCE: And does their flour also move down the coast in the O. R. & N. ships or did it move to California points?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: To points below, in South America?

Mr. CAMPBELL: Some trans-shipped at San Francisco; yes, sir.

Mr. SEVERANCE: And go also to New York?

Mr. CAMPBELL: Why not that I know of.
Mr. SEVERANCE: Or any points in the Atlantic seaboard?
Mr. CAMPBELL: I do not think so.
Mr. SEVERANCE: Their business was all on the Pacific side, was it?
Mr. CAMPBELL: Yes, I think so.
Mr. SEVERANCE: Did all their flour go by water?
Mr. CAMPBELL: Yes.
Mr. SEVERANCE: None move by rail?
568 Mr. CAMPBELL: No, none that I ever knew of.
Mr. SEVERANCE: Now you spoke of this skimmer, or some boat or other picking up paper in the Willamette Valley. Where did it get the paper?
Mr. CAMPBELL: No; I don't think the particular boat that Mr. Cotton questioned me about handled any paper.
Mr. SEVERANCE: Oh, it did not?
Mr. CAMPBELL: No, sir.
Mr. COTTON: That was a boat above Salem.
Mr. SEVERANCE: That was the one that was frequently wrecked?
Mr. COTTON: Yes, that was above Salem; the ones below Salem at Oregon City picked up paper; they picked up paper at Oregon City.
Mr. SEVERANCE: By the way, I was just asking Judge Lovett whether you remember in those days when that boat was wrecked, if there were any wrecks along the Southern Pacific in that region. Do you remember any such thing on land or rails?
Mr. CAMPBELL: I guess they have had some.
Mr. SEVERANCE: Now where was this paper mill?
Mr. CAMPBELL: At Oregon City.
Mr. SEVERANCE: How far is that from Portland?
Mr. CAMPBELL: Sixteen miles.
Mr. SEVERANCE: Now where did that paper move to?
Mr. CAMPBELL: San Francisco.
Mr. SEVERANCE: By boat?
Mr. CAMPBELL: Yes.
Mr. SEVERANCE: Did that all go by boat or sometimes by rail?
Mr. CAMPBELL: I think it all went by boat.
Mr. SEVERANCE: Are you sure?
Mr. CAMPBELL: I feel confident that it did.
Mr. SEVERANCE: That all came into Portland and went down the coast?
Mr. CAMPBELL: Yes, sir.
Mr. SEVERANCE: On your boats?
Mr. CAMPBELL: Yes, sir.
569 Mr. SEVERANCE: And the Southern Pacific road runs through Oregon City?
Mr. CAMPBELL: Yes, sir.
Mr. SEVERANCE: What else did you say was picked up out there, flour or lumber or what?
Mr. CAMPBELL: On the Columbia River?
Mr. SEVERANCE: I mean in answer to Mr. Cotton you spoke of something besides paper.
Mr. CAMPBELL: Flour at Oregon City.

Mr. SEVERANCE: Where did that move to?

Mr. CAMPBELL: That moved to Portland locally and to San Francisco.

Mr. SEVERANCE: And to San Francisco?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Did any flour ever move to San Francisco by rail?

Mr. CAMPBELL: None that I ever knew of.

Mr. SEVERANCE: You never knew of any flour going by rail?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: It always went by your boats?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Now, Mr. Campbell, you spoke of lumber, I think, being brought in on the Willamette boats. In answer to Judge Lovett you said there was some lumber brought in?

Mr. LOVETT: I don't think he did.

Mr. SEVERANCE: Didn't you?

Mr. CAMPBELL: I don't think so; I don't remember it.

Mr. SEVERANCE: I understood you to say that lumber was brought in by the Willamette boats?

Mr. CAMPBELL: No, I don't think so.

Mr. SEVERANCE: There was no lumber brought in that you know of?

Mr. CAMPBELL: A little hardwood lumber but not a large volume of it.

Mr. SEVERANCE: Was any wool brought in on these boats?

Mr. CAMPBELL: A small amount.

Mr. SEVERANCE: A small amount of wool?

570 Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And did that wool move east over the O. R. & N.?

Mr. CAMPBELL: I think it did ultimately.

Mr. SEVERANCE: Did wool also move east over the Southern Pacific either via Sacramento or Sunset route?

Mr. CAMPBELL: Yes, from Willamette Valley points.

Mr. SEVERANCE: Yes, Willamette Valley points, that is what I mean. The great wool markets in the country were in Boston and Philadelphia, were they not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And wool from that region moved both ways, by the O. R. & N. and by the Southern Pacific?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Now, Judge Lovett was asking you if the matter of travel between San Francisco and Portland was not a matter of individual choice. That is, as to whether passengers would go by boat or by rail. Both lines were soliciting passengers, were they not?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And got all the business they could?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Did any farm products come into Portland by

the Southern Pacific from this Willamette Valley county other than wool?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: What?

Mr. CAMPBELL: Grain of several kinds, potatoes.

Mr. SEVERANCE: Yes. Well, now, did those products that came in by the Southern Pacific proceed on to San Francisco by boats other than the O. R. & N. boats? You said there were other boats running down there?

Mr. CAMPBELL: I think that some of them did, yes. The other boats participated in the general traffic from Portland?

571 Mr. SEVERANCE: Who ran those other boats, do you remember?

Mr. CAMPBELL: The California & Oregon Steamship Company, I think was the name.

Mr. SEVERANCE: Where was their headquarters, in San Francisco?

Mr. CAMPBELL: In San Francisco.

Mr. SEVERANCE: How frequent a service did you have with the O. R. & N. boats, a three-day service?

Mr. CAMPBELL: Three days, I think.

Mr. LOVETT: You mean three sailings a week or three trips?

Mr. SEVERANCE: You mean every three days?

Mr. CAMPBELL: I think it was every three days?

Mr. SEVERANCE: Now Mr. Campbell, you by answering directly "yes," testified in answer to Judge Lovett that the Sunset route was impracticable for Portland business. He asked you that direct question.

Mr. LOVETT: From the Atlantic Seaboard.

Mr. SEVERANCE: From the Atlantic seaboard, yes. He asked you that question, and you said yes. Now it is a fact as you have stated here, isn't it, that business did move that way?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And what you mean by impracticable is that as a rule business would go through quicker all rail direct than it would by the Morgan steamers to Texas and thence by rails?

Mr. CAMPBELL: That is what I meant.

Mr. SEVERANCE: That is what you meant?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: And that is all you meant, is it not?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Judge Lovett also examined you with reference to possible suicide of the Union Pacific Railroad, and asked you——

Mr. LOVETT (interrupting): Not possible; impossible.

Mr. SEVERANCE: Impossible suicide, yes; as to whether it would have been suicidal for the Union Pacific to have diverted its business by way of Portland. Now, isn't it also a fact, Mr. Campbell,

572 that the Southern Pacific line from Ogden to the coast was very largely dependent on the Union Pacific for its business?

Mr. CAMPBELL: No, sir, I don't think so.

Mr. SEVERANCE: Now let's see; the Union Pacific runs to Omaha. It has traffic connections with the Northwestern, Milwaukee & St.

Paul and various other lines that center there at Council Bluffs, and Omaha, hasn't it?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And in that way controls a large amount of traffic, doesn't it?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And that traffic is quite essential, isn't it, to the Southern Pacific line from Ogden to San Francisco?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: Yes. Therefore, the Southern Pacific road could not afford, unless it wanted to suicide, to demand unfair divisions from the Union Pacific on that through business so long as the Union Pacific had the possibility of carrying the stuff by Portland. Isn't that true, about?

Mr. CAMPBELL: Well, I think the Union Pacific was as dependent upon the Southern Pacific as the Southern Pacific could have possibly been upon the Union Pacific.

Mr. SEVERANCE: That is not my question, sir. I asked you whether or not as a matter of fact so long as the Union Pacific had a line of its own to tidewater, or did not have such an advantage, that it could compel the Southern Pacific to deal fairly with it?

Mr. CAMPBELL: No, I don't think so.

Mr. SEVERANCE: You don't think so?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: Well, why not?

Mr. CAMPBELL: Well, because it is a physical impossibility for the Union Pacific to control anything like the volume of business over a route through Portland to San Francisco that the Southern Pacific could take away from it by way of Ogden.

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Mr. SEVERANCE: So that you think that the position of this route to the coast was of no advantage whatever to the Union Pacific in the way of securing fair treatment from the Southern Pacific; that is your opinion, is it?

Mr. CAMPBELL: I so regard it, yes.

Mr. SEVERANCE: Yes; and it was of no consequence whatever?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: Not as an equalizer of divisions or anything?

Mr. CAMPBELL: Not at all.

Mr. SEVERANCE: Not at all. And that would be your opinion also, I suppose, with reference to the Sunset route from New York to the coast—that being a round-about way to San Francisco, partly by water, as it is, you would have the same view as to that wouldn't you, that the Southern Pacific by reason of the position of that line would have no dominating influence that could compel a fair division of the lines east of Oregon; it is the same principle, is it not?

Mr. CAMPBELL: Well, I did not get it clearly in my mind to say whether it is or not.

Mr. SEVERANCE: Here is the point: You say that that round-about line by Portland could not dominate the situation so that the Southern Pacific could—the Union Pacific could demand fair division with the Southern Pacific; now the Sunset route then, being a roundabout line, being half water and half rail, was no club in

the hands of Mr. Stubbs by which he could demand fair treatment with the lines east of Ogden, was it?

Mr. CAMPBELL: I do not know whether it was so used or not.

Mr. SEVERANCE: I am not asking you whether it was.

Mr. CAMPBELL: I do not know whether it was or not.

Mr. SEVERANCE: Whether it could be used; that is the point. As a traffic man would you say that it could be so used by
574 an able, energetic man like Mr. Stubbs?

Mr. CAMPBELL: I think the Southern Pacific Sunset route is a great deal stronger line and in addition it has to be a stronger line in taking freight from the seaboard to San Francisco than it would be possible for the line as formerly described through Portland, because the Southern Pacific owns the entire line through, and it is possible for it to give better service and make better time on the through eastern competitive business than it would be for the Union Pacific to give by the way of Portland.

Mr. SEVERANCE: Well now, let's see about that. The distance is not as great, is it, to San Francisco by way of Portland as it is from New York,—I mean from New York the distance is not as great all rail to Portland and thence by water to San Francisco as it is by the Sunset route, is it?

Mr. CAMPBELL: No.

Mr. SEVERANCE: What is the mileage from New Orleans,—well, we will say Galveston to San Francisco, do you know, by the Sunset?

Mr. CAMPBELL: I think it is two thousand miles, something like that.

Mr. SEVERANCE: About the same as from Chicago to Portland?

Mr. CAMPBELL: About the same.

Mr. SEVERANCE: And do you know the distance from Galveston to New York by sea?

Mr. CAMPBELL: No, I don't.

Mr. SEVERANCE: You know it is a long ways, don't you?

Mr. CAMPBELL: I do not know.

Mr. SEVERANCE: You know as a matter of fact my statement is correct, do you not? That it is farther from New York City by the Sunset route to San Francisco than it is all rail from Chicago via Union Pacific to Portland or down?

Mr. CAMPBELL: I think it is, yes.

Mr. SEVERANCE: And the sea trip is shorter from Portland by water, is it not?

575 Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And therefore you think the advantage lies with the Sunset by reason of the fact that it owns its own rails all the way from Galveston to San Francisco?

Mr. CAMPBELL: And the steamship lines through the seaboard.

Mr. SEVERANCE: Certainly; but the Union Pacific owns its steamship lines. I was getting at the point of destination in your mind, and that is the fact, that you think that the connections of the Union Pacific east would be slow in transporting freight making deliveries?

Mr. CAMPBELL: I do.

Mr. SEVERANCE: I have forgotten whether your experience as a General Freight Agent goes back to 1887, does it?

Mr. CAMPBELL: No, it does not; 1886 or 1887; 1886 I think I testified to.

Mr. SEVERANCE: Well did you attend the transcontinental pool meetings in the days when the business was pooled before the Interstate Commerce law made that unlawful?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: How is that?

Mr. CAMPBELL: I never did.

Mr. SEVERANCE: You never attended that?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: Were you at that time familiar with these pools?

Mr. CAMPBELL: I was not.

Mr. SEVERANCE: You were not?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: That was perhaps before you became General Freight Agent?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: I think that is all.

Mr. LOVETT: Mr. Campbell, isn't one of the great advantages of the Sunset over the Sound——

Commissioner LANE: A little louder, please.

576 Mr. LOVETT: I ask whether one of the great advantages of the Southern Pacific Sunset route is not in the fact that with its own steamers in New York it can gather the cargo and take it to New Orleans or Galveston in solid cargo lots and load it into train loads, whereas the all rail route like this, for instance, the Great Northern has to depend on its connections—delivering it in car load lots, isn't that very important?

Mr. CAMPBELL: Yes.

Mr. LOVETT: What is the relative distance by all rail line from New York and the Great Northern to Puget Sound and the Pacific Coast Steamship Company boats to San Francisco as compared with the Sunset route of the Southern Pacific approximately?

Mr. CAMPBELL: I should say that—I have forgotten the length of the water line from New York to New Orleans.

Mr. LOVETT: What is it?

Mr. DUNNE: 2200 miles to Galveston, 1800 miles to New Orleans.

Mr. LOVETT: About 4500 from New York?

Mr. CAMPBELL: Well, it is about 3000 miles all rail, 3900 miles all rail and the water from here down.

Mr. LOVETT: In other words, the all rail route made up by the Great Northern and the Northern Pacific for instance, and these other lines to Puget Sound, is shorter than the Sunset?

Mr. CAMPBELL: A little shorter, yes.

Mr. LOVETT: And still I believe that you testified that you are not able to move any business of consequence by this Puget Sound line?

Mr. CAMPBELL: We are not.

Mr. LOVETT: Mr. Severance asked you with reference to the power of the Union Pacific by reason of its line via Portland and the boat line to San Francisco, to deal with the Southern Pacific in the matter

of divisions at Ogden, whether that power could not be used to coerce the Southern Pacific Company in according larger division
577 than it might accord if it did not have that club. Suppose the Union Pacific and the Southern Pacific were entirely separate and distinct in their ownership and the Union Pacific should attempt to use this route via Portland to San Francisco as a club against the Southern Pacific, as Mr. Severance suggests, and suppose that you were acting for the Southern Pacific with the Rio Grande connection at Ogden and the east, don't you think that you could hold your own for the Southern Pacific as against the Union Pacific in a contest of that sort?

Mr. CAMPBELL: I do.

Mr. LOVETT: Which do you think would fare the worst?

Mr. CAMPBELL: The Union Pacific.

Mr. LOVETT: At Ogden the Union Pacific's only connection to California outside of the San Pedro road for the time being is the Southern Pacific, isn't it?

Mr. CAMPBELL: Yes.

Mr. LOVETT: Whereas the Southern Pacific for its traffic east may turn it over either to the Union Pacific or the Rio Grande, may it not?

Mr. CAMPBELL: Yes.

Mr. LOVETT: The Rio Grande in turn connects with the Burlington, the Rock Island, the Missouri Pacific and Santa Fe, doesn't it, in the east?

Mr. CAMPBELL: It does.

Mr. LOVETT: That is perfectly practicable and is in fact a competitor of the Union Pacific east of Ogden, isn't it?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: Just one other question. Speaking of this Sunset route, you have described in answer to Judge Lovett the advantages of the Sunset route?

Mr. LOVETT: One.

Mr. SEVERANCE: One of the advantages of the Sunset route in gathering business in New York in these ships and taking it out in train loads, and so forth. That does give it a strong advantageous position as a competitor of the other transcontinental lines, doesn't it?

578 Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: From the coast. Now, when you speak of the Southern Pacific as a three or four or five per cent., when you said three to five,—the other time you said three to four per cent. line,—from Portland, as to what class of traffic do you refer, the entire traffic going into Portland over the Southern Pacific or as compared with the O. R. & N., or what?

Mr. CAMPBELL: Eastern competitive traffic.

Mr. SEVERANCE: Well, eastern competitive traffic. Didn't they do more than three or four per cent. of the seaboard traffic?

Mr. CAMPBELL: I don't think so into Portland.

Mr. SEVERANCE: How is that?

Mr. CAMPBELL: Into Portland, I don't think so.

Mr. SEVERANCE: That is what I am speaking about, into Portland.

Mr. CAMPBELL: Well, I do not know about that.

Mr. SEVERANCE: Taking the seaboard traffic alone for a moment?

Mr. CAMPBELL: I do not know what percentage of the seaboard traffic; the percentage of what we call competitive traffic, that is traffic originating east of the Missouri River on down on to the seaboard.

Mr. SEVERANCE: Yes.

Mr. CAMPBELL: Of all of the competitive traffic into Portland, I would regard the Southern Pacific as not exceeding a three to five per cent. line. Now what percentage of the seaboard business they handle, I am not prepared to state.

Mr. SEVERANCE: And what percentage of that competitive business came over the Union Pacific and the O. R. & N.?

Mr. CAMPBELL: Well at one time it was as high as 85 per cent.

Mr. SEVERANCE: Well, that would not be ordinary, would it, the Northern Pacific do more business than that, don't they? They do more than ten per cent. of the Portland business, don't they?

Mr. CAMPBELL: They did not at the time I speak of.

579 Mr. SEVERANCE: Well, I know, but take ordinary conditions.

Mr. CAMPBELL: I suppose that the Union Pacific takes into Portland now probably forty per cent.

Mr. SEVERANCE: Well, take it in 1900; put it at that time.

Mr. CAMPBELL: Well, I should say about fifty per cent.

Mr. SEVERANCE: About fifty per cent.?

Mr. CAMPBELL: Yes.

Mr. SEVERANCE: And the Southern Pacific how much?

Mr. CAMPBELL: I think from three to five, say five per cent.

Mr. SEVERANCE: And the Northern Pacific the balance, or the Great Northern?

Mr. CAMPBELL: No, the Great Northern had a little of it.

Mr. SEVERANCE: Well, and did the Great Northern get it; they got it over the O. R. & N.?

Mr. CAMPBELL: Over the O. R. & N., yes?

Mr. SEVERANCE: By fifty per cent. you mean the Union Pacific business?

Mr. CAMPBELL: Yes, I mean the Union Pacific had about fifty per cent. of the whole; the balance of it was distributed with the other lines.

Mr. SEVERANCE: That is, distributed between the Great Northern——

Mr. CAMPBELL: The Great Northern, the Northern Pacific and Sunset.

Mr. SEVERANCE: And did the Canadian Pacific share at all in that business?

Mr. CAMPBELL: No, I think not.

Mr. SEVERANCE: Did they run boats from Portland to Vancouver?

Mr. CAMPBELL: No.

Mr. SEVERANCE: So that the balance of the fifty per cent. was distributed among these other lines?

Mr. CAMPBELL: Yes.

580 Mr. SEVERANCE: And what percentage did the Great Northern get?

Mr. CAMPBELL: About fifteen or sixteen.

Mr. SEVERANCE: Fifteen or sixteen; and how much did the Northern Pacific get?

Mr. CAMPBELL: Somewhere around 28 or 30.

Mr. SEVERANCE: And that is the division as best you can estimate of all the competitive business?

Mr. CAMPBELL: Yes, sir.

Mr. SEVERANCE: But as to Atlantic seaboard business the Southern Pacific had a larger percentage of the Portland business, didn't it, than you stated, by reason of these splendid facilities that Judge Lovett has dilated on, at New York, Galveston and so forth, the speed at which they could bring their stuff through?

Mr. CAMPBELL: I think it might be safe to say that the Sunset handled of the strictly Atlantic seaboard business, probably 20 to 25 per cent.

Mr. SEVERANCE: Yes; it was rather a formidable competitor of the other lines for that business then, wasn't it?

Mr. CAMPBELL: No, there is very little of that business.

Mr. SEVERANCE: Well, I say it was a practicable competitor for that business, whatever it amounted to, whatever the extent of that business was?

Mr. CAMPBELL: I would not so regard it, no.

Mr. SEVERANCE: You do not think a line that handles 25 per cent. of the traffic of a certain line is a formidable competitor of that traffic, is that the idea?

Mr. CAMPBELL: No, I do not think it is where it has the entire route.

Mr. SEVERANCE: You mean that it is not well managed then, that it ought to get more. Is that what you mean?

Mr. CAMPBELL: I think it is physically an inferior route to the others. It is a mere guess on my part to say that they get 25 per cent. of the seaboard business. I don't know as a fact.

581 Mr. SEVERANCE: Now, Mr. Campbell, in that seaboard business, is there or not included a large amount of manufactured articles of heavy character manufactured in the iron foundries and steel mills of the east?

Mr. CAMPBELL: There is a large amount of structural steel and steel product shipped from the east to the coast.

Mr. SEVERANCE: And by way of the Sunset, isn't it?

Mr. CAMPBELL: I do not know.

Mr. SEVERANCE: Well this is seaboard business, isn't it?

Mr. CAMPBELL: No, that isn't what we class seaboard business, that is interior, not seaboard business.

Mr. SEVERANCE: I don't mean the business out of Pittsburg, but I mean the business in the seaboard zone which is a strip of country a little east of Buffalo and Pittsburg?

Mr. CAMPBELL: I do not know whether any such material moves by the Sunset or not?

Mr. SEVERANCE: You do not know of that?

Mr. CAMPBELL: No, sir.

Mr. SEVERANCE: But in the way of general merchandise of all descriptions; high grade merchandise coming from the seaboard you think perhaps twenty or twenty-five per cent. comes around by the Sunset, do you?

Mr. CAMPBELL: Well, it would be a mere guess on my part. I have not the remotest idea how much does come there.

Mr. SEVERANCE: Well you must have seen it coming in when you were there for years in Portland?

Mr. CAMPBELL: I never figured it up any further than to carry in my mind the fact that the Sunset-Gulf was regarded as a three to five percentage competitive line in Portland; how much seaboard business it handles I did not know because I never segregated it, and I cannot tell.

Witness excused.

Com'r LANE: We will take an adjournment at this time until two o'clock.

582 SEATTLE, WASHINGTON, *Jan.* 21, 1907, 2 p. m.

ROBERT LEE, called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Lee, where do you reside?

Mr. LEE: In Tacoma, Washington.

Mr. SEVERANCE: And how long have you lived in Tacoma?

Mr. LEE: About fourteen or fifteen years—fifteen years.

Mr. SEVERANCE: During that time what has been your business?

Mr. LEE: Well, I have been connected with the O. R. & N. for the last nine and a half years. Prior to that time I was in the real estate and insurance and transfer and commission business.

Mr. SEVERANCE: You have been for nine and one-half years connected with the O. R. & N.?

A. Yes.

Mr. SEVERANCE: Are you also connected with the Southern Pacific?

Mr. LEE: Well, I am the joint agent for the Southern Pacific——

Mr. SEVERANCE: And the O. R. & N.?

Mr. LEE: Yes.

Mr. SEVERANCE: And how long have you been a joint agent of the two lines?

Mr. LEE: About five years last August.

Mr. SEVERANCE: That is since August, 1901?

Mr. LEE: Yes, since August, 1901.

Mr. SEVERANCE: And prior to that time did the Southern Pacific have an agent other than yourself in Tacoma?

Mr. LEE: Yes.

Mr. SEVERANCE: Who was it?

Mr. LEE: Well, first it was Mr. Graham, and then it was—let me see what was his name; I can't just recall his name now, but he is here in Seattle at the present time.

Mr. SEVERANCE: He is in Seattle at the present time?
583 Mr. LEE: Yes; or was.
Mr. SEVERANCE: Is he still in the railroad service?
Mr. LEE: No.
Mr. SEVERANCE: Now Mr. Lee, take the time that you were solely the agent of the O. R. & N. prior to 1901, what were your duties there at Tacoma?
Mr. LEE: Well, to solicit passenger business and sell tickets, and everything, in the passenger business.
Mr. SEVERANCE: Did you have anything to do with freight business?
Mr. LEE: No, we didn't solicit any freight.
Mr. SEVERANCE: You didn't solicit freight business at all?
Mr. LEE: No.
Mr. SEVERANCE: But you solicited passenger business?
Mr. LEE: Yes, passengers.
Mr. SEVERANCE: To the East?
Mr. LEE: Oh, everywhere.
Mr. SEVERANCE: Everywhere?
Mr. LEE: Yes.
Mr. SEVERANCE: That is, through passenger business and local passenger business?
Mr. LEE: Well, local, yes.
Mr. SEVERANCE: That is to say, now, your Eastern connection for passengers was Portland, was it?
Mr. LEE: At Portland.
Mr. SEVERANCE: On the Northern Pacific?
Mr. LEE: Yes, Portland.
Mr. SEVERANCE: And that is still the case, is it?
Mr. LEE: Yes, just the same.
Mr. SEVERANCE: For instance, suppose a passenger goes by your line to New York, Chicago, and other places?
Mr. LEE: Yes.
Mr. SEVERANCE: And if they go over the O. R. & N. they go first to Portland over the Northern Pacific?
Mr. LEE: First to Portland by the Northern Pacific.
Mr. SEVERANCE: Yes, and then over the O. R. & N.?
Mr. LEE: Yes, and the Short Line.
584 Mr. SEVERANCE: The Short Line, the Union Pacific, and some connection, either the Northwestern or St. Paul, or some of those roads, through?
Mr. LEE: Well, whatever is the wish of the passenger.
Mr. SEVERANCE: Yes, that is right; and since 1901, since you have been the joint agent of the Southern Pacific and the other road, what have been your duties?
Mr. LEE: Well, just similar,—selling tickets for both lines.
Mr. SEVERANCE: Soliciting business for both lines?
Mr. LEE: Yes, sir; that is, the passenger business.
Mr. SEVERANCE: The passenger business?
Mr. LEE: Yes.
Mr. SEVERANCE: To all points?
Mr. LEE: Yes.

Mr. SEVERANCE: In the South or the East?

Mr. LEE: Well, both South and East.

Mr. SEVERANCE: Both South and East?

Mr. LEE: Yes.

Mr. SEVERANCE: And you route passengers from Tacoma to the same points either way?

Mr. LEE: Yes; give the passengers their choice.

Mr. SEVERANCE: Now prior to 1901 when you assumed these duties for both lines, and this Mr. Graham I believe you said?

Mr. LEE: No; Mr. Steeples is the gentleman.

Mr. SEVERANCE: Yes, the other gentleman?

Mr. LEE: Yes.

Mr. SEVERANCE: He was performing the same duties to the Southern Pacific that you were to the O. R. & N.?

Mr. LEE: Yes, similar.

Mr. SEVERANCE: Yes, and he was soliciting business, for passenger business?

Mr. LEE: Yes.

Mr. SEVERANCE: Over his line to all points in the East and South, and everywhere?

Mr. LEE: Yes, sir.

585 Mr. SEVERANCE: Just as you are doing now over both lines?

Mr. LEE: Yes, that is correct.

Mr. SEVERANCE: And in this solicitation of business for the Southern Pacific and the Union Pacific, or the Short Line rather, I speak of the Union Pacific because that is the connection.

Mr. LEE: Yes.

Mr. SEVERANCE: You are competing with the Northern Pacific and the Great Northern?

Mr. LEE: Yes, the Northern Pacific and other lines.

Mr. SEVERANCE: The Northern Pacific particularly, and other Eastern lines.

Mr. LEE: Well, not any more against the Northern Pacific than the Great Northern.

Mr. SEVERANCE: Yes, I understand that; and the Canadian?

Mr. LEE: Yes.

Mr. SEVERANCE: But all these lines are competitive for that class of business out of Portland?

Mr. LEE: Yes; of course there are some points, though——

Mr. SEVERANCE: Oh, there are some points I understand, are not common to through business?

Mr. LEE: Yes, for Chicago.

Mr. SEVERANCE: Yes; and you sell a ticket, for instance, to an eastern point over one of your lines at the same price you do over the other, don't you?

Mr. LEE: Well, no; by the Southern Pacific it is just a trifle higher.

Mr. SEVERANCE: How much higher?

Mr. LEE: Well, to most points it is just the same, but to Chicago it is a Dollar higher.

Mr. SEVERANCE: To what points is it the same?

Mr. LEE: Well, to Missouri river points.

Mr. SEVERANCE: Missouri river?

Mr. LEE: Yes.

Mr. SEVERANCE: Now to reach Missouri river over the Southern Pacific, which way do you route passengers?

586 Mr. LEE: Well, we route them by the way of Portland and San Francisco, and then they can take the Santa Fe, or they can go by the way of Ogden or the Rio Grande, or any way they want to.

Mr. SEVERANCE: Or they could go by the Southern Pacific by Texas, and up through there, I suppose, by the Rock Island through El Paso?

Mr. LEE: Well, of course there are some points there—well, we give the passenger his choice.

Mr. SEVERANCE: I understand, but you can route passengers by way of the Southern Pacific from Portland down to El Paso and from there up by the Rock Island?

Mr. LEE: Yes.

Mr. SEVERANCE: East to Kansas City?

Mr. LEE: Yes.

Mr. SEVERANCE: And your rate for that would be just the same, wouldn't it, as the rate by way of Portland and thence over the O. R. & N. and the Union Pacific to Kansas City?

Mr. LEE: No; it would be a little higher there.

Mr. SEVERANCE: How much higher?

Mr. LEE: Well, to Kansas City?

Mr. SEVERANCE: Yes.

Mr. LEE: It would be $9.35.

Mr. SEVERANCE: More?

Mr. LEE: That is from the south; yes.

Mr. SEVERANCE: What is the through rate by way of El Paso?

Mr. LEE: Well, it is $59.35, first class.

Mr. SEVERANCE: And it is Fifty Dollars the other way?

Mr. LEE: No; it is Fifty Dollars the other way, yes.

Mr. SEVERANCE: Now there are some points, you say, where the rate would be the same?

Mr. LEE: Yes, just so they don't go South. Well, by El Paso it takes a higher rate.

Mr. SEVERANCE: Well, what places are there of some
587 consequence down there where you can route them for the same price?

Mr. LEE: Well, we could route by the way of the St. Paul and Albuquerque, and away around that way; but of course when they get clear South it is a higher rate.

Mr. SEVERANCE: Suppose you are routing to New Orleans, how is the rate as between the Sunset Route and the Union Pacific, and then down by the Illinois Central, say to New Orleans?

Mr. LEE: Well, that would be the same by California or the same by the Union Pacific.

Mr. SEVERANCE: Yes, it would be just the same?

Mr. LEE: Because the Southern has a short line there.

Mr. SEVERANCE: Yes. That is, passengers going from Tacoma to New Orleans, for instance, you could route them by way of the Southern Pacific all the way?

Mr. LEE: Yes, sir.

Mr. SEVERANCE: Or by way of the Oregon Railroad & Navigation and Short Line, and then some other line like the Illinois Central reaching New Orleans, for the same rate?

Mr. LEE: Well, they would not take the Illinois Central.

Mr. SEVERANCE: Well, whatever line they did take connecting down there?

Mr. LEE: Yes; they would go through Denver and connect at Ft. Worth.

Mr. SEVERANCE: Yes; it would be the same rate?

Mr. LEE: Yes.

Mr. SEVERANCE: You say you don't solicit any freight business at all?

Mr. LEE: No, we don't solicit, only with freight of course the parties come in and want to know the rates, and things of that kind; we don't go out and solicit business.

588 Mr. SEVERANCE: Now to go back to the passenger business a minute, Mr. Lee, the rates over all the lines to the Coast here are just the same, are they not, into Portland, as they are into Sound points?

Mr. LEE: Yes, just the same.

Mr. SEVERANCE: So that in getting this business it is necessary for your roads, either one of them, to absorb the rate from here to Portland, isn't it?

Mr. LEE: Well, it would be the same as the Canadian or the same as the Great Northern would have to absorb.

Mr. SEVERANCE: Oh, surely; I am not saying it by way of criticism; I am just trying to ascertain the fact?

Mr. LEE: Yes, sir, that is right.

Mr. SEVERANCE: And that is rendered necessary by the competition of the roads that go directly to Portland or come directly here?

Mr. LEE: Well, understand, that is a terminal point, and all the coast lines are terminal points.

Mr. SEVERANCE: And you say the other lines do the same thing in competing with you?

Mr. LEE: Yes.

Mr. SEVERANCE: Now to go back to the freight matter, there are importers, are there not, here at Sound points who are shipping to, say Salt Lake City, and that part of the country?

Mr. LEE: Importers?

Mr. SEVERANCE: Yes.

Mr. LEE: You mean lumber, or importers from the Orient?

Mr. SEVERANCE: From the Orient, yes; tea merchants and people like that?

Mr. LEE: Yes; but we don't have any dealings with them whatsoever.

Mr. SEVERANCE: How does their stuff go?

Mr. LEE: Well, in fact, we don't pay any attention to how it goes.

Mr. SEVERANCE: You don't know anything about that?

Mr. LEE: No, I don't.

589 Mr. SEVERANCE: Well, you don't go out and solicit freight business, but you quote rates when they come in to see you.

Mr. LEE: Well, as a convenience, as a favor.

Mr. SEVERANCE: That is all?

Mr. LEE: That is all.

Mr. SEVERANCE: And on what classes of commodities are you asked to quote rates from Tacoma over your lines?

Mr. LEE: Well, in a general way, of course, principally lumber.

Mr. SEVERANCE: Principally lumber?

Mr. LEE: Yes, sir.

Mr. SEVERANCE: And does lumber move from the Sound points down to connection at Portland, and thence over these other lines?

Mr. LEE: Yes.

Mr. SEVERANCE: And that lumber comes in competition with the lumber out of Portland, doesn't it?

Mr. LOVETT: What lumber is that?

Mr. SEVERANCE: Lumber from Sound points that goes over their lines?

Mr. LOVETT: Over whose lines?

Mr. SEVERANCE: Over the line represented by Mr. Lee.

Mr. LEE: Well, of course that would go over the Northern Pacific. Of course there is no line in Tacoma except the Northern Pacific.

Mr. SEVERANCE: I don't think you caught my question, Mr. Lee. You said lumber moved from Sound points generally to Portland, I have in mind chiefly of course to a connection, and thence over your lines.

Mr. LEE: Well, the rate is higher that way, and very little lumber moves that way excepting to California points.

Mr. SEVERANCE: That is it?

Mr. LEE: Yes; it is not competitive.

Mr. SEVERANCE: How does that go to California points, you mean, that are not reached by steamships?

Mr. LEE: Well, even that is reached by steamships; any point in California; that is, they go from Tacoma to Portland, and

590 then from Portland continue on by rail to California points.

Mr. SEVERANCE: San Francisco?

Mr. LEE: Yes.

Mr. SEVERANCE: How is that?

Mr. LEE: Yes, San Francisco and all points.

Mr. SEVERANCE: And does lumber also move down by boat?

Mr. LEE: Well, I presume it does.

Mr. SEVERANCE: To San Francisco?

Mr. LEE: Well, I expect it does; yes.

Mr. SEVERANCE: Well, you know, don't you, Mr. Lee, whether it does or not?

Mr. LEE: Certainly.

Mr. SEVERANCE: It goes both from the Sound and from Portland, doesn't it?

Mr. LEE: Yes.

Mr. SEVERANCE: But you don't think of any other commodities on which you are asked to quote rates, except lumber?

Mr. LEE: Well, of course there are some commodities; but I don't think—when parties come in and want to know rates, that is about all.

Mr. SEVERANCE: That is about all, is it?

Mr. LEE: Yes.

Mr. SEVERANCE: You don't make any effort to get the business?

Mr. LEE: Yes.

Mr. SEVERANCE: You simply take what is offered you?

Mr. LEE: Yes; it is all forced.

Mr. SEVERANCE: Kind of forced on you?

Mr. LEE: Well, no; of course they come in; we don't go out and solicit, or anything of that kind.

Mr. SEVERANCE: As you do for passengers?

Mr. LEE: Yes.

Mr. SEVERANCE: That you do your best to get the business?

Mr. LEE: Certainly.

Mr. SEVERANCE: How is that?

591 Mr. LEE: Certainly; yes.

Mr. SEVERANCE: You have an assistant, haven't you, your brother?

Mr. LEE: Yes.

Mr. SEVERANCE: And he performs the same duties that you do, doesn't he, under your directions?

Mr. LEE: Well, he just assists around in the office there; of course he is not employed by the Company at all.

Mr. SEVERANCE: He is employed by you?

Mr. LEE: Yes.

Mr. SEVERANCE: But employed to assist in this same work?

Mr. LEE: Yes.

Mr. SEVERANCE: That is all.

Mr. LOVETT: Mr. Lee, what position did you say you held with the Southern Pacific and Union Pacific?

Mr. LEE: Well, of course I am rightly employed by the O. R. & N.

Mr. LOVETT: By the O. R. & N. then?

Mr. LEE: Yes.

Mr. LOVETT: What is the position?

Mr. LEE: Well, as agent, ticket agent.

Mr. LOVETT: Ticket agent?

Mr. LEE: Yes.

Mr. LOVETT: Have you anything to do with freight; are you an agent of the freight department?

Mr. LEE: No, I don't solicit freight there.

Mr. LOVETT: Well, you are not an agent of the freight department, so far as your duties are concerned?

Mr. LEE: Yes.

Mr. LOVETT: Are you required to keep track of the freight originating in this territory and moving in this territory?

Mr. LEE: No, not at all.

Mr. LOVETT: This lumber that you spoke about, do you know

whether there is any lumber of any consequence moves over the Northern Pacific to Portland, and thence over the Southern Pacific to San Francisco, or to California points?

592 Mr. LEE: Well, of course we don't keep any record of it, but of course we know that there is quite a lot.

Mr. LOVETT: You are not——

Mr. SEVERANCE: Just pardon me; let him answer.

Mr. LOVETT: Had you answered my question?

Mr. SEVERANCE: He had not quite finished his answer.

Mr. LEE: Well, I didn't say. We don't keep any record any more than an outsider would know. If you would ask anybody they would have an idea that there was some lumber going.

Mr. LOVETT: You are not required to look after it at all, are you?

Mr. LEE: No, not at all.

Mr. LOVETT: Nor make any report with reference to it?

Mr. LEE: No, none whatever.

Mr. LOVETT: Do you know really anything about how the freight moves, about whether there is any lumber moves that way, or not, of your own knowledge?

Mr. LEE: No, only from observing on the outside.

Mr. LOVETT: By observing, do you mean you have actually seen it move that way?

Mr. LEE: Oh well, I have seen a freight train come by with lumber or something of that kind, but not in an official way at all.

Mr. LOVETT: Mr. Lee, the Northern Pacific does not make joint rates with the O. R. & N. to this territory, does it, on passenger business,—check through baggage for you?

Mr. LEE: No.

Mr. LOVETT: You have to handle it locally?

Mr. LEE: Yes.

Mr. LOVETT: You have no joint rates with either the Union Pacific or the Northern Pacific to this territory?

Mr. LEE: That is right.

Mr. LOVETT: You try to advertise and solicit passenger traffic for the Union Pacific and Southern Pacific?

Mr. LEE: Yes, sir.

593 Mr. LOVETT: Has there ever been any competition between the Union Pacific and the Southern Pacific within your recollection prior to 1901, on passenger business?

Mr. LEE: No, I can't say that there is any competition, because parties naturally want to go through California, or go that way, and they will go.

Mr. LOVETT: The Southern Pacific's lines on passenger business are opened up to all of its connections, aren't they, and don't they work its passengers both ways?

Mr. LEE: Yes; you can go any way you please.

Mr. LOVETT: The Southern Pacific and Union Pacific have only two common points, one at Ogden, Utah, and the other Portland, Oregon, isn't that true?

Mr. LEE: Yes.

Mr. SEVERANCE: Now you say you don't know of any competition between those lines for passenger traffic prior to 1901?

Mr. LEE: Yes.

Mr. SEVERANCE: Now you were getting——

Mr. LOVETT: Or since.

Mr. SEVERANCE (continuing): You were getting at that time all the people you could, Mr. Lee, to go to the East and Southeast over your lines, weren't you; that is what you were there for?

Mr. LEE: What I was supposed to be there for.

Mr. SEVERANCE: Yes; well, you did it, didn't you?

Mr. LEE: Yes.

Mr. SEVERANCE: You did your duty as best you could?

Mr. LEE: Yes.

Mr. SEVERANCE: And this other gentleman whose name has slipped my mind, representing the Southern Pacific?

Mr. LEE: Mr. Steeples.

Mr. SEVERANCE: Mr. Steeples was doing the same for his Company, wasn't he?

Mr. LEE: Yes.

Mr. SEVERANCE: And it is a fact that passengers are in-
594 duced, by reason of personal friendship or by the arguments or talk of solicitors to route certain ways; isn't that so?

Mr. LEE: Well, if they are friends, of course that would make some difference.

Mr. SEVERANCE: Well, you have a great many friends in Tacoma, haven't you?

Mr. LEE: They would not require any arguments there. No; the feature about that is this: Most of the people that come out by the Northern lines, and so on, when they know about California, or hear about it, will go that way without any soliciting to any extent, and that is why I stated there was no competition.

Mr. SEVERANCE: But there was the attempt by the agents of the respective lines to get the people to go their way; that is what you were there for?

Mr. LEE: Well, they would go that way anyhow.

Mr. SEVERANCE: Well, they tried to get them to, didn't they?

Mr. LEE: Well, yes, we tried to.

Mr. SEVERANCE: Yes, certainly; they tried their best?

Mr. LEE: Yes.

Mr. SEVERANCE: You may have competed, if the passengers didn't want to?

Mr. LEE: Well, we try to make them think so.

Mr. SEVERANCE: Judge Lovett was asking you about making reports; to whom do you report, Mr. Lee?

Mr. LEE: We don't make any freight reports.

Mr. SEVERANCE: I am not speaking of freight rates, but your other business, to whom do you report; who is your immediate superior?

Mr. LEE: Well, we report to Mr. McMurray at Portland the general passenger business.

Mr. SEVERANCE: You report to Mr. McMurray at Portland on your general passenger business?

Mr. LEE: Yes.

Mr. SEVERANCE: And he is an official of both the O. R. & N. and Southern Pacific, isn't he?

595 Mr. LEE: Well, he is a joint agent; yes.

Mr. SEVERANCE: Yes. Well, what is his title?

Mr. LEE: Well, general passenger agent.

Mr. SEVERANCE: General passenger agent of the O. R. & N. and Southern Pacific in Oregon, isn't he?

Mr. LEE: Yes.

Mr. SEVERANCE: You make reports to him?

Mr. LEE: For the O. R. & N., but we report to San Francisco for the Southern Pacific.

Mr. SEVERANCE: To whom do you report there?

Mr. LEE: Well, we are under the jurisdiction of Mr. Fee.

Mr. SEVERANCE: I know; but you don't report directly to Mr. Fee, do you?

Mr. LEE: No; we report to the Auditor.

(Witness excused.)

E. E. ELLIS called as a witness, having been first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Ellis?

Mr. ELLIS: In Seattle.

Mr. SEVERANCE: How long have you lived in Seattle?

Mr. ELLIS: About ten or eleven years.

Mr. SEVERANCE: What is your business?

Mr. ELLIS: I am a general agent for the O. R. & N.

Mr. SEVERANCE: Have you any official connection with the Southern Pacific?

Mr. ELLIS: I act jointly in the interest of the Southern Pacific; I report directly to the O. R. & N. though.

Mr. SEVERANCE: You are general agent of both the Southern Pacific and the O. R. & N., are you not?

Mr. ELLIS: Well, no; I would not put it that way; I am general agent for the O. R. & N.; that is my title.

Mr. SEVERANCE: Just state then what your relation is to the Southern Pacific?

Mr. ELLIS: I act for the Southern Pacific.

Mr. SEVERANCE: I can't hear you?

Mr. ELLIS: I act for the Southern Pacific.

596 Mr. SEVERANCE: In what capacity?

Mr. ELLIS: As a representative.

Mr. SEVERANCE: Have they any other representative here?

Mr. ELLIS: None whatever that I know of.

Mr. SEVERANCE: How long have you been the agent of the O. R. & N. in Seattle?

Mr. ELLIS: Since 1890. Well, no; I was in Tacoma prior to that; about 1895 was when I came to Seattle.

Mr. SEVERANCE: About 1895?

Mr. ELLIS: Yes.

Mr. SEVERANCE: Had you been in the railroad service before that, Mr. Ellis?

Mr. ELLIS: Yes.

Mr. SEVERANCE: Whereabouts?

Mr. ELLIS: I was at Tacoma prior to that.

Mr. SEVERANCE: With what Company?

Mr. ELLIS: Agent for the O. R. & N., Union Pacific, at different times, and I was three months in Portland.

Mr. SEVERANCE: With the O. R. & N.?

Mr. ELLIS: With the Short Line. I have been with the Harriman lines since 1890.

Mr. SEVERANCE: Yes, you have been with the Harriman lines since 1890?

Mr. ELLIS: Yes.

Mr. SEVERANCE: When did your connection with the Southern Pacific commence?

Mr. ELLIS: In August, 1901.

Mr. SEVERANCE: And by whom were you appointed as their agent?

Mr. ELLIS: My connection was not with the Southern Pacific, if I may correct that statement; I was appointed joint agent with the O. R. & N. at that time.

Mr. LOVETT: I can't understand you if you don't speak louder.

Mr. ELLIS: I was appointed general agent of the O. R. & N. at that time, and I acted jointly from that time up to the present time; I was a representative also of the Southern Pacific.

597 Mr. SEVERANCE: I am very sorry to ask you to speak a little louder, Mr. Ellis?

Mr. ELLIS: I was appointed general agent in 1901.

Mr. SEVERANCE: I heard that part of it, but the last I didn't hear.

Mr. ELLIS: Yes; and I acted in the interest of the Southern Pacific on and after that time; the agency was taken from the former agent, and the accounts placed in my office.

Mr. SEVERANCE: Now prior to August, 1901, had the Southern Pacific maintained a separate agency here?

Mr. ELLIS: They had; yes.

Mr. SEVERANCE: And who was the agent?

Mr. ELLIS: Mr. C. J. Steeples was the agent.

Mr. SEVERANCE: And for how many years had he been the agent here?

Mr. ELLIS: Three or four years; something like that.

Mr. SEVERANCE: Was he denominated the General Agent of the Southern Pacific, or what was his title?

Mr. ELLIS: I think his title was commercial agent; I am not sure of that, however. He was the Sound agent; he had charge of the Tacoma office as well as the Seattle office.

Mr. SEVERANCE: Yes; and his duties were solely confined to the Southern Pacific?

Mr. ELLIS: They were.

Mr. SEVERANCE: Now Mr. Ellis, you stated that in August, 1901, you received your appointment as general agent of the O. R. & N.; prior to that time what had been your position?

Mr. ELLIS: I was agent for the O. R. & N.

Mr. SEVERANCE: Well, was there any change in your duties, so far as the O. R. & N. was concerned, when you attached this word "general" to your title?

Mr. ELLIS: Yes; I had a little more territory; I had jurisdiction outside of the City of Seattle, as well as——

Mr. SEVERANCE: As well as in Seattle?

Mr. ELLIS: Yes.

598 Mr. SEVERANCE: And is your jurisdiction over both freight and passenger business?

Mr. ELLIS: It is; yes.

Mr. SEVERANCE: Prior to 1901, had you had jurisdiction for the O. R. & N. over both freight and passenger business?

Mr. ELLIS: There was practically no freight at that time solicited by the O. R. & N. Company on the Sound.

Mr. SEVERANCE: But whatever was solicited you attended to?

Mr. ELLIS: I did.

Mr. SEVERANCE: Now you have stated that in August, 1901, you were appointed the General Agent of O. R. & N., and you also acted for the Southern Pacific; under whose instructions did you assume the business of the Southern Pacific here in succession to this other gentleman that you have named?

Mr. ELLIS: My instructions came from the O. R. & N. to assume charge of the Southern Pacific accounts; there was practically no freight so far as the Southern Pacific is concerned, at that time.

Mr. LOVETT: Practically what?

Mr. SEVERANCE: Practically no freight so far as the Southern Pacific is concerned, at that time. But you were instructed, were you, by the O. R. & N. to take charge of the Southern Pacific business and handle it to the same extent that you handled the O. R. & N. business?

Mr. ELLIS: I was; yes.

Mr. SEVERANCE: And to whom have you since that time reported the business transacted for these two companies.

Mr. ELLIS: I have reported directly to the O. R. & N. and Southern Pacific matters I have reported to the Southern Pacific officers located at Portland.

Mr. SEVERANCE: At Portland; to what official; what is the name of the officer?

599 Mr. ELLIS: Well, Mr. Markham was in for a while, and Mr. Coman was in for a while, and Mr. Miller in for a while, at various dates.

Mr. SEVERANCE: Mr. R. B. Miller?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And he is there now, isn't he?

Mr. ELLIS: He is with the O. R. & N. at the present time.

Mr. SEVERANCE: Isn't he with both?

Mr. ELLIS: Yes; I think his duties extend also as far as the Southern Pacific lines up to Ashland and north of Ashland.

Mr. SEVERANCE: You have never reported to San Francisco, as I understand it, direct?

Mr. ELLIS: Yes, so far as passenger business is concerned I report

to San Francisco to the Auditor; I report directly there; occasionally we take up some——

Mr. SEVERANCE: Some special question?

Mr. ELLIS: Special question; whenever we are asked by the Southern Pacific we naturally do; it does not originate at my office, but if they ask anything, take up some correspondence, of course I answer.

Mr. SEVERANCE: Why yes, you answer their letter?

Mr. ELLIS: Yes.

Mr. SEVERANCE: But you are transacting your business as general agent for these companies, in fact general agent for both of them under direct instructions from time to time, and making direct reports all the time to Portland?

Mr. ELLIS: Yes. Well, so far as our passenger business is concerned, I report to San Francisco to the Auditor of the Southern Pacific.

Mr. SEVERANCE: And you make no reports——

Mr. ELLIS (interrupting): I do make reports so far as the O. R. & N. is concerned; but the ticket system is kept separate between them; we have two separate systems.

Mr. SEVERANCE: But in case of freight you are entirely under jurisdiction of the Portland office?

Mr. ELLIS: I report to Mr. Miller in Portland.

600 Mr. SEVERANCE: Now prior to that time, prior to 1901, you say Mr. Steeples had been the agent here of the Southern Pacific?

Mr. ELLIS: That is right.

Mr. SEVERANCE: And had he maintained the ticket office here?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And also a soliciting freight office?

Mr. ELLIS: I don't know that he solicited freight; I don't think there was any Southern Pacific freight in here at that time to amount to anything; there was some little lumber business, and so on.

Mr. SEVERANCE: Yes; but he solicited passenger business prior to that time?

Mr. ELLIS: Yes, he did.

Mr. SEVERANCE: And you solicited business for the O. R. & N., and its connections?

Mr. ELLIS: I did.

Mr. SEVERANCE: And since 1901 you have solicited both freight and passenger business for both lines?

Mr. ELLIS: Yes.

Mr. SEVERANCE: Now what kind of freight is there that moves from Sound points over the lines of the O. R. & N. and the Southern Pacific?

Mr. ELLIS: Well, lumber and forest products; rather forest products move to points in Nebraska, Kansas and Colorado, situated on the Union Pacific proper, by way of Silver Bow.

Mr. SEVERANCE: It goes by the Northern Pacific and Silver Bow?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And then that is the Oregon Short Line South of Silver Bow?

Mr. ELLIS: Yes, that is the first Short Line.

Mr. SEVERANCE: To what points in Nebraska, did you say?

Mr. ELLIS: To points in Nebraska, Kansas and Colorado, and Wyoming, on the Union Pacific.

Mr. SEVERANCE: They go clear through to the Missouri river, don't they,—Omaha?

Mr. ELLIS: Yes; any point on the Union Pacific.

601 Mr. SEVERANCE: Any point; and Kansas City?

Mr. ELLIS: Yes.

Mr. SEVERANCE: Well, what about the Southern Pacific?

Mr. ELLIS: The Southern Pacific; we don't solicit lumber business at all; we have no common rates in there.

Mr. SEVERANCE: What kind of freight do you solicit over the Southern Pacific?

Mr. ELLIS: Well, practically no commodities moving out of the Sound to far Eastern competitive points; there are commodities moving to California; that is all.

Mr. SEVERANCE: Mr. Ellis, does lumber move from the Sound to Utah, common points?

Mr. ELLIS: The rate is based local over Portland I think there.

Mr. SEVERANCE: I don't believe I caught you.

Mr. ELLIS: I say, I think the rate is composed local over Portland.

Mr. SEVERANCE: Well, I want to know if lumber does move?

Mr. ELLIS: I don't know of any movement that takes place there.

Mr. SEVERANCE: Is any lumber shipped from Puget Sound points to Salt Lake City and Ogden, and that region?

Mr. ELLIS: Yes, there is some shipped.

Mr. SEVERANCE: How does it go?

Mr. ELLIS: It all goes by Silver Bow in connection with the Northern Pacific, or by Spokane by the O. R. & N.,—the Great Northern to Spokane and the O. R. & N. at Spokane.

Mr. SEVERANCE: Does it ever move by Portland?

Mr. ELLIS: Yes, it moves by Portland also, some of the local over Portland; there is no through rate.

Mr. SEVERANCE: In moving by Portland it could reach Salt Lake City or Ogden either over the O. R. & N., or over the Southern Pacific and Sacramento, couldn't it?

602 Mr. ELLIS: I don't think the rates apply from the Sound down there. Yes, it could move down there if the rates apply, but I am not positive whether the rates apply.

Mr. SEVERANCE: Mr. Campbell testified this morning lumber did move that way?

Mr. ELLIS: It may move that way.

Mr. LOVETT: Not from the Sound.

Mr. SEVERANCE: Not from the Sound; Portland, I mean. Well, you get into Portland from here whichever way you go; so that, after the lumber gets to Portland going out of the Sound, it could go to Salt Lake City and I think to Ogden, and other points, either way, at Sacramento or the O. R. & N.?

Mr. ELLIS: It could on some of the locals; I don't understand there is any movement that way.

Mr. SEVERANCE: Yes. Well, you don't know. Now when you ship to Salt Lake City you do it by Silver Bow?

Mr. ELLIS: Well, we leave that up to the shipper whatever way he wants to designate.

Mr. SEVERANCE: You would prefer to ship it by Portland, wouldn't you, than Spokane?

Mr. ELLIS: I have no preference; I altogether leave it to the shipper.

Mr. SEVERANCE: It makes no difference to your Company?

Mr. ELLIS: That is a matter I don't have to deal with. That is handled by the general office; I am simply after the tonnage.

Mr. SEVERANCE: Well, I know; but as general agent of the Company seeking tonnage if one road had a thousand miles of track and your road had a hundred, and then you had another road by which the other road had a hundred and you had the thousand, you would try to route it over the thousand miles, wouldn't you?

Mr ELLIS: I leave it altogether to the consignor.

Mr. SEVERANCE: You would not try to influence that movement at all?

603 Mr. ELLIS: No.

Mr. SEVERANCE: It makes no difference to you whether the road gets the large or small revenue out of the shipment; is that right?

Mr. ELLIS: I think I answer the question direct when I say I leave it to the shipper.

Mr. SEVERANCE: When you go to the shipper to solicit business, for instance the designation we will say is Ogden, Utah, do you ask him immediately which way he wants it shipped, or do you route it yourself, unless he asks you to ship it a certain way?

Mr. ELLIS: He usually has his own mind made up, and he asks for one of our cards, whichever is the most handy for him to get.

Mr SEVERANCE: He would have his own mind made up when he would come to you, but I am speaking of times you go out and solicit business yourself?

Mr. ELLIS: I don't dictate the routing for them; they usually don't ask me, they have their minds made up.

Mr. SEVERANCE: Isn't there other stuff here at Seattle that goes into that region, in the Utah region?

Mr. ELLIS: Nothing that I know of.

Mr. SEVERANCE: Any merchandise going there?

Mr. ELLIS: I don't know of any. An occasional shipment of salmon goes down there, but I don't think it amounts to more than one car a year.

Mr. SEVERANCE: Do you know anything about shipments of teas and spices and coffee, and so forth, into that country from Seattle?

Mr. ELLIS: I have no control of those at all; they are routed in the Orient.

Mr. SEVERANCE: I am not speaking about stuff that is consigned there?

Mr. ELLIS: Nothing leaves here.

Mr. SEVERANCE: And stock jobbed out of Seattle?

Mr. ELLIS: I don't know of any shipments.

Mr. SEVERANCE: Do you know of a concern here called the Crescent Manufacturing Company?

Mr. ELLIS: I do.

Mr. SEVERANCE: Don't they consign goods to that country
604 down there, teas and spices, and coffee, and so forth?

Mr. ELLIS: They may make some small shipments; it does not come to my notice, if they do. I suppose they do ship there some small quantities.

Mr. SEVERANCE: They ship there over your lines, don't they; or do you know about it at all?

Mr. ELLIS: Well, we have no rails of our own in Seattle, and naturally that would be handled as non-competitive business, and I would not take much notice of it.

Mr. SEVERANCE: Now in the case of passenger business you are endeavoring to get all the people you can to go to the East and South over your lines, aren't you?

Mr. ELLIS: Yes.

Mr. SEVERANCE: As against the outside lines?

Mr. ELLIS: We are.

Mr. SEVERANCE: And that is a large part of your business, isn't it, owing to the fact that you are not well situated to handle freight out of Seattle?

Mr. ELLIS: Well, we naturally handle freight too. I think the earnings on freight are equal or more than that of passengers, taking everything into consideration.

Mr. SEVERANCE: That makes me think; how many cars a month on an average do you ship out of here?

Mr. ELLIS: Through the different gate-ways?

Mr. SEVERANCE: Yes.

Mr. LOVETT: Are you asking for the O. R. & N.?

Mr. SEVERANCE: I am.

Mr. ELLIS: If you will ask me a direct question as to what gate it goes through; we have various gate-ways.

Mr. SEVERANCE: Well, through Portland, we will say.

Mr. ELLIS: Five or six cars a month, or something like that.

Mr. SEVERANCE: And how much through Silver Bow?

605 Mr. ELLIS: Very little West; there wasn't but, I would say, about a hundred cars East bound.

Mr. SEVERANCE: Well, I am speaking about East bound business; but you meant five or six cars both ways through Portland, did you?

Mr. ELLIS: No; there is practically nothing Southern Pacific.

Mr. SEVERANCE: Practically nothing Southern Pacific; very little freight moves that way?

Mr. ELLIS: Except California business. I presume you mean competitive points in the East?

Mr. SEVERANCE: Yes, I mean competitive points in the East.

Mr. ELLIS: Yes, practically nothing Southern Pacific.

Mr. SEVERANCE: But there is considerable California business?

Mr. ELLIS: Oh, yes.

Mr. SEVERANCE: What class of business?

Mr. ELLIS: Well, North bound there is oranges and lemons, and commodities grown in California that might come up here, wheat, potatoes, and so on.

Mr. SEVERANCE: Do they come all-rail?

Mr. ELLIS: They do.

Mr. SEVERANCE: Always, or do they sometimes come by boat?

Mr. ELLIS: I don't think there is many—in the oranges I don't think there is much; I don't think there is any sweet potatoes——

Com'r LANE: Talk a little more distinctly, Mr. Ellis.

Mr. ELLIS: I don't think there is any sweet potatoes moving North bound by way of the steamers; they all come all-rail.

Mr. SEVERANCE: What about fruit?

Mr. ELLIS: Fruit; there is some fruit comes up by steamer I understand; I didn't see the report, I don't know just how much there is.

Mr. SEVERANCE: Come up to Portland by boat and then by rail?

606 Mr. ELLIS: No; they come in by Pacific Coast Steamhsip Company.

Mr. SEVERANCE: By Pacific Coast Steamship Company?

Mr. ELLIS: Yes.

Mr. SEVERANCE: That is, that would be fruit originating I suppose on rail lines in Southern California and trans-shipped at San Francieso?

Mr. ELLIS: Well, some of them take that route, and I believe they do ship that way.

Mr. SEVERANCE: And it also moves all-rail?

Mr. ELLIS: Also moves all-rail, yes.

Mr. SEVERANCE: You heard Mr. Lee's testimony here a few minutes ago, didn't you, about the matter of rates, passenger rates?

Mr. ELLIS: I did.

Mr. SEVERANCE: It is substantially as you understand it, isn't it,—the routing of passengers?

Mr. ELLIS: Yes, practically.

Mr. SEVERANCE: To competitive points in the East?

Mr. ELLIS: I heard a part of it. I was talking to Mr. Stubbs.

Mr. SEVERANCE: You were probably learning something if you were talking to Mr. Stubbs?

Mr. ELLIS: No; I was talking to him about some other matter that has no bearing on the subject.

Mr. SEVERANCE: Mr. Ellis, if you didn't hear his testimony I want to ask you one or two questions. You route passengers from here to New Orleans, don't you?

Mr. ELLIS: We do; yes, sir.

Mr. SEVERANCE: Both ways, don't you?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And you route passengers to other Mississippi Valley points both ways, don't you?

Mr. ELLIS: I do.

Mr. SEVERANCE: Do you route passengers to Chicago both ways?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And to Kansas City?

Mr. ELLIS: Yes.

607 Mr. SEVERANCE: How does the fare by El Paso compare with the fare by the direct route to Chicago?

Mr. ELLIS: The fare is higher, about Nine Dollars, I think, $9.35, I think, something like that.

Mr. SEVERANCE: Is that so to Chicago?

Mr. ELLIS: I think so by El Paso; by the Sacramento route it is about One Dollar higher?

Mr. SEVERANCE: About One Dollar higher?

Mr. ELLIS: Yes.

Mr. SEVERANCE: That is, there is a difference of a Dollar between going from here over the Southern Pacific to Sacramento, thence East to Ogden, and going direct to Ogden by the O. R. & N?

Mr. ELLIS: That is right; by the O. R. & N., or the Northern lines.

Mr. SEVERANCE: That is all.

Mr. LOVETT: What do you mean by routing passengers; you mean simply selling them tickets, don't you?

Mr. ELLIS: Beg pardon?

Mr. LOVETT: By routing passengers, you mean selling them tickets the way they want to go, don't you?

Mr. ELLIS: Certainly; we never dictate to passengers which way they want to go.

Mr. LOVETT: Every coupon agent throughout the United States does practically the same thing, doesn't he?

Mr. ELLIS I think so. It is our practice anyway; I can't say for the rest.

Mr. LOVETT: With reference to this lumber business to Utah points, about which Mr. Severance asked you, as a matter of fact that practically all goes by way of Silver Bow, doesn't it; doesn't the Northern Pacific take it up here to get the long haul for itself?

Mr. ELLIS: I think they do, for the reason it originates at points on the Northern Pacific, and if it is on the Great Northern, if it originates on the Great Northern they would naturally take it through the Spokane gateway.

608 Mr. LOVETT: They would naturally take it the long haul?

Mr. ELLIS: Yes.

Mr. LOVETT: The route by way of Portland, in view of the local that they would charge you from here to Portland, would make the rate higher that way, wouldn't it?

Mr. ELLIS: Some of the locals.

Mr. LOVETT: In other words, the Northern Pacific would not put in rates with the O. R. & N. by way of Portland?

Mr. ELLIS: Naturally where they would get the long haul the other way they would not.

Mr. LOVETT: Did you ever know of any traffic going that way?

Mr. ELLIS: By Portland over the Southern Pacific to Salt Lake, or Utah Points?

Mr. LOVETT: Yes, or the O. R. & N. either; doesn't it all go the other way?

Mr. ELLIS: Out of the Sound, yes it does.

Mr. LOVETT: They would not take the higher-rate line rather than the low, would they?

Mr. ELLIS: No, they would not.

Mr. LOVETT: Don't you know that they don't publish any tariff at all on lumber to Utah points from the Sound by Portland?

Mr. ELLIS: That is the fact.

Mr. LOVETT: They are in the other way, and that is what you mean by saying you would have to pay some of the locals?

Mr. ELLIS: Yes.

Mr. LOVETT: With reference to this passenger business, the passenger business that you solicit in this territory for the Southern Pacific is as against the steamer lines, isn't it?

Mr. ELLIS: Well, steamer lines invariably take their own—there is quite a difference in their rate and there is very little competition.

Mr. LOVETT: What is your competition with on California business then, and passengers?

609 Mr. ELLIS: There is a great difference between the rates and passengers. In the summer time the passengers usually a great number of them, like to go by way of water, and in the winter time they prefer rail; it is optional with the passenger, we don't solicit.

Mr. LOVETT: The only competition the Southern has ever had on passenger business between California and the Sound territory is by water, isn't it?

Mr. ELLIS: Is water; certainly.

Mr. LOVETT: The O. R. & N. has never competed since you have known it on passenger business from this territory?

Mr. ELLIS: Not from the Sound; they have no through rates, I think.

Mr. LOVETT: To California. Just what business does the Southern Pacific do; does it do any freight business at all from this territory?

Mr. ELLIS: Yes; there is some business originates in the Mississippi river points, Memphis and South.

Mr. LOVETT: How does that get here?

Mr. ELLIS: On which the routes are equal by the Northern lines.

Mr. LOVETT: How does that get here?

Mr. ELLIS: Well, sometimes it comes over the Southern Pacific, delivered to the Pacific Coast Steamship Company at San Francisco, and some commodities bear a common rate and are delivered to the Northern Pacific at Portland; they come in that way.

Mr. LOVETT: What kind of business is that?

Mr. ELLIS: Well, that would be rice from New Orleans, and Cove Oysters from Biloxi, cotton linters from Texas, and Bananas from New Orleans, a car of rosin occasionally, a car of molasses occasionally, once in a while a car of hardwood.

Mr. LOVETT: What is the magnitude of that?

Mr. ELLIS: There is not a very heavy tonnage.

Mr. LOVETT: Well, do you mean a half dozen car loads a month?

Mr. ELLIS: About that; some months it averages more,

610 according to the time of the year and the disposition of the consumers.

Mr. LOVETT: Where does that come from you say, the Gulf coast country?

Mr. ELLIS: From Mississippi river points and South where common rates exist as against the Northern lines, Memphis and South.

Mr. LOVETT: What do you mean by the Mississippi river points?

Mr. ELLIS: Well, define territory by the tariff sheets, from Memphis and points South, down the Mississippi river.

Mr. SEVERANCE: About that traffic you have just been speaking of, that can move and does move both by the Sunset Route and by the Omaha gate-way, does it not?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And at equal rates?

Mr. ELLIS: Yes.

Mr. SEVERANCE: Which way does the most of it go?

Mr. ELLIS: I can't answer that question; I don't know just what the percentage of business is. The bananas in the winter time come over the Southern Pacific, the Northern Pacific under joint arrangement, and in the summer time they usually come by the way of Billings in connection with the Burlington and C. B. & Q.

Mr. SEVERANCE: Now Mr. Ellis, the people out here dealing in the various commodities you mentioned, a half dozen or so, that come up from down South there in the Mississippi Valley, do the people out here at Seattle dictate that routing, considerable of it?

Mr. ELLIS: Sometimes they do on some commodities; the bananas are controlled pretty much in the South.

Mr. SEVERANCE: That is, the United Fruit Company would route them, wouldn't they?

Mr. ELLIS: Yes.

Mr. SEVERANCE: And these other things?

Mr. ELLIS: Rice is controlled to a great extent here.

611 Rosin is controlled here, and molasses and cotton linters.

Mr. SEVERANCE: And that is the class of business for which the companies maintain soliciting agents, isn't it, to procure the routing from the people here on the ground?

Mr. ELLIS: Well, it is the duty of a general agent to look after the traffic on his line as much as he can.

Mr. SEVERANCE: Yes; that is to say, you know that a wholesale merchant here is importing commodities of that kind from Memphis and below on the Mississippi river, it is your business as general agent to endeavor to have that stuff routed over one or the other of your lines as against competing lines?

Mr. ELLIS: It is.

Mr. SEVERANCE: And that is what you are here for and prior to the time you represented both lines, this Mr. Steeples was doing that for one line and you for the other?

Mr. ELLIS: No, I wasn't doing it at that time, because we had no traffic arrangement in here with the Great Northern at that time; we had no gate-way and no common rates prior to that.

Mr. SEVERANCE: That has grown up since, has it?

Mr. ELLIS: It has grown up since.

Mr. SEVERANCE: By mutual arrangement with the great Northern?

Mr. ELLIS: Yes.

Mr. LOVETT: You would solicit it for the line that would get the longest haul out of it, wouldn't you, Mr. Ellis?

Mr. ELLIS: On that business I would practically leave it to the consignor, to meet with his requirements.

Mr. LOVETT: As between the Sunset——

Mr. ELLIS: That is, as between the Huntington gate-way and Southern Pacific route, as against the Northern lines, I would try to influence it over——

Mr. LOVETT: Either of the other?

Mr. ELLIS: Either of the other two.

612 Mr. LOVETT: That is all.

Mr. SEVERANCE: That amounts to this, then; you would, as you say, try to influence it in favor of one or the other of your lines as against the Northern lines?

Mr. ELLIS: Yes.

Mr. SEVERANCE: But you would not endeavor to influence him to ship by one of your lines as against the other?

Mr. ELLIS: No, I would not.

Mr. SEVERANCE: That is all.

Witness excused.

J. D. FARRELL called as a witness, having been first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Farrell, I wanted to examine Mr. Ford, who is Vice-President and General Manager of the Pacific Coast Company about their matters, about their traffic, but I believe you are a director of that company, are you not?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Perhaps you can tell us what we want to know about it. How many ships has the Pacific Coast Steamship Company?

Mr. FARRELL: I think about twenty now.

Com'r LANE: Are you connected with the Pacific Coast Steamship Company?

Mr. FARRELL: I am director of the Pacific Coast Company, not of the——

Com'r LANE: Pacific Coast Company?

Mr. FARRELL: Yes, sir; not of the Pacific Coast Steamship Company.

The COURT: What is the Pacific Coast Company?

Mr. FARRELL: That is the owner of the Pacific Coast Steamship Company.

Mr. SEVERANCE: I was going to bring that out. The Pacific Coast Company is the name of it, is it?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And that Company owns the stock of the Pacific Coast Steamship Company, does it not?

Mr. FARRELL: Yes.

613 Mr. SEVERANCE: And controls its operation?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Can you name from memory the directors of the Pacific Coast Company?

Mr. FARRELL: Mr. Cannon, Mr. Keene.

Com'r LANE: Who is Mr. Cannon.

Mr. FARRELL: H. W. Cannon.

Mr. SEVERANCE: Of the Chase National Bank, of New York?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Mr. Fee, did you say?

Mr. FARRELL: No, sir; Mr. Keene, Senator Keene of New Jersey; John Keene, Kane usually pronounced.

Mr. SEVERANCE: Yes; John Keene?

Mr. FARRELL: J. N. Hill.

Mr. SEVERANCE: Who is J. N. Hill?

Mr. FARRELL: Son of James J. Hill.

Mr. SEVERANCE: He has some other title to fame, hasn't he; doesn't he hold some other official position or connection with the railroad?

Mr. FARRELL: That is fame enough, isn't it?

Mr. SEVERANCE: What is his official connection with the Great Northern,—Vice-President, isn't he?

Mr. FARRELL: Yes; I think he is a member of the Board, too.

Mr. SEVERANCE: Of the Northern Pacific?

Mr. FARRELL: Yes; that is my understanding.

Mr. SEVERANCE: Yes. Well, who else?

Mr. FARRELL: Mr. Tucker of Boston, a broker.

Mr. SEVERANCE: And who is Mr. Tucker?

Mr. FARRELL: He is a broker; Tucker and Emery is the firm.

Mr. SEVERANCE: Has he any connection of any sort, so far as you know, with any railroad company?

Mr. FARRELL: No, sir.

Mr. SEVERANCE: All right; who is the next one?

Mr. FARRELL: How many have I named?

Mr. SEVERANCE: You have named four; you have named Mr. Cannon, Senator Keene, J. N. Hill and Mr. Tucker.

614 Mr. FARRELL: Mr. Harriman.

Mr. SEVERANCE: Mr. E. H. Harriman?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: Well, we know who he is; we won't stop for that.

Mr. FARRELL: And a new man whose name I don't recall, Amory I think is his name.

Mr. SEVERANCE: Where does he live?

Mr. FARRELL: I believe in Boston; he represents some New England interest; I think his residence is Boston; and myself.

Mr. SEVERANCE: Mr. Farrell; and what is your present business, Mr. Farrell?

Mr. FARRELL: Generally representing the Oregon & Washington Railroad Company.

Mr. SEVERANCE: The Oregon & Washington Railroad Company is a Washington corporation that is controlled by the Union Pacific people, is it not?

Mr. FARRELL: It is an Oregon corporation.

Mr. SEVERANCE: An Oregon corporation?

Mr. FARRELL: Yes.

Mr. SEVERANCE: But it is the Union Pacific, isn't it? That is to say, I mean it is building a connection for the Union Pacific, isn't it, into Seattle?

Mr. FARRELL: Well, I don't know who is furnishing the money; I guess it is generally understood to be the Union Pacific.

Mr. SEVERANCE: Well, do you know who the stockholders are?

Mr. FARRELL: No, sir, I do not.

Mr. SEVERANCE: What is your position in that Company?

Mr. FARRELL: I am not an officer nor a director; I am in general charge of their affairs.

Mr. SEVERANCE: Well, do you make any reports of your doings to any person?

Mr. FARRELL: In a general way I report to Mr. Kruttschnitt.

Mr. SEVERANCE: He is director of maintenance and operation of the Harriman system, is he not?

615 Mr. FARRELL: Yes.

Mr. SEVERANCE: And do you confer with anybody else?

Mr. FARRELL: Mr. Lovett and Mr. Stubbs.

Mr. SEVERANCE: Mr. Lovett is my esteemed friend sitting here, counsel of the Harriman line?

Mr. FARRELL: Yes, the same.

Mr. SEVERANCE: And with whom else do you *re*fer?

Mr. FARRELL: Mr. Stubbs and I have conferred with Mr. Harriman.

Mr. SEVERANCE: Then as a matter of fact, Mr. Farrell, this corporation you speak of is the Union Pacific line that is being built into here, isn't it?

Mr. FARRELL: Why it is so called, I understand.

Mr. LOVETT: You may let the record show that it is the Union Pacific enterprise.

Mr. SEVERANCE: Yes, they own the stock, I suppose,—they or the Short Line.

Mr. LOVETT: One or the other.

Mr. SEVERANCE: One or the other; that is all I want. Now Mr. Farrell, about the Pacific Coast Company, you say they have about twenty ships?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And who is the President of the Pacific Coast Company, Mr. Cannon?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And Mr. Ford is the Vice President, is he not?

Mr. FARRELL: Vice President and General Manager.

Mr. SEVERANCE: Where do these ships ply?

Mr. FARRELL: Various points between Cape Nome and Mexico, Mazatland, Mexico, is the lowest point they go.

Mr. SEVERANCE: And to what points do they touch along the Western coast of the United States, the Pacific coast?

Mr. FARRELL: All the principal Californian coasts, Seattle, Tacoma,

Everett, Bellingham, and Blaine, I think of the Washington coast; Victoria, Vancouver, of the British Columbia coast.

616 Mr. SEVERANCE: And they go to San Francisco?

Mr. FARRELL: Yes; and also to Alaska, Southeastern Alaska and Southwestern Alaska.

Mr. SEVERANCE: And they go to San Francisco and San Diego?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And they go into Coose Bay?

Mr. FARRELL: No, sir; Humboldt and Eureka.

Mr. SEVERANCE: But they don't go into Coose Bay?

Mr. FARRELL: No, sir.

Mr. SEVERANCE: What is the character of the traffic of these Companies; is it passenger or freight, or both?

Mr. FARRELL: Both. Many of the ships handle both freight and passengers, some freight exclusively.

Mr. SEVERANCE: Do you have ships coming up here from San Francisco that handle freight exclusively, or are they both freight and passenger?

Mr. FARRELL: Well, the regular line is freight and passenger, but our irregular ships also handle freight North and South bound in addition.

Mr. SEVERANCE: Now what is the character of freight that is brought up here from San Francisco?

Mr. FARRELL: Fruit, vegetables, general merchandise.

Mr. SEVERANCE: Do you bring up from San Francisco to the Sound Port, traffic that originates in the East and is brought West over the Sunset Route and over the Santa Fe?

Mr. FARRELL: I was not aware that that was true to any extent, until I heard Mr. Ellis say that small quantities moved; I haven't any impression of that.

Mr. SEVERANCE: You have no knowledge about that?

Mr. FARRELL: No, sir.

Mr. SEVERANCE: And is the stuff in the way of freight and so forth, that you speak of that you bring up from San Francisco, are they commodities that originate in California?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: Or points East?

Mr. FARRELL: California very largely.

617 Mr. SEVERANCE: Southern California?

Mr. FARRELL: Well, yes, Southern California and middle, depending on the season, you know.

Mr. SEVERANCE: And those fruits are brought in there by the railroads, the Southern Pacific or the Sante Fe and turned over to you?

Mr. FARRELL: To some extent. The lower Californian points, for instance San Diego, it is trucked down, you know, and brought in by the other little railroads that run out into the country.

Mr. SEVERANCE: I am speaking of San Francisco principally.

Mr. FARRELL: Oh, San Francisco; yes.

Mr. SEVERANCE: Do you go to San Pedro, by the way?

Mr. FARRELL: Yes.

Mr. SEVERANCE: And do you take on freight there that comes over the Salt Lake road?

Mr. FARRELL: That connection did not exist when I was actively connected with the company, and I can't say whether there is any such business or not.

Mr. SEVERANCE: Do you go to Santa Monica?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Do you take on freight at Santa Monica that comes in over the Southern Pacific?

Mr. FARRELL: Yes.

Mr. SEVERANCE: What kind of freight?

Mr. FARRELL: Well, such as I have described, merchandise, fruits, vegetables in season.

Mr. SEVERANCE: Merchandise is rather general; do you mean general merchandise, manufactured goods and dress goods?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And everything of that sort, notions?

Mr. FARRELL: Yes, general is what is commonly called merchandise.

Mr. SEVERANCE: Where do these shipments originate? They can't originate at San Pedro or Santa Monica?

Mr. FARRELL: I don't know.

618 Mr. SEVERANCE: They must come from the east, do they not?

Mr. FARRELL: I have no doubt, yes; they originate largely in Los Angeles; that is, the shipments are made from there, but just where the goods are manufactured I can't say.

Mr. SEVERANCE: And do you mean by that they are jobbed out of Los Angeles?

Mr. FARRELL: Yes.

Mr. SEVERANCE: But there are shipments that pass through Los Angeles to the seaboard?

Mr. FARRELL: Well, through shipments, to a small extent, and some of it jobbed.

Mr. SEVERANCE: That is at Los Angeles?

Mr. FARRELL: Yes.

Mr. SEVERANCE: And the same is true at San Francisco?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And the Pacific Coast Steamship Co. then takes these commodities that are brought in by the railroads to these terminal points and delivers them here in the Sound?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: Seattle and Tacoma?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: Do you handle lumber?

Mr. FARRELL: In small quantities, yes, sir.

Mr. SEVERANCE: You don't make a call at Portland, do you, with your ships?

Mr. FARRELL: No, sir.

Mr. SEVERANCE: Where does the lumber originate you take down,—here at Seattle?

Mr. FARRELL: Largely at Seattle, yes, sir, Tacoma, Everett, Bellingham.

Mr. SEVERANCE: Now these articles you speak of as merchandise, fruits, and so forth that are brought up from the south are consigned to wholesale merchants largely, are they not, here at Sound points?

Mr. FARRELL: And to interior eastern points to some extent.

619 Mr. SEVERANCE: That is, to Spokane you mean, or something like that?

Mr. FARRELL: Spokane and Montana points, and Idaho, and eastern Washington.

Com'r LANE: Do I understand, Mr. Farrell, you make a through rate with the Southern Pacific's connection at Santa Monica for freight carried to coast points farther north?

Mr. FARRELL: I don't get the question.

Com'r LANE: Do you make a through rate with the railroad company connecting at Santa Monica on freight?

Mr. FARRELL: Yes, that is my recollection; it is a little more than three years since I had to do with that and I am a little bit rusty, but it applies from Los Angeles to various ports of call on the Pacific Coast.

Mr. SEVERANCE: Does your through rate extend east of Los Angeles?

Mr. FARRELL: I am not clear on that.

Mr. SEVERANCE: You would have to look up the tariffs?

Mr. FARRELL: Yes.

Mr. SEVERANCE: I suppose you can furnish us tariffs on that?

Mr. FARRELL: Yes.

Mr. SEVERANCE: These goods that are brought up here by your line come off of the Southern Pacific there at San Francisco and brought up here consigned to jobbers, are sold and jobbed out by these wholesalers here at Sound points in all this territory that is contiguous; are they not?

Mr. FARRELL: No; in part they are.

Mr. SEVERANCE: That is what I mean; that that is consigned to wholesalers here.

Mr. FARRELL: Yes, I think so, but a good bit of it is carried on by connecting boats to Alaska.

Mr. SEVERANCE: Yes, I know that, but I mean that that stops here.

Mr. FARRELL: Yes.

620 Mr. SEVERANCE: This territory, so far as jobbing is concerned south and east of Seattle within the limits is competitive, isn't it, with Portland; that is, the jobbers of Portland are competing with the jobbers of Seattle in this country down back here in Washington or Idaho and Oregon.

Mr. FARRELL: Yes.

Mr. SEVERANCE: And Montana?

Mr. FARRELL: To some extent.

Mr. SEVERANCE: Do you know, Mr. Farrell, the amount of the capital stock of the Pacific Coast Company?

Mr. FARRELL: It has $1,525,000 first preferred; four million second preferred; seven million common; it has five million five per cent. thirty year bonds.

Mr. SEVERANCE: What about the Pacific Coast Steamship Co.; what is its capitalization?

Mr. FARRELL: That is nominal, I think; two millions of dollars, I think.

Mr. SEVERANCE: That is all owned by the other company?

Mr. FARRELL: Yes.

Mr. SEVERANCE: And has the Pacific Coast Company any property other than the steamship stock?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: What character of property?

Mr. FARRELL: Railroads and coal mines and real estate.

Mr. SEVERANCE: Where are the railroads?

Mr. FARRELL: The principal railroad is from Seattle to the coal mines in the county in which Seattle is situated; and another line about eighty miles in length from Port Oxford and San Luis Obispo.

Mr. SEVERANCE: How long is that?

Mr. FARRELL: About eighty miles, I think now, is my recollection.

Mr. SEVERANCE: Does that connect with any line of railroad in California?

Mr. FARRELL: With the Southern Pacific; that is a narrow
621 gauge road, however, the Southern Pacific being standard gauge.

Mr. SEVERANCE: It connects with the Southern Pacific at what point?

Mr. FARRELL: San Luis Obispo.

Mr. SEVERANCE: Well, San Luis Obispo is not on the coast is it?

Mr. FARRELL: No, sir, out twelve miles from the coast.

Mr. SEVERANCE: Do you have a harbor on the coast?

Mr. FARRELL: Port Orford.

Mr. SEVERANCE: That is the terminus of your railroad that goes into the country?

Mr. FARRELL: Yes, that is the water terminus.

Mr. SEVERANCE: I mean water terminus.

Mr. FARRELL: Yes.

Mr. SEVERANCE: And that is one of the ports of call of your steamships?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: And did you take traffic over your narrow gauge from the Southern Pacific at San Luis Obispo and bring it down to the harbor there to load it on your ships?

Mr. FARRELL: No; I think there is very little, if any of that.

Mr. SEVERENCE: What is the principal business, if any, on the line of the narrow gauge railroad?

Mr. FARRELL: Well, generally grain, wheat, oats, barley. Just now they are pretty active in handling oil. Then the return business is that ordinarily handled; merchandise, lumber, pipes, something of that sort.

Mr. SEVERANCE: You say you have these two lines of railroad and you have certain coal mines?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Besides the line of steamships.

Mr. FARRELL: Yes.

Mr. SEVERANCE: And do you know where the stock is
622 owned?

Mr. FARRELL: It is owned in the east almost exclusively.

Mr. SEVERANCE: Well, do you know whether it is widely scattered?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Or closely held?

Mr. FARRELL: Yes. I think there are about fifteen or sixteen hundred stockholders.

Mr. SEVERANCE: Fifteen or sixteen hundred?

Mr. FARRELL: That is my recollection.

Mr. SEVERANCE: Have you traffic contracts with the Southern Pacific and the other railroads which you operate in connection with?

Mr. FARRELL: I am not certain as to the Southern Pacific. There is a contract, has been for many years with the Northern Pacific, the Great Northern and Canadian Pacific, and the Pacific Coast Steamship Company is their ocean connection.

Mr. SEVERANCE: Under these contracts you make a through rate from the north here, do you not, to San Francisco and other Southern ports?

Mr. FARRELL: Yes, sir; that is transcontinental.

Mr. SEVERANCE: Yes. Do you carry much stuff of that?

Mr. FARRELL: No, very little. It is largely a local business, local with the ports.

Mr. SEVERANCE: There is very little, but is there some through business?

Mr. FARRELL: Oh yes.

Mr. SEVERANCE: Comes from the east, that comes out to the coast by these lines and goes down to San Francisco?

Mr. FARRELL: Yes, small quantities.

Mr. SEVERANCE: What kind of business is that, what kind of traffic?

Mr. FARRELL: Well, what I generally term as merchandise, manufactured articles from the east; then to the east is fruit, vegetables again, sugar and salt and such as that?

623 Mr. SEVERANCE: Now, Mr. Farrell, have you ever had any connection with the steamship lines across the ocean?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: You represented the Great Northern, didn't you?

Mr. FARRELL: For a time, yes.

Mr. SEVERANCE: What steamship lines are there up here on the north, say north of Portland, plying to the Orient?

Mr. FARRELL: The Canadian Pacific, a line of five ships; the Boston Steamship Company with five ships.

Mr. LOVETT: Is that the Boston Steamship or the Boston Towboat Company?

Mr. FARRELL: Well, I don't know.

Mr. SEVERANCE: Well, they are two corporations, aren't they?

Mr. FARRELL: Yes; I don't know the difference; we call them the Boston Company. They have five ships. I think they are two corporations. And the Holt line I think it is called.

Mr. SEVERANCE: The Great Northern?

Mr. FARRELL: I named those first. If I didn't I intended to.

Mr. SEVERANCE: Then there is a Japanese line here?

Mr. FARRELL: A Japanese line, yes.

Mr. SEVERANCE: Is there a Dodwell line now?

Mr. FARRELL: Not to my knowledge.

Mr. SEVERANCE: Used to be?

Mr. FARRELL: Yes.

Mr. SEVERANCE: There used to be one from Tacoma and one from Portland, didn't there?

Mr. FARRELL: Yes. I never knew any Portland line; I know they did have a line at one time.

Mr. SEVERANCE: Those lines that you have spoken of are all competing for the Oriental business from the Sound here including Vancouver?

Mr. FARRELL: Yes.

624 Mr. SEVERANCE: Then the other lines below here, the Portland & Asiatic, Pacific Mail, Occidental and Oriental and the Japanese line into San Francisco?

Mr. FARRELL: Yes.

Mr. SEVERANCE: Those are the only ones, are they not?

Mr. FARRELL: I can't say as to San Francisco; there may be another line there that I don't know.

Mr. SEVERANCE: Did you ever visit the Orient in connection with the business of your line when you were representing the Great Northern?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: Well, will you state how the business in the Orient is collected for the ships; they have representatives over there, don't they, these various lines?

Mr. FARRELL: Yes.

Mr. SEVERANCE: How do they collect business for their ships; what kind of organization do they maintain over there?

Mr. FARRELL: Well, in a large part the agents are made up by firms, brokerage firms and shipping firms, that represent a number of steamship lines; others have their direct representatives, direct exclusive agents for freight and passengers.

Mr. SEVERANCE: All of these lines of ships, both from San Francisco and from the Sound call at the same ports over there, don't they?

Mr. FARRELL: Very largely, yes.

Mr. SEVERANCE: That is, there are certain principal ports?

Mr FARRELL: Yes.

Mr. SEVERANCE: Like Yokohama, Kobe, Nagasaki, Shanghai and Hongkong?

Mr. FARRELL: Yes, those are the principal ones; and then north China ports and Russian ports.

Mr. SEVERANCE: Now these lines, both the San Francisco line and the Portland line and lines up here all reach these various ports in the Orient?

Mr. FARRELL: Yes.

625 Mr. SEVERANCE: Now do these agents or firms, whichever they happen to be, representing the respective lines at these ports collect any commodities from other points where they are shipped in there and assembled there by these agents to be loaded, or how is it handled?

Mr. FARRELL: The traffic largely originates at the principal ports, Kobe, and is brought in from the outside manufacturing points; Kobe originates a great deal of its trade; we obtain some from Nagasaki and Kioka, and other interior points.

Mr. SEVERANCE: Now there is plenty of tonnage to handle all that business, isn't there, at present?

Mr. FARRELL: I believe there is, yes, sir.

Mr. SEVERANCE: And there is rather keen competition among the agents in the Orient?

Mr. FARRELL: Very naturally there would be; I am not in touch with it.

Mr. SEVERANCE: Yes; and the Great Northern at the time you were agent, did it have its big ships then?

Mr. FARRELL: Yes, sir.

Mr. SEVERANCE: How far did they go, to Hong Kong?

Mr. FARRELL: Yes.

Mr. SEVERANCE: And that business is procured by these agents and firms that are representing the respective lines by personal solicitation of importers, isn't it, a good deal of it?

Mr. FARRELL: Yes, I suppose that describes it generally; it is much the same, it is similar in this country or any other place.

Mr. SEVERANCE: That is all.

Mr. LOVETT: Mr. Farrell, what steamship lines between Puget Sound and Asiatic ports were in operation in 1900 and 1901, the same that you have named?

Mr. FARRELL: No, sir. The Dodwell line——

Mr. LOVETT: Running how many steamers?

Mr. FARRELL: I think they had four, they may have had five; three, and may be five.

626 Mr. LOVETT: Sailing about how often?

Mr. FARRELL: Three a little better than one a month perhaps; I think their regular line was three ships.

Mr. LOVETT: What other lines?

Mr. FARRELL: Nippon, Yusen Kaisha in connection with the Great Northern.

Mr. LOVETT: How many ships did it operate?

Mr. FARRELL: Your question was in 1900?

Mr. LOVETT: 1900, yes, or in the early part of 1901; I presume the conditions were the same in 1901 and 1900.

Mr. FARRELL: Yes. I am not certain as to whether they had in service at that time and operated these ships or not.

Mr. LOVETT: Sailing about how often?

Mr. FARRELL: I think about three weeks, though it may have been every fortnight.

Mr. LOVETT: And what other line?

Mr. FARRELL: I think those were the only two lines that year.

Mr. LOVETT: The Canadian Pacific was not operating then, was it?

Mr. FARRELL: Oh yes. I thought you meant from this port.

Mr. LOVETT: I mean from Sound ports.

Mr. FARRELL: Yes, the Canadian Pacific with five ships.

Mr. LOVETT: Sailing about how often?

Mr. FARRELL: The Empress line, so called. Every three weeks approximately, and the two other ships, I think were on an independent schedule at that time.

Mr. LOVETT: Were those the only lines operating from Sound ports in 1900 and 1901?

Mr. FARRELL: The only lines I recall.

Mr. LOVETT: Now what lines were operating out of Portland at that time, so far as you know, if any, besides the Portland & Asiatic?

Mr. FARRELL: I am not well informed as to the Portland service. They have had generally a line monthly service or better, I think.

627 Mr. LOVETT: Were you ever disturbed by any Portland competition, Portland line competitive for Asiatic business while you were in charge of the Northern Pacific Steamship Co.? Did you ever feel any competition there?

Mr. FARRELL: Yes, there was competition.

Mr. LOVETT: By what line?

Mr. FARRELL: I don't know the corporate name, but that running in connection with the Oregon Navigation Company.

Mr. LOVETT: The Portland & Asiatic?

Mr. FARRELL: The Portland & Asiatic. Yes, there was competition.

Mr. LOVETT: You don't know how often the sailings were, do you?

Mr. FARRELL: No, sir, I do not; it is my understanding they were then and are now running three ships, but I can't tell you the frequency of the sailings.

Mr. LOVETT: When did you first become connected with the Pacific Coast Company?

Mr. FARRELL: In 1898.

Mr. LOVETT: You have been connected with it ever since?

Mr. FARRELL: Until the close of 1903 actively; I have been a director continuously.

Mr. LOVETT: You have been a director since then?

Mr. FARRELL: Yes, continuously.

Mr. LOVETT: You were president of the company for a while, were you not?

Mr. FARRELL: Yes, sir.

Mr. LOVETT: During what period?

Mr. FARRELL: November 1898 until the close of December 1903.

Mr. LOVETT: When did you become connected with the Union Pacific, the Harriman interests?

Mr. FARRELL: February 1906.

Mr. LOVETT: February 1906?

Mr. FARRELL: Yes, sir.

Mr. LOVETT: You are not a representative of any Union
628 Pacific or Harriman interest in the Pacific Coast Steamship Company, are you?

Mr. FARRELL: No, sir.

Mr. LOVETT: Has either the Southern Pacific, the Union Pacific, the Oregon Railroad & Navigation Company a dollar's interest in the Pacific Coast Company so far as you know?

Mr. FARRELL: Not so far as I know, no, sir. I think Mr. Harriman has ten shares.

Mr. SEVERANCE: How many?

Mr. FARRELL: Ten I think, maybe a hundred; I don't know; merely nominal qualifying shares.

Mr. LOVETT: You have not been in active charge of the business of the Pacific Coast Company in recent years, not since you were director?

Mr. FARRELL: Not since the close of 1903, only incidentally in an advisory capacity with Mr. Ford or Mr. Kendall; not actively at all.

(Witness excused.)

M. H. HAWKINS called as a witness, having been first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live?

Mr. HAWKINS: Seattle.

Mr. SEVERANCE: And what is your business?

Mr. HAWKINS: Assistant manager of the Crescent Manufacturing Company.

Mr. SEVERANCE: In what kind of commodities do you deal?

Mr. HAWKINS: We manufacture spices, extracts, baking powders, Mapleine, importers of teas and coffees.

Mr. SEVERANCE: And in what parts of the country do you sell your goods?

Mr. HAWKINS: We have for all of our commodities Idaho, California, Oregon, Montana, Washington; and mapeline shipments go as far east as New York, Philadelphia, Pittsburg and St. Louis.

Mr. SEVERANCE: And do you also do business in Utah?

629 Mr. HAWKINS: Yes, sir, Mapleine principally.

Mr. SEVERANCE: Are you acquainted with the representatives here of the Southern Pacific and the Oregon Short Line and the O. R. & N.?

Mr. HAWKINS: I am with Mr. Rowley, Assistant Solicitor.

Mr. SEVERANCE: He works under Mr. Ellis?

Mr. HAWKINS: Yes, in Mr. Ellis's office.

Mr. SEVERANCE: And do these gentlemen come to you to solicit freight?

Mr. HAWKINS: Yes.

Mr. SEVERANCE: For what parts of the country?

Mr. HAWKINS: For New Orleans, that is westbound, New Orleans and St. Louis, and eastbound for St. Louis and Denver and Salt Lake.

Mr. SEVERANCE: New York?

Mr. HAWKINS: New York, yes.

Mr. SEVERANCE: And Utah points?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: How often do you receive a call from the representatives of these people?

Mr. HAWKINS: Oh, I suppose about four or five times a year they would drop in.

Mr. SEVERANCE: Every once in a while?

Mr. HAWKINS: Yes.

Mr. SEVERANCE: And ask for your business, do they?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: And do you give them business?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: Now when that business is going to points in the Mississippi Valley, or east, and you give it to them, do you dictate which way it shall go, whether it shall go by Sacramento and Ogden, or whether it shall go by the Oregon Short Line?

Mr. HAWKINS: We usually leave the routing open.

Mr. SEVERANCE: You usually leave the routing open?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: And they take the stuff at the station of the Northern Pacific here?

630 Mr. HAWKINS: They take it at Portland, or the Northern Pacific at Spokane.

Mr. SEVERANCE: Or the Great Northern?

Mr. HAWKINS: The Great Northern, yes.

Mr. SEVERANCE: That is, you deliver it either to the Great Northern or Northern Pacific, whichever they tell you to?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: Whichever place they tell you, and then they take it out at these gateways and take it on from there?

Mr. HAWKINS: Take it on from Portland or Spokane, yes.

Mr. SEVERANCE: And you import teas and coffees, do you?

Mr. HAWKINS: Yes.

Mr. SEVERANCE: What kind of goods do you have that are westbound that you have spoken of?

Mr. HAWKINS: We frequently get coffees from the south, from South America by way of New Orleans, and baking powder material either from Philadelphia or from St. Louis and eastern points.

Mr. SEVERANCE: And do these gentlemen coming around soliciting business, solicit business on those commodities?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: And you give them a part of your business?

Mr. HAWKINS: Yes, sir.

Mr. SEVERANCE: And they handle it whichever route they please?

Mr. HAWKINS: Yes, sir.

Mr. LOVETT: I believe we have no questions.

(Witness excused.)

Com'r LANE: We will now take an adjournment, and this hearing will be continued in Portland on Thursday morning in the Federal court.

631 PORTLAND, OREGON, *January* 24, 1907—10:00 a. m.

Com'r LANE: We will resume this morning the inquiry into the relations between the Union Pacific, the Oregon Short Line, the Oregon Railroad & Navigation Company, and the Southern Pacific System, and the effect of those relations, Mr. Severance acting for the Commission, and Judge Lovett and Mr. Cotton for the Southern Pacific and allied lines. Mr. Severance, you may call your first witness.

HENRY HAHN, being called as a witness and having been first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Hahn, where do you live?
Mr. HAHN: Portland.
Mr. SEVERANCE: How long have you lived here?
Mr. HAHN: Sixteen or seventeen years.
Mr. SEVERANCE: What is your business?
Mr. HAHN: Merchant.
Mr. SEVERANCE: Wholesale or retail.
Mr. HAHN: Wholesale grocery.
Mr. SEVERANCE: Wholesale grocery?
Mr. HAHN: Yes.
Mr. SEVERANCE: What firm are you connected with?
Mr. HAHN: Wadhams & Company.
Mr. SEVERANCE: Have you been in that business during the entire period of your residence in Portland?
Mr. HAHN: All but about one year, that was at the beginning; about sixteen years.
Mr. SEVERANCE: And where else have you been in business in Oregon aside from Portland, if anywhere?
Mr. HAHN: At Prineville, Crook County.
Mr. SEVERANCE: Have you still interests in that part of Oregon?
Mr. HAHN: We have, or I have.
Mr. SEVERANCE: What is the nature of those interests?

632 Mr. HAHN: Livestock, cattle business and sheep business.
Mr. SEVERANCE: Mr. Hahn, in getting goods for your store from the east prior to 1901, what lines or road did they come over?
Mr. HAHN: Oh, they came over the Union Pacific, the Southern Pacific, the Northern Pacific and the Great Northern.
Mr. SEVERANCE: Prior to 1901,—so you will understand the reason that I use 1901, you will recollect of hearing of the acquisition of the stock of the Southern Pacific by the Union Pacific road, I presume, several years ago?
Mr. HAHN: I do.
Mr. SEVERANCE: That was the year. Prior to that will you state whether or not you and your firm were solicited for shipments of goods from the east by these different lines of road that you have mentioned?

Mr. HAHN: They were, yes.

Mr. SEVERANCE: The Southern Pacific and the Union Pacific, or the Oregon Short Line.

Mr. HAHN: Yes.

Mr. SEVERANCE: And the Oregon Railroad & Navigation Company.

Mr. HAHN: Yes.

Mr. SEVERANCE: And the Northern Pacific.

Mr. HAHN: Yes.

Mr. SEVERANCE: Also the Great Northern.

Mr. HAHN: Also the Great Northern.

Mr. SEVERANCE: And the Southern Pacific and the Oregon Railroad & Navigation as a part of the Union Pacific System had separate solicitors, did they not?

Mr. HAHN: Separate organizations, yes, sir.

Mr. SEVERANCE: Seeking to get business for their respective roads?

Mr. HAHN: For their respective lines.

Mr. SEVERANCE: At the present time, is there competition between these lines in the solicitation of business?

Mr. HAHN: Not that is apparent to us.

633 Mr. LOVETT: In what line?

Mr. HAHN: By the same solicitors.

Mr. SEVERANCE: By the same solicitors?

Mr. HAHN: By the same solicitors, yes.

Mr. LOVETT: Between what lines?

Mr. SEVERANCE: I am speaking as between the Oregon Railroad & Navigation and the Southern Pacific?

Mr. HAHN: The Union and Southern, yes, sir.

Mr. SEVERANCE: Those roads are all represented by a single solicitor, so far as your observations go?

Mr. HAHN: Yes, so far as we are aware.

Mr. SEVERANCE: And there is no competition between one road as against the other for your business?

Mr. HAHN: No, sir, none that we know of.

Mr. SEVERANCE: Mr. Hahn, did you in those old days—I think you already stated you shipped over all these different lines formerly?

Mr. HAHN: Yes, sir.

Mr. SEVERANCE: Now, Mr. Hahn, I wish you would describe briefly the character of the country in Eastern Oregon, where you were engaged in the cattle business?

Mr. HAHN: As to the nature of its production?

Mr. SEVERANCE: Yes; the possibilities, and the cations of the people residing there.

Mr. HAHN: I didn't catch that last question.

Mr. SEVERANCE: And the avocations of the people residing in that part of the state?

Mr. HAHN: Well, aside from the immediate river counties that adjoin the transportation lines, the country is almost wholly given up to sheep, cattle and horses; the live stock interests predominate.

Mr. SEVERANCE: What is the extent of the country in a general way in miles, that is not reached by railroads?

Mr. HAHN: Oh, roughly speaking, I should say there were fifty thousand square miles of territory that is not reached by railroads.

Mr. SEVERANCE: Do the people in that part of the state raise grain to any extent?

634 Mr. HAHN: For home consumption?

Mr. SEVERANCE: They raise only for home consumption?

Mr. HAHN: Yes, sir.

Mr. SEVERANCE: That is by reason of the difficulty of transporting by wagon?

Mr. HAHN: They could not transport it by wagon; it would not be profitable.

Mr. SEVERANCE: Is the country over there adapted to raising grain if transportation facilities were offered?

Mr. HAHN: Yes, certain parts of it. I should say that from my knowledge of what I have been over, and I have been over a fair share of it, that it would be safe to say that 25 per cent. of that country is subject and capable of raising ordinary grains,—wheat, barley, potatoes and stuff of that kind.

Mr. SEVERANCE: Mr. Hahn, I will show you a map which I will have marked by the stenographer as Exhibit 1, and which I am sure must be a good map as it is the Oregon Railroad & Navigation Company's map—would you like to see it, Mr. Cotton?

Mr. COTTON: No; if you will just describe it by counties, I know the localities.

Mr. SEVERANCE: Now, I will call your attention to this map and to this country that lies between the Southern Pacific line on the west, the Oregon Short Line on the east, and the Oregon Railroad & Navigation line on the north, and will ask you if that is the country concerning which you have been speaking.

Mr. HAHN: And you want me to describe it by counties?

Mr. SEVERANCE: If you please. In general, is that the country you have been speaking of?

Mr. HAHN: That is the country, yes.

Mr. SEVERANCE: Now will you describe it by counties?

Mr. HAHN: Well, I would say Wasco, Crook, Lake, Klamath, Wheeler, Grant, Harney, Malheur, are the principal counties to which I referred.

635 Mr. SEVERANCE: Yes. Now is there any outlet by rail for that whole country except by the Southern Pacific, the Oregon Railroad & Navigation, or the Oregon Short Line, unless you go way south—well, that would be the Southern Pacific in there.

Mr. HAHN: None at present except those lines.

Mr. SEVERANCE: Except those lines?

Mr. HAHN: No, sir.

Mr. SEVERANCE: Now that map shows certain branches, very few in number, one running down to Shaniko, and one from Arlington south.

Mr. HAHN: Yes, that is to Condon.

Mr. SEVERANCE: One from Heppner, is it?

Mr. HAHN: Yes, sir.

Mr. SEVERANCE: Southeast?

Mr. HAHN: Yes.

Mr. SEVERANCE: Now, are there any other branches built into that territory other than are shown on that map, so far as you know?

Mr. HAHN: Not directly into that territory, no, sir. There is a little road out from The Dalles, a short road.

Mr. SEVERANCE: How long is it?

Mr. HAHN: Oh, I think about—it reaches in there about fifteen or twenty miles.

Mr. SEVERANCE: How long ago were those branches that now exist built?

Mr. HAHN: Well, the Condon road has only been built here lately, about a year.

Mr. SEVERANCE: What is that road?

Mr. HAHN: The Condon road, the Condon branch.

Mr. SEVERANCE: Where does that run?

Mr. HAHN: From Arlington to Condon.

Mr. SEVERANCE: How long is that about?

Mr. HAHN: I think it is about forty odd miles.

Mr. SEVERANCE: Yes; is that the middle one or the eastern one?

Mr. HAHN: The middle one.

Mr. SEVERANCE: That is the middle one of the three?

636 Mr. HAHN: Yes, sir.

Mr. SEVERANCE: How long ago was the Columbia Southern built, the line down to Shaniko?

Mr. HAHN: I think that it is about three or four years.

Mr. SEVERANCE: Well, who built that line, if you know?

Mr. HAHN: Well, Lytle and his associates, I don't know who they were. Originally Lytle and O'Reilly were known as the principal movers in the proposition.

Mr. SEVERANCE: Well, that road is started down toward a fruitful country, isn't it?

Mr. HAHN: Yes.

Mr. SEVERANCE: And started toward the country that you described as suitable for agriculture?

Mr. HAHN: Yes, sir.

Mr. SEVERANCE: Is there a lot of timber in that part of the state?

Mr. HAHN: Yes. There is the east slope of the Cascade Range and the spurs of the Blue Mountains are all covered with timber; this tier of counties in here (referring to Hahn's Exhibit 1 and indicating on same), Klamath, Crook, and that tier of counties has quite an extensive belt of timber which represents the eastern slope of the Cascade Range.

Mr. SEVERANCE: Do you know Mr. E. H. Harriman?

Mr. HAHN: By reputation.

Mr. SEVERANCE: Do you know him by sight?

Mr. HAHN: No, sir, I never met the gentleman.

Mr. SEVERANCE: You never met him. Were you present at the Arlington Club in this city some years ago when he made an address here on the subject of the extension of the Columbia Southern road?

Mr. HAHN: No, sir, I was not.

Mr. SEVERANCE: You were not present at that meeting?

Mr. HAHN: No, sir.

Mr. SEVERANCE: That was a matter of public knowledge, however, immediately afterwards, wasn't it?

637 Mr. HAHN: Yes, sir.

Mr. SEVERANCE: And he at that time stated that he proposed to extend the Columbia Southern down to Bend, didn't he, or some other point?

Com'r LANE: You had better prove that by somebody else; this witness says he didn't hear the statement.

Mr. SEVERANCE: He said it was common knowledge here. I will ask him what the common report was.

Mr. LOVETT: Why don't you introduce newspapers and almanacs?

Mr. SEVERANCE: Do you prefer to have me prove that by somebody else?

Mr. LOVETT: I don't understand we are here interested in that matter at all

Mr. SEVERANCE: Yes, we are interested in it.

Mr. LOVETT: The Commission can make the investigation as wide as it sees proper; I don't think we have a right to object.

Mr. SEVERANCE: Beg pardon?

Mr. LOVETT: As I understand, the Commission can make the scope of the investigation as wide as it sees proper; it is not a question of materiality so far as we are concerned.

Com'r LANE: I think that the evidence you now purpose introducing is too remote, Mr. Severance. If there are any statements or admissions that were made by Mr. Harriman they can be proved directly at least.

Mr. SEVERANCE: Very well. I misunderstood Mr. Hahn; I talked with him yesterday; I understood him to say that he was present when this statement was made, which was made to a large number of gentlemen, I understand, and I understood Mr. Hahn that he was present; that was a misunderstanding. Now, do you know anything, Mr. Hahn, of the number of people settling around on agency claims after these reports were made that Mr. Harriman purposed to extend that line down there?

Mr. HAHN: Yes; on the strength of the road being extended there was quite a settlement went in there and took up the govern-

638 ment lands on the agency plan, probably to the extent of,—oh, four or five hundred claims were taken up in there.

Mr. SEVERANCE: Several hundred families still there?

Mr. HAHN: Yes; there must be at least somewheres about four hundred, between four and five hundred.

Mr. SEVERANCE: The road has not been extended down below Shaniko, has it?

Mr. HAHN: No, sir.

Mr. SEVERANCE: What is the mode of getting the productions of that region to market?

Mr. HAHN: Wagon.

Mr. SEVERANCE: That is all, I think.

Com'r LANE: You may cross-examine.

Mr. COTTON: We have no examination, your honor.

(Witness Excused.)

E. NEWBEGIN, called as a witness, having been first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Newbegin, where do you live?

Mr. NEWBEGIN: Portland.

Mr. SEVERANCE: And how long have you lived in Portland?

Mr. NEWBEGIN: About eight years.

Mr. SEVERANCE: Where did you come from when you came to Portland?

Mr. NEWBEGIN: Seattle?

Mr. SEVERANCE: What is your business, Mr. Newbegin?

Mr. NEWBEGIN: Agricultural implements.

Mr. SEVERANCE: What is the name of your firm?

Mr. NEWBEGIN: R. M. Wade & Co.

Mr. SEVERANCE: Do you deal in all kinds of agricultural implements?

Mr. NEWBEGIN: I can't say that we do. We deal in that class of implements that is used in this territory, but not all kinds.

639 Mr. SEVERANCE: What kinds do you deal in?

Mr. NEWBEGIN: Well, plows, harrows, wagons and drills, garden tools and such stuff as used on the farm in this territory.

Mr. SEVERANCE: You have a very large warehouse across the river here, haven't you? It may not seem large to you, it seems large to me.

Mr. NEWBEGIN: Well, that might depend on what would be called large; we have a warehouse.

Mr. SEVERANCE: Well, it extends from one street to the other.

Mr. NEWBEGIN: Some people might call it large, but some would call it small; a farmer would probably call it large.

Mr. SEVERANCE: Well, it extends through from one street to the other, doesn't it?

Mr. NEWBEGIN: Yes, sir, it is a whole city block.

Mr. SEVERANCE: And that is the warehouse at which your office is located, isn't it?

Mr. NEWBEGIN: Yes, sir.

Mr. SEVERANCE: And at which you transact this business.

Mr. NEWBEGIN: Yes, sir.

Mr. SEVERANCE: What railroad tracks, if any, come by your warehouse?

Mr. NEWBEGIN: Well, the main lines of the Southern Pacific go by, and we have a switch of the O. R. & N. on one side.

Mr. SEVERANCE: Now, Mr. Newbegin, you recall, do you not, the time that it first became public in 1901 that the Union Pacific had acquired the Southern Pacific stock?

Mr. NEWBEGIN: Well, I can't say——

Mr. SEVERANCE: I don't ask you to give the date, but do you remember the circumstance?

Mr. NEWBEGIN: I can't give the date, but like most anyone, I am familiar with the newspaper reports of such affairs; but I am not posted on it.

Mr. SEVERANCE: I understand, but you knew at the time the report was made public five or six years ago?

640 Mr. NEWBEGIN: I probably knew it at the time, yes.

Mr. SEVERANCE: Yes. Now prior to that time, Mr. Newbegin, over what line of road did you ship your goods from the east?

Mr. NEWBEGIN: Well, we shipped most of our freight, that is my predecessor had been routing most of the freight Southern Pacific, and I followed his footsteps.

Mr. SEVERANCE: Well, by Southern Pacific, which route do you mean, both routes, or one.

Mr. NEWBEGIN: No, by Ogden; that is, the major part of it, of course not all of it; but the larger portion via Ogden via Sacramento.

Mr. SEVERANCE: Yes, sir. Did the Southern Pacific connect with some road east of Ogden at that time over which your goods came, aside from the Union Pacific?

Mr. NEWBEGIN: Well, I don't know in regard to the connection. We used to route our stuff by the Rio Grande to Ogden and some connecting line of the Rio Grande road, I think, from Ogden. I am not positive on those roads back there; I have never been east; it was the Rio Grande road and the Colorado Midland, I think.

Mr. SEVERANCE: And thence over the Southern Pacific to Sacramento and up to Portland?

Mr. NEWBEGIN: Yes.

Mr. SEVERANCE: Did the Southern Pacific have a separate solicitor of traffic at that time?

Mr. NEWBEGIN: Yes, I think so.

Mr. SEVERANCE: And did the other roads coming into Portland have solicitors for traffic?

Mr. NEWBEGIN: How is that?

Mr. SEVERANCE: And did the other lines of roads coming in here have solicitors of traffic?

Mr. NEWBEGIN: I think they all did from the number of them.

Mr. SEVERANCE: And they were constantly calling on you soliciting business, weren't they?

Mr. NEWBEGIN: Yes.

641 Mr. SEVERANCE: From what part of the east do you get your goods?

Mr. NEWBEGIN: Well, we ship it from various parts. We ship some from Missouri, Indiana, Illinois, New Jersey, Pennsylvania, Michigan, Minnesota—different parts of the eastern states.

Mr. SEVERANCE: Now, Mr. Newbegin, over what line are you getting your goods at present?

Mr. NEWBEGIN: Well, we ship partly over the Union Pacific and partly the Northern lines.

Mr. SEVERANCE: By the Union Pacific do you mean via the Oregon Railroad & Navigation?

Mr. NEWBEGIN: Yes, the Oregon Short Line. Of course the Union Pacific gets in here now by the Oregon Short Line and the O. R. & N.

Mr. SEVERANCE: And do you ship now over the Sacramento route?

Mr. NEWBEGIN: No.

Mr. SEVERANCE: Are you solicited to ship by that route by the agents of the Southern Pacific?

Mr. NEWBEGIN: Not to my knowledge.

Mr. SEVERANCE: Are you still called on by soliciting agents of the other lines?

Mr. NEWBEGIN: Yes.

Mr. SEVERANCE: And the Northern lines?

Mr. NEWBEGIN: Yes.

Mr. SEVERANCE: And the O. R. & N.?

Mr. NEWBEGIN: The O. R. & N. and Union Pacific, yes.

Mr. SEVERANCE: Do you remember, Mr. Newbegin, of the diversion of a shipment of yours at about the time this common ownership took place?

Mr. NEWBEGIN: I don't know whether it was about the time that the common ownership took place, but I know it was about the time the Ogden gateway closed, they diverted some cars to us; if it was at the time of the common ownership, I don't remember distinctly about that.

Mr. SEVERANCE: What was the fact about that diversion of cars?

642 Mr. NEWBEGIN: Why, we had some freight that we had ordered in the regular course of business and routed by the lines we had usually routed our freight, and before this stuff had moved the railroads had closed this Ogden gateway, and without consulting us they sent it around the Oregon Short Line and the O. R. & N.

Mr. SEVERANCE: That is, you had routed the commodities by way of the Rio Grande and the Southern Pacific, Sacramento route?

Mr. NEWBEGIN: I would not say that it was the Rio Grande, but it was the roads connecting into Ogden; I don't know whether it was the Colorado Midland; I don't know which road it was; I don't remember. Of course it was so far back, we pay very little attention to those things and I have not had occasion to look it up.

Mr. SEVERANCE: But you do remember it as routed here by way of the Sacramento route?

Mr. NEWBEGIN: Yes.

Mr. SEVERANCE: And you say the Ogden gateway was closed and stuff diverted from the North——

Mr. NEWBEGIN (interrupting): I would not say that it was closed; I understand that it was closed.

Mr. SEVERANCE: At any rate the shipment was diverted.

Mr. NEWBEGIN: At any rate, in place of bringing it around by Sacramento they brought it in by the Oregon Short Line.

Com'r LANE: You have not fixed that time; can you approximate that time?

Mr. SEVERANCE: Can you tell what that was?

Mr. NEWBEGIN: No, I could not tell from memory; I could not tell without referring to the correspondence.

Mr. SEVERANCE: Would you say it was five or six years ago?

Mr. NEWBEGIN: I would say it was several years ago.

Mr. COTTON: You have your correspondence here in town, haven't you, Mr. Newbegin?

643 Mr. NEWBEGIN: I expect I could find it, yes.

Mr. COTTON: I wish you would kindly refer to it and find out the date.

Mr. NEWBEGIN: I think I can give you the exact date.

Mr. COTTON: Yes, get the exact date, please.

Mr. SEVERANCE: Yes, I would be glad if you would do that.

Mr. NEWBEGIN: Yes; I can get you the exact date, but I could not give it from memory.

Mr. COTTON: I understand the difficulty about that; that is the reason I want you to look up the correspondence.

Mr. SEVERANCE: What did you say, Mr. Cotton?

Mr. COTTON: I say, I understand the trouble of detailing from memory; that is the reason I want him to look up the correspondence.

Mr. SEVERANCE: Do you recall from memory whether that took place after you heard of the common ownership of these properties?

Mr. NEWBEGIN: Well now, I would not like to say, but I would judge so anyway; I would not like to swear that it was so, because I don't know.

Mr. SEVERANCE: Mr. Newbegin, were you present when Mr. Hahn was describing this country in eastern Oregon?

Mr. NEWBEGIN: I think I came in just as he had finished; you were up here with a map; I don't know what was going on, I could not hear very well.

Mr. SEVERANCE: Are you under present conditions able to do business to a large extent in the country not reached directly by railroads in eastern Oregon?

Mr. NEWBEGIN: I don't know as I quite follow your remark, Mr. Severance.

Mr. SEVERANCE: I say, are you now able to wholesale goods into the country not reached by railroads in eastern Oregon, and if so what means have you of getting the goods there?

Mr. NEWBEGIN: We are on the same basis with our other competitors.

644 Mr. SEVERANCE: I understand; your goods have to be taken in there overland by team.

Mr. NEWBEGIN: In some portions, yes, from the railroad they take it by team.

Mr. SEVERANCE: Have you ever been over in that country yourself?

Mr. NEWBEGIN: No, I never was over in there.

Mr. SEVERANCE: You have not. Could you look up the correspondence you think by this afternoon, Mr. Newbegin?

Mr. NEWBEGIN: I will try. If you will excuse me as soon as I get through here I will go back and see if I can find it.

Mr. SEVERANCE: Yes, all right. Could you give any estimate as to the number of carloads of commodities per year that you shipped into Portland, Mr Newbegin?

Mr. NEWBEGIN: No, I don't know as I could; we never thought enough of it to look it up to see; we are more interested in getting new cars than we are the old ones; I don't know.

Mr. SEVERANCE: Several hundred at least?

Mr. NEWBEGIN: Well I would not like to say, Mr. Severance, because I don't know.

Mr. SEVERANCE: Well, you do an active business in your line?

Mr. NEWBEGIN: We try to get our share, Mr. Severance.

Mr. SEVERANCE: Yes. You may examine. I would like for you to come back with that data.

Mr. COTTON: Mr. Newbegin, where does this freight come from that was diverted; where was it coming from when it was diverted?

Mr. NEWBEGIN: Well now, Mr. Cotton, I am in about the same fix with you as with Mr. Severance; I would have to look it up; I could not say.

Mr. COTTON: All right; I suppose you will find it, and with Mr. Severance's permission I will reserve my cross examination until after Mr. Newbegin looks this up a little bit.

645 Mr. NEWBEGIN: I think I can find the original orders, I am not sure. It may take me longer than I think for, because I don't know just the years.

Mr. SEVERANCE: Well, I will say for your assistance that this purchase was in 1901. Would you rather be excused until to-morrow morning or this afternoon?

Mr. NEWBEGIN: Tomorrow morning will suit me better. I have some other matters I would like to attend to this afternoon.

Mr. COTTON: Yes; that will probably expedite matters, after refreshing his memory.

Mr. NEWBEGIN: If necessary, perhaps I can bring in the documentary evidence, if you would like to see it.

Mr. SEVERANCE: You had better bring it in; I think Mr. Cotton would perhaps like to see it.

(Witness Excused).

T. D. HONEYMAN, called as a witness, being first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live?

Mr. HONEYMAN: Portland.

Mr. SEVERANCE: And what is your business?

Mr. HONEYMAN: Wholesale and retail hardware.

Mr. SEVERANCE: How long have you been in business, Mr. Honeyman?

Mr. HONEYMAN: About thirty years.

Mr. SEVERANCE: Twenty years here in Portland?

Mr. HONEYMAN: Thirty years; yes, sir.

Mr. SEVERANCE: In the same line of business?

Mr. HONEYMAN: Yes, sir.

Mr. SEVERANCE: From what points, Mr. Honeyman, do you import into Portland your stock that you handle?

Mr. HONEYMAN: Our goods originate in all the manufacturing centers in this country.

Mr. SEVERANCE: That means the Atlantic Seaboard and the interior states?

Mr. HONEYMAN: Yes, sir.

646 Mr. SEVERANCE: You remember of hearing several years

ago of the acquisition of the stock of the Southern Pacific road by the Union Pacific, do you not, Mr. Honeyman?

Mr. HONEYMAN: I remember when the matter became public, yes.

Mr. SEVERANCE: Prior to that time will you state whether there was any competition here at Portland between the soliciting agents of the Oregon Railroad & Navigation Company and the Southern Pacific as well as the Northern Pacific or shipments from the east?

Mr. HONEYMAN: Yes, there was competition.

Mr. SEVERANCE: That was rather active at that time, Mr. Honeyman?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: And over what lines did you ship your goods coming into Portland in those days?

Mr. HONEYMAN: Over all the transcontinental lines, the Southern Pacific, O. R. & N., Northern, and the Great Northern.

Mr. SEVERANCE: By the Southern Pacific do you mean both the Sunset route around by boat and rail by the south, and also the Sacramento route?

Mr. HONEYMAN: The Sunset route by boat and rail to the south?

Mr. SEVERANCE: Yes.

Mr. HONEYMAN: We shipped some goods via Sacramento.

Mr. SEVERANCE: Yes; and also shipped over the Union Pacific, the Short Line and the O. R. & N.?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: And the Northern road?

Mr. HONEYMAN: Yes, sir.

Mr. SEVERANCE: Now at the present time, Mr. Honeyman, are you solicited for shipments via the Sunset route?

Mr. HONEYMAN: The details of solicitation, or the details of shipments I have turned over to employés.

Mr. SEVERANCE: To Mr. Hall?

647 Mr. HONEYMAN: Yes.

Mr. SEVERANCE: And you don't meet the solicitors at all yourself now?

Mr. HONEYMAN: No, sir.

Mr. SEVERANCE: Now in those days was there also another method of shipment by way of Panama, thence by boats of the Oregon Railroad & Navigation Co.?

Mr. HONEYMAN: Yes, that still exists.

Mr. SEVERANCE: That still exists, and you ship that way at times?

Mr. HONEYMAN: Yes, we move large quantities that way.

Mr. SEVERANCE: And were there soliciting agents working that line too who called on you?

Mr. HONEYMAN: No.

Mr. SEVERANCE: That was routed east?

Mr. HONEYMAN: It was a rate, or the route was of common knowledge on account of the rates being much less than the railroads and it didn't need solicitation.

Mr. SEVERANCE: Yes. Now were there also lines of boats coming around Cape Horn up to San Francisco and thence trans-shipped here via the O. R. & N.?

Mr. HONEYMAN: Yes.
Mr. SEVERANCE: And still are.
Mr. HONEYMAN: Yes.
Mr. SEVERANCE: And did you ship by that route at times?
Mr. HONEYMAN: Yes, great quantities.
Mr. COTTON: Mr. Honeyman, how many lines of transportation are there competing here at the present time for your business; that is, over which you can ship? You have mentioned two water lines, have you not?
Mr. HONEYMAN: We have the American Hawaiian line and the Panama line.
Mr. COTTON: And the Northern Pacific?
Mr. HONEYMAN: The Northern Pacific.
Mr. COTTON: Great Northern?
Mr. HONEYMAN: Great Northen.
648 Mr. COTTON: Union Pacific?
Mr. HONEYMAN: Union Pacific.
Mr. COTTON: And Southern Pacific Sunset?
Mr. HONEYMAN: And I presume the Southern Pacific Sunset is still in existence.
Mr. COTTON: You don't know where you get your goods from, do you? That is, do you ship from the Atlantic seaboard at all?
Mr. HONEYMAN: Sunset from the Atlantic seaboard?
Mr. COTTON: Yes.
Mr. HONEYMAN: We do not, Mr. Cotton. The rates, the Sunset being the same as the northern lines, it is not to our advantage to ship Sunset, it is a long, circuitous route.
Mr. COTTON: Then the goods you ship from the Atlantic seaboard which might be in competition with the Sunset you usually bring in here by ocean; do you not?
Mr. HONEYMAN: Yes.
Mr. COTTON: By the Panama line or the American Hawaiian line.
Mr. HONEYMAN: Yes.
Mr. COTTON: Are your shipments by the Panama line and the American Hawaiian line large or small?
Mr. HONEYMAN: They are large.
Mr. COTTON: You are quite heavy ocean shippers, are you not?
Mr. HONEYMAN: Yes.
Mr. COTTON: Comparatively?
Mr. HONEYMAN: Yes.
Mr. COTTON: Have you any objection to telling relatively what proportion of your goods are received by ocean and what proportion by rail in this city?
Mr. HONEYMAN: I would be unable to tell that.
Mr. COTTON: From the Atlantic Seaboard?
Mr. HONEYMAN: I would be unable to tell that without referring to our figures, but the tonnage is a considerable item. Every pound that we can move that way we do.
649 Mr. COTTON: You move everything by sea you can from the Atlantic seaboard?

Mr. *Honeyman:* Therefore, you are not interested in the Sunset route as such?

Mr. HONEYMAN: No.

Mr. COTTON: Now from the railroad country in the interior,—Missouri, Chicago,—do you ship from Missouri, or only from Chicago?

Mr. HONEYMAN: From Chicago and points east. Very little this side of Chicago.

Mr. COTTON: Very little this side of Chicago.

Mr. HONEYMAN: Yes, very little this side of Chicago.

Mr. COTTON: Now, from that section of the country what competing lines are there?

Mr. HONEYMAN: The solicitation competition from that territory has always been done by the middle west lines, with the Missouri River lines.

Mr. COTTON: About how many of the Missouri River lines are soliciting your business from Chicago points here at the present time?

Mr. HONEYMAN: Well, from the number of solicitors that come into the store, I think that all the lines are represented, which would include the Burlington, the Great Northern, the Milwaukee——

Mr. COTTON: Rock Island?

Mr. HONEYMAN: Rock Island.

Mr. COTTON: Northwestern?

Mr. HONEYMAN: I think the Northwestern, yes.

Mr. COTTON: Illinois Central?

Mr. HONEYMAN: Illinois Central.

Mr. COTTON: And all the so-called Iowa roads are working for your business at the present time?

Mr. HONEYMAN: Yes.

Mr. COTTON: And they are routed either over the—are the Rio Grande soliciting business too?

Mr. HONEYMAN: I don't know, Mr. Cotton.

Mr. COTTON: These Iowa roads route their business into this city either over the Northern Pacific, or the Great Northern, or the Union; isn't that right?

650 Mr. HONEYMAN: Yes.

Mr. COTTON: You ship all three ways?

Mr. HONEYMAN: Yes.

Mr. COTTON: The Great Northern reaches this city by what route?

Mr. HONEYMAN: Over the O. R. & N.

Mr. COTTON: It comes in over the O. R. & N. from Spokane?

Mr. HONEYMAN: From Spokane, yes.

Mr. COTTON: You do much shipping that way?

Mr. HONEYMAN: Yes, we have given them quite a little business.

Mr. COTTON: And all of these roads have their solicitors, and they are all visiting you?

Mr. HONEYMAN: Yes.

Mr. COTTON: And as far as your business is concerned you have many ways of shipping besides the Harriman line, haven't you?

Mr. HONEYMAN: We have plenty ways to get goods in here.

Com'r LANE: Do you route your own business, or do you leave that to the consignor?

Mr. HONEYMAN: We route our own business with the exception of possibly some stuff that is controlled by some of the larger corporations who insist on making their own deliveries, referring to the U. S. Steel Co., for instance.

Com'r LANE: You route your own business with the exception of some of the large corporations, such as the U. S. Steel Co., who insist on the right to route their own business?

Mr. HONEYMAN: Yes.

Com'r LANE: That is all, Mr. Honeyman.

Mr. SEVERANCE: Just one moment, Mr. Honeyman. In the old days when you were shipping as you said somewhat by the Sunset, and by the——

Mr. COTTON: I don't understand that the witness said he ever shipped by the Sunset.

Mr. SEVERANCE: He said he did.

Mr. HONEYMAN: Yes; we shipped by the Sunset.

651 Mr. COTTON: In the old days?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: That is what he said; I remember that brought out the question whether the Sunset was still in existence.

Mr. HONEYMAN: We ship by the Sunset when it is to our advantage; owing to conditions.

Mr. SEVERANCE: I was going to ask you in the old days if the Sunset route and Southern Pacific into Portland did not compete by way of reducing rates as against the Union Pacific and its connections?

Mr. HONEYMAN: The Sunset route used to make low rates into San Francisco forced by steamer conditions to that point, and we used to take advantage of them by adding the steamer or rail local from San Francisco here which made a lower combination.

Mr. SEVERANCE: The soliciting agents of the Sunset and these other lines in the old days, and of the Sacramento route, all of them used to compete at times by way of reducing rates, didn't they, so you could get a better route by one line than by the other.

Mr. HONEYMAN: The published tariffs that were in effect to San Francisco made it to our advantage to ship——

Mr. SEVERANCE: I understand that, but there were sometimes when shipments made to Portland,—and I don't mean recently but years ago,—when these competitive differences existed much less than published rates, were they not?

Mr. HONEYMAN: We never had any offers from the Southern Pacific officials better than——

Mr. SEVERANCE: Better than the published rates?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: But that difference in the rates that you have spoken of existed, and enabled you to——

Mr. HONEYMAN: Yes, combination of rates.

Mr. SEVERANCE: Yes, bettered you to ship that way?

Mr. HONEYMAN: Yes.

Mr. COTTON: There was a time, Mr. Honeyman, in the
652 old days to which Mr. Severance refers, practically every transcontinental shipment coming in here except on a few of the lines came in at a rate less than tariff, isn't that so?

Mr. HONEYMAN: Yes.

Mr. COTTON: And are you referring to those old days when you are talking to Mr. Severance?

Mr. HONEYMAN: I was referring to those days, yes.

Mr. COTTON: But you say you did not receive any offer of a cut rate in those old days from the Southern Pacific?

Mr. HONEYMAN: I never had an offer from the Southern Pacific.

Mr. SEVERANCE: But you did from the O. R. & N. as competing with the Southern Pacific and the Sunset Route?

Mr. HONEYMAN: Well——

Mr. SEVERANCE: To the best of your recollection?

Mr. HONEYMAN: Would I be compelled to answer a matter?

Mr. SEVERANCE: You have already answered everything moved in here on low rates. I don't care whether you answer it if you don't want to.

Mr. COTTON: I would just as soon have him answer so far as I am concerned.

Com'r LANE: There was a time when that was universal.

Mr. SEVERANCE: Yes, that was universal.

Com'r LANE: I don't understand the witness to testify, however, that it was because of competition in rebates between the two lines that he shipped over the Southern Pacific.

Mr. SEVERANCE: Let me ask the question in this way, Mr. Honeyman; when that combination existed which gave you a low rate over the Southern Pacific and Sunset Route, didn't the Oregon Railroad & Navigation Company at its eastern connection with the Union Pacific meet that by a cut in the published rate in order to get business?

Mr. HONEYMAN: No; the rates were established from the
653 Atlantic to the California points to meet water competition.

Mr. SEVERANCE: I understand that.

Mr. HONEYMAN: And existed for a long time before the Northern lines followed suit. Ultimately they were forced to it and published the same rates. When they did that the business began to move north.

Mr. SEVERANCE: You stated in answer to Mr. Cotton a moment ago there was a time when nearly everything moved in there at less than a published tariff?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: Now that was a time when these roads were all competing for business, wasn't it?

Mr. HONEYMAN: But it did not necessarily apply between the O. R. & N. and the Sunset route.

Mr. SEVERANCE: Oh, I don't mean simply between them, but all the lines were competing for the business and were cutting the rates.

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: At that time, weren't they?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: Trying to get the business as against the Sunset, and as against the O. R. & N., and as against the Northern Pacific and all of them, each one trying to get the business?

Mr. HONEYMAN: Yes, cutting the rates below the tariff.

Mr. SEVERANCE: To get the business.

Mr. HONEYMAN: Yes, that was all stopped by the Interstate Commerce Law.

Mr. SEVERANCE: Yes, that is all.

(Witness Excused.)

O. O. HALL, being called as a witness, having been first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Hall, where do you live?

Mr. HALL: Portland.

Mr. SEVERANCE: What is your business?

654 Mr. HALL: Employed with the Honeyman Hardware Co.

Mr. SEVERANCE: In what capacity do you work for them, sir.

Mr. HALL: I look after ther freight shipments.

Mr. SEVERANCE: How long have you been with them?

Mr. HALL: A little over four years.

Mr. SEVERANCE: Before that time what was your business?

Mr. HALL: I was employed with the O. R. & N. Company.

Mr. SEVERANCE: Are you called on at your office, Mr. Hall, by gentlemen soliciting freight?

Mr. HALL: I am, yes, sir.

Mr. SEVERANCE: Quite frequently?

Mr. HALL: Not so much so as I was in the past. I shut them off a little.

Mr. SEVERANCE: But they have been around?

Mr. HALL: Oh yes, they come around.

Mr. SEVERANCE: Now when the contracting freight agents of the Harriman lines, so-called,—as that expression was used by Mr. Cotton a few minutes ago, I will assume to use it, when those gentlemen come around to see you do they solicit freight for the Sunset route or the Sacramento route or simply for the Harriman line?

Mr. HALL: They solicit for the Harriman lines; they don't mention which routing.

Mr. SEVERANCE: Now you ship a good deal of your stuff over the O. R. & N., don't you?

Mr. HALL: Yes, sir.

Mr. SEVERANCE: And how does that come out from the east; take it from the Atlantic seaboard territory.

Mr. HALL: Well, by the various lines; that means all of them; and by all of them, I mean the majority of them; there might be some that we don't use.

Mr. SEVERANCE: Well, Mr. Hall, take the shipments to—I suppose you make shipments by the lakes, don't you, having heavy stuff to ship?

655 Mr. HALL: Yes, sir.

Mr. SEVERANCE: To what ports on the lake does your stuff go?

Mr. HALL: You mean the western port?

Mr. SEVERANCE: To what upper lake ports do you ship from the east?

Mr. HALL: West Superior, Duluth, Chicago, Milwaukee.

Mr. SEVERANCE: And from thence how does your stuff move?

Mr. HALL: From the Northern ports it would move Great Northern and Northern Pacific; from the Chicago and Milwaukee ports ports it would move by some of the Iowa lines.

Mr. SEVERANCE: To Omaha?

Mr. HALL: To Omaha.

Mr. SEVERANCE: Do you sometimes also move stuff Duluth to Omaha by the C. St. P. M. & O.?

Mr. HALL: Yes, frequently.

Mr. SEVERANCE: You are solicited to ship by the Northern Pacific, are your not; their solicitor calls on you, doesn't he?

Mr. HALL: Yes, sir.

Mr. SEVERANCE: And the Great Northern?

Mr. HALL: Yes, sir.

Mr. SEVERANCE: The Canadian Pacific; or don't they come in?

Mr. HALL: No, sir.

Mr. COTTON: Mr. Hall, you are solicited now by the freight agents of all the Iowa roads, are you not?

Mr. HALL: With the possible exception of one or two, yes, sir.

Mr. COTTON: And they ship over the Union Pacific, also over the Northern Pacific, don't they too?

Mr. HALL: If we route it that way, yes, sir.

Mr. COTTON: And there has been no limitation on the manner in which you can route your freight?

Mr. HALL: None whatever.

Mr. COTTON: What?

656 Mr. HALL: None whatever on the freight that we control.

Mr. COTTON: You route your freight in here anyway that you want to?

Mr. HALL: Yes, sir.

Mr. COTTON: Now, when your stuff comes over the lakes and comes out here by way of the Great Northern, how does it reach Portland from Spokane?

Mr. HALL: By the O. R. & N.

Mr. COTTON: On the O. R. & N. line? If it comes out by one of the Iowa lines that delivers it at Omaha, it comes in here by way of Huntington?

Mr. HALL: Yes.

Mr. COTTON: The Northern Pacific is actively engaged in business here and brings some stuff for you, doesn't it?

Mr. HALL: Yes, sir.

Mr. SEVERANCE: And there has been no limitation on any route you know of to your knowledge over which you can send your goods.

Mr. HALL: None whatever, to my knowledge.

Mr. SEVERANCE: In the case of the Harriman lines you say they merely solicit business for the Harriman line; they route it all by way of the Oregon Railroad & Navigation in here, do they not?

Mr. HALL: They don't route any of it; I route the freight.

Mr. SEVERANCE: Well, you bring it in that way; it does not come by Sacramento, does it?

Mr. HALL: It does not come by Sacramento, no, sir.

Mr. SEVERANCE: And you are not solicited by anybody representing the Harriman lines to allow it to come that way, are you?

Mr. HALL: We are not requested to let it come that way.

Mr. SEVERANCE: No, sir; nor are you requested to let it come by the Sunset route, are you?

Mr. HALL: Yes, sir.

Mr. COTTON: You can ship Sacramento or Sunset if you want to, can't you?

657 Mr. HALL: Now, I don't know whether the rates apply to Portland; I think they do; I have a copy of the tariff, but I don't keep up on it.

Mr. SEVERANCE: You do your own routing, do you?

Mr. HALL: Yes, sir.

(Witness Excused.)

J. K. GILL, being called as a witness and having been first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Gill?

Mr. GILL: Portland.

Mr. SEVERANCE: How long have you lived here?

Mr GILL: About 35 years.

Mr. SEVERANCE: What is your business?

Mr. GILL: Wholesale and retail stationery and books.

Mr. SEVERANCE: You have the principal store of that kind in Portland, do you not?

Mr. GILL: Yes, we carry a large line of stock.

Mr. SEVERANCE: Mr. Gill, you remember prior to the time in common talk that the Southern Pacific and Union Pacific united, or the stock of one was owned by the other, which way your goods were routed out here from the east?

Mr. GILL: Why, they were routed a variety of ways. We have always shipped some goods by water and some by rail.

Mr. SEVERANCE: Some by water and some by rail?

Mr. GILL: Yes.

Mr. SEVERANCE: And over what lines of rail did you ship in these days?

Mr. GILL: Generally by the Union Pacific and the O. R. & N., and sometimes by the—well, we used all the lines, but mainly the O. R. & N. and Northern Pacific.

Mr. SEVERANCE: And were you in those days solicited for shipments by the Southern Pacific and did you sometimes ship that way?

Mr. GILL: Yes, we sometimes shipped that way but not
658 frequently.

Mr. SEVERANCE: No, not frequently; the most of your goods came over the other roads?

Mr. GILL: More direct; yes, sir.

Mr. SEVERANCE: But in those days you were called upon and solicited for shipments that way, were you not?

Mr. GILL: Yes, we were occasionally.

Mr. SEVERANCE: And did your shipments that way come both by the Sunset route and by Sacramento in response to those solicitations?

Mr. GILL: Usually by the Sunset, by the American water lines.

Mr. SEVERANCE: The Morgan line of boats and the rails?

Mr. GILL: Yes, we used that route mostly in those days when we came by the Southern route.

Mr. SEVERANCE: Now at the present time, are you solicited for shipments via that route by any representative?

Mr. GILL: Not to my knowledge. I don't meet as many of the solicitors; one of our men handles the freight; but I think we are seldom solicited to ship that way if at all.

Mr. SEVERANCE: You don't know that you are solicited to ship that way at all, do you, Mr. Gill?

Mr. GILL: I don't know; my impression is we are not.

Mr. SEVERANCE: Who is the gentleman in your store who is met by these solicitors?

Mr. GILL: Mr. Montgomery, manager of our wholesale department would see more than I would, or the young man that handles the freight.

Mr. SEVERANCE: You are still solicited for shipments by the other lines at times?

Mr. GILL: Why, by the lines of the middle west, the lines east of Omaha; we have solicitations from them frequently.

Mr. SEVERANCE: And for the Northern Pacific and Great Northern?

Mr. GILL: Not so much from them; occasionally from the
659 Northern Pacific and the Great Northern, not often.

Mr. COTTON: You have always comparatively been a heavy ocean shipper, have you not, Mr. Gill?

Mr. GILL: Yes, that is true.

Mr. COTTON: By the Panama route until the American Hawaiian line recently giving better service.

Mr. GILL: Yes; formerly by the sailing vessels and later by the Panama lines.

Mr. COTTON: Are you still an ocean shipper?

Mr. GILL: Yes.

Mr. COTTON: Your Atlantic seaboard stuff comes in largely by ocean, doesn't it?

Mr. GILL: The heavy lines do, yes.

Mr. COTTON: And the other lines come what way?

Mr. GILL: Why, most of our stock originates in New England and

New York points, and if it does not come by water it comes mainly by the Union Pacific and the O. R. & N.

Mr. COTTON: And your manner of shipment has not changed now from what it was, but it has practically gone along in the same way, hasn't it?

Mr. GILL: Why I won't say, except we might perhaps,—I think we do ship a larger proportion of rail stock by the O. R. & N. than we formerly did.

Mr. COTTON: But that has not been a diversion from the Sunset route of the Southern Pacific particularly?

Mr. GILL: No, not at all.

Mr. COTTON: The Sunset route and Southern Pacific are still open to you if you wish to ship that way, are they not?

Mr GILL: Yes, we could ship that way.

Mr. COTTON: You don't know of any limitation upon your routing or manner of shipment?

Mr. GILL: No, I do not.

Mr. COTTON: That is all, sir.

Mr. SEVERANCE: Mr. Gill, I think you stated in answer to my question that you did at times ship by the Sunset in the old days and by Sacramento?

Mr. GILL: I did, yes.

660 Mr. SEVERANCE: And you do not do so now?

Mr. GILL: No, I am not aware that we route any; occasionally a shipment may go that way that is routed by the shipper who pays the freight and has the right to route it.

Mr. SEVERANCE: But when you route it yourself?

Mr. GILL: Oh, no.

Mr. SEVERANCE: But in the old days you did?

Mr. GILL: Yes.

Mr. SEVERANCE: Owing to the solicitation of the agents?

Mr. GILL: That had something to do with it, no doubt, but usually the rate would affect it.

Com'r LANE: What other reason?

Mr. GILL: There might be a personal reason that might lead us to give a man a carload or shipment over his route when there was no other particular reason for doing it. We might be interested in that man and say Yes, we will give you this shipment; that is the only reason to which I referred.

Com'r LANE: Any difference in time?

Mr. GILL: Yes; it would take a little longer that way than by the all-rail routes.

Com'r LANE: So it would be an act of personal preference to give it to the Sunset route?

Mr. GILL: Yes; it would be some personal consideration or something like that; friendship perhaps; that would be all there would be in it.

Mr. SEVERANCE: Well, sometimes, I suppose owing to congested conditions by the all-rail routes, the time made would be fully as short or shorter by the Sunset; isn't that so?

Mr. GILL: Well, that is true; that might happen, but that is an

incident we never can foresee. We never route anything in any special way to avoid congestion, because the congestion does not arise until after the——

Mr. SEVERANCE: After the stuff is started?

Mr. GILL: Yes, and we don't know of it until afterwards.

Mr. SEVERANCE: That is all, Mr. Gill.

661 Mr. COTTON: You don't know how the distance compares from New Orleans to Portland as compared with the distance from New York to Portland, do you; you don't happen to remember?

Mr. GILL: I don't know in miles; I have been over it a great many times; of course it is very much longer by the Southern route.

(Witness excused.)

W. A. MONTGOMERY, called as a witness, was first duly sworn and testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Montgomery?

Mr. MONTGOMERY: In Portland.

Mr. SEVERANCE: What is your business?

Mr. MONTGOMERY: I am in the stationery business.

Mr. SEVERANCE: You are in the company with Mr. Gill, are you not?

Mr. MONTGOMERY: Yes, sir.

Mr. SEVERANCE: Mr. Gill just stated on the stand, Mr. Montgomery, that you meet the freight solicitors more than he does these days?

Mr. MONTGOMERY: That has been true during the last four or five years; yes.

Mr. SEVERANCE: Now, Mr. Montgomery, are you at the present time solicited by agents of the Southern Pacific road for shipments by the Southern Pacific?

Mr. MONTGOMERY: No, sir.

Mr. SEVERANCE: You say you are not?

Mr. MONTGOMERY: No.

Mr. SEVERANCE: And your goods chiefly come out by the O. R. & N., do they not?

Mr. MONTGOMERY: Yes.

Mr. SEVERANCE: And the Union Pacific?

Mr. MONTGOMERY: Yes, sir.

Mr. SEVERANCE: You ship some over the Northern Pacific?

Mr. MONTGOMERY: Yes, some.

662 Mr. SEVERANCE: And some over the Great Northern?

Mr. MONTGOMERY: We have occasionally, but not as much as the Northern Pacific.

Mr. SEVERANCE: And also by water?

Mr. MONTGOMERY: Yes, largely by water.

Mr. SEVERANCE: Largely by water; and to what points—by what lines do you ship by water?

Mr. MONTGOMERY: By the American Hawaiian nearly altogether.

Mr. SEVERANCE: That line comes from New York around the Horn or through the Straits to San Francisco, doesn't it?

Mr. MONTGOMERY: Yes.

Mr. SEVERANCE: Then how do you bring your stuff up from San Francisco?

Mr. MONTGOMERY: Well, the rate we have on that is taken by the American Hawaiian. It nearly all comes by the O. R. & N. or by the line of boats down there, but I don't know anything about it; it may come by several different lines so far as we know, because the rate is given us from New York.

Mr. SEVERANCE: The American Hawaiian gives you a net rate into Portland?

Mr. MONTGOMERY: Yes, they make us a rate.

Mr. SEVERANCE: And it comes up by some boat, does it?

Mr. MONTGOMERY: Yes.

Mr. SEVERANCE: In no case by rail from San Francisco?

Mr. MONTGOMERY: I don't recall any case when it has come by rail.

Mr. SEVERANCE: Do you buy any goods in California?

Mr. MONTGOMERY: Very few.

Mr. SEVERANCE: What class of goods if any do you buy in California?

Mr. MONTGOMERY: It would be merely shorts of lines that we handle from the east; that would be all; in our lines of books and stationery.

663 Mr. SEVERANCE: And how do they come up from San Francisco?

Mr. MONTGOMERY: Sometimes by boat and sometimes by rail.

Mr. SEVERANCE: Sometimes by the O. R. & N. boats and sometimes by rail. That is all.

Mr. COTTON: Mr. Montgomery, the stuff which comes here from the east via the Great Northern reaches Portland over what route from Spokane?

Mr. MONTGOMERY: Over the O. R. & N.

Mr. COTTON: It comes in over the O. R. & N. Now you say you ship largely by water at the present time in the American Hawaiian line?

Mr. MONTGOMERY: Yes.

Mr. COTTON: That is at less rates than the rail rates, isn't it?

Mr. MONTGOMERY: Yes, sir.

Mr. COTTON: And that is the cause of your making your shipments that way?

Mr. MONTGOMERY: Yes, sir.

Mr. COTTON: Are their rates stapled, or are they being cut from time to time in order to make cargoes?

Mr. MONTGOMERY: The rates have been staple so far as I know.

Mr. COTTON: You make your engagements in advance, do you, now?

Mr. MONTGOMERY: Yes.

Mr. COTTON: And therefore you have to contract for space and agree to pay a current rate?

Mr. MONTGOMERY: Yes.

Mr. COTTON: Now when the stuff comes in by the American

Hawaiian line at lesser rates than the rail rates, it reaches San Francisco and comes to Portland in what way?

Mr. MONTGOMERY: We have received it nearly altogether by boat.

Mr. COTTON: And those boats are boats belonging to the O. R. & N. Co.?

Mr. MONTGOMERY: Yes.

664 Mr. COTTON: Yes. And therefore the O. R. & N. steamboat lines are the connection between Portland and San Francisco of the American Hawaiian lines?

Mr. MONTGOMERY: Yes, sir.

Mr. COTTON: Operating in opposition to all of the railroads in the country.

Mr. MONTGOMERY: Yes, sir.

Mr. COTTON: And they are in direct and intense opposition, aren't they?

Mr. MONTGOMERY: Well, so far as we are concerned, it would be because of their rates.

Mr. COTTON: They get your business most of the time?

Mr. MONTGOMERY: Yes, sir; heavy goods, I mean.

Com'r LANE: Is the rate you pay a through rate from the east of Portland, or is it the rate to San Francisco and you pay the local?

Mr. MONTGOMERY: No, it is a rate through to Portland.

Com'r LANE: Who pays the rate over the O. R. & N. steamship from San Francisco up.

Mr. MONTGOMERY: The American Hawaiian line.

Com'r LANE: Do you know what that rate is?

Mr. MONTGOMERY: I do not, no.

Mr. COTTON: Now, on your San Francisco stuff, some of it you say comes by rail and some by the O. R. & N. boats?

Mr. MONTGOMERY: I should have said altogether by boat. I referred to, I think I referred to one or two instances where it came by rail in case of some long delay perhaps, where the agents of the American Hawaiian had brought it that way; that had nothing to do with us, except I recall the case; but it would not form the rule.

Mr. COTTON: I mean your short orders.

Mr. MONTGOMERY: Oh, our short orders; I thought you meant the American Hawaiian shipments.

Mr. COTTON: No, no.

Mr. MONTGOMERY: Short orders we can take the boat or rail, whichever we choose.

665 Mr. COTTON: You say you are not separately solicited, or no Southern Pacific solicitor solicits you; what do you mean by that?

Mr. MONTGOMERY: Not that I know of; I don't know that any solicitor has come to us representing himself to be for the Southern Pacific.

Mr. COTTON: Alone?

Mr. MONTGOMERY: Alone.

Mr. COTTON: Are you solicited by many railroad men now for your business?

Mr. MONTGOMERY: I don't know that we are solicited by as many

as formerly. We use the O. R. & N. in our business, because of the time concerned largely.

Mr. COTTON: You would prefer the O. R. & N. line so far as the rail, rather than shipping around by the Sunset or Sacramento, wouldn't you?

Mr. MONTGOMERY: Well, we would almost have to use it.

Mr. COTTON: You would not route that way if they insisted on it, would you?

Mr. MONTGOMERY: The Southern Pacific?

Mr. COTTON: Yes, Sacramento.

Mr. MONTGOMERY: No, we would not.

Mr. COTTON: There is a substantial difference in time and always has been, hasn't there?

Mr. MONTGOMERY: Yes, I think on the average there has been.

Mr. COTTON: Do you know of any limitation upon your routing or the manner in which you can route goods in this country by reason of any railroad restrictions of any kind?

Mr. MONTGOMERY: I do not.

Mr. COTTON: You are free to ship any way that you want to, aren't you?

Mr. MONTGOMERY: At least during the time that I have been acquainted with the road.

Mr. COTTON: That has been how many years?

Mr. MONTGOMERY: Oh, that has been practically since 1901; I knew about the route before, but Mr. Gill received more of that previous to that.

666 Mr. COTTON: But ever since that time you have known of no limitation of your routing goods in this city in any way whatsoever?

Mr. MONTGOMERY: No.

Mr. COTTON: That is all.

Mr. SEVERANCE: Whatever might be your action in case you were solicited to ship by the Sacramento route, you don't get any such request now, do you?

Mr. MONTGOMERY: No.

Mr. SEVERANCE: That is all.

(Witness excused.)

EDWARD EHRMAN was called as a witness and after being first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Ehrman?

Mr. EHRMAN: Portland.

Mr. SEVERANCE: How long have you lived here?

Mr. EHRMAN: Twenty years.

Mr. SEVERANCE: What is your business?

Mr. EHRMAN: Wholesale grocer.

Mr. SEVERANCE: Have you been in that business all the time you have been living here?

Mr. EHRMAN: Yes.

Mr. SEVERANCE: From what points do you procure the goods that you sell?

Mr. EHRMAN: From what points?

Mr. SEVERANCE: Yes, from what points do you procure the goods you sell? From where do you ship them?

Mr. EHRMAN: Where do we ship them?

Mr. SEVERANCE: From where do you ship goods to your store?

Mr. EHRMAN: From all points east.

Mr. SEVERANCE: Atlantic Seaboard and the middle states.

Mr. EHRMAN: The Atlantic Seaboard west and south.

Mr. SEVERANCE: And has that been the case during all the time you have been in the business?

667 Mr. EHRMAN: Yes.

Mr. SEVERANCE: Prior to the time the Southern Pacific and the Union Pacific came under the same management, were you called on by solicitors of the Southern Pacific and of the O. R. & N. both?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: And did they ask for your business?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: One against the other?

Mr. EHRMAN: Yes.

Mr. SEVERANCE: Is there now any solicitation for business by one of these lines against the other?

Mr. EHRMAN: No, sir.

Mr. SEVERANCE: What lines do you ship over, Mr. Ehrman?

Mr. EHRMAN: We use all the lines, the Union, Southern, Great Northern, and Northern Pacific.

Mr. SEVERANCE: What goods do you get over the Southern Pacific now?

Mr. EHRMAN: Well, mostly goods originating in the south.

Mr. SEVERANCE: Yes, originating in Texas?

Mr. EHRMAN: Texas and Louisiana.

Mr. SEVERANCE: Texas or Louisiana?

Mr. EHRMAN: Yes.

Mr. SEVERANCE: And California; do you get goods from California?

Mr. EHRMAN: We do some.

Mr. SEVERANCE: Fruits, canned goods?

Mr. EHRMAN: Yes.

Mr. SEVERANCE: Do you bring up commodities from San Francisco to some extent?

Mr. EHRMAN: To some extent, yes.

Mr. SEVERANCE: And how do they come, by boat or by rail?

Mr. EHRMAN: Well, they come both ways.

Mr. SEVERANCE: And has that always been the case, they always come both ways?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: Now the steamship service between here
668 and San Francisco is called now the San Francisco & Portland, being the same ships as the O. R. & N., formerly called the O. R. & N.?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: And do you ship over that line, or have you always shipped over that line more or less from San Francisco?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: And have been solicited for business over that line?

Mr. EHRMAN: Yes.

Mr. SEVERANCE: Are there other ships running up here from San Francisco?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: Any other regular line?

Mr. EHRMAN: Yes, there is a regular line.

Mr. SEVERANCE: What is the name of it?

Mr. EHRMAN: I don't know the name of it, I don't know the name of the line.

Mr. SEVERANCE: Do you know the name of the manager?

Mr. EHRMAN: No, sir, I do not.

Mr. SEVERANCE: Are there also independent boats, tramp boats?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: And some business is done over them?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: To what parts of the Northwest do you wholesale goods, Mr. Ehrman?

Mr. EHRMAN: Well, through the states of Oregon, Washington and Idaho.

Mr. SEVERANCE: Did you formerly ship goods from the east by the Sunset route?

Mr. EHRMAN: To a limited extent only.

Mr. SEVERANCE: And that was largely by reason of active solicitation from their agents, wasn't it?

Mr. EHRMAN: Yes, sir.

Mr. SEVERANCE: Now, you do not ship that way?

Mr. EHRMAN: How?

669 Mr. SEVERANCE: Do you ship that way, now, except goods coming up from Louisiana and Texas?

Mr. EHRMAN: We would rather not; we don't care to ship that way.

Mr. SEVERANCE: No. I suppose you would not be able to tell, Mr. Ehrman, without reference to books, the number of carloads of stuff you get in here every year, could you?

Mr. EHRMAN: No, sir, I could not tell you that; our freight men might, I could not.

Mr. COTTON: You can ship by the Sunset if you want to?

Mr. EHRMAN: Yes, sir.

Mr. COTTON: But you don't want to?

Mr. EHRMAN: We prefer not to, it takes longer.

Mr. COTTON: It takes longer?

Mr. EHRMAN: Yes, sir.

Mr. COTTON: Now you spoke about a regular line of boats; did you mean a regular line in addition to the O. R. & N. steamers?

Mr. EHRMAN: I think there is a regular line; they come here regularly, I think they are a regular line.

Mr. COTTON: Yes. Then in addition to that there are quite a number of tramp boats?

Mr. EHRMAN: Yes, sir.

Mr. COTTON: You know of no limitation upon your routing the freight in any way whatsoever in this country, do you?

Mr. EHRMAN: No; the railroads usually respect our routing that we give them.

Mr. COTTON: You route any way that you want to; isn't that right?

Mr. EHRMAN: Yes, so far as I know.

Mr. COTTON: That is all.

Mr. SEVERANCE: And you are sometimes, or used to be sometimes by personal solicitation induced to route a certain way?

Mr. EHRMAN: Well, that is mostly different connecting lines, the Omaha and Iowa lines.

Mr. SEVERANCE: That is, at present that is the case?

670 Mr. EHRMAN: No; it always was that way, I believe.

Mr. SEVERANCE: Well, I asked you about the Sunset routing before. That is all.

Mr. COTTON: Now, Mr. Ehrman, when you shipped by the Sunset why did you ship that way in the good old days? Do you want to say why?

Mr. EHRMAN: Well, I have no particular reason.

Mr. COTTON: Was that because of the personal solicitation of the agent, or what was it?

Mr. EHRMAN: Well, perhaps it was.

(Witness excused.)

Mr. L. A. LEWIS called as a witness, being first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live?

Mr. LEWIS: I live in Portland.

Mr. SEVERANCE: How long have you lived there?

Mr. LEWIS: I was born here and lived here most altogether with the exception of a few years when I was away at college and school.

Mr. SEVERANCE: What is your business, Mr. Lewis?

Mr. LEWIS: Wholesale grocer.

Mr. SEVERANCE: What is the name of your firm?

Mr. LEWIS: Allen & Lewis.

Mr. SEVERANCE: Is that an old firm here?

Mr. LEWIS: Well, it is not a firm to-day, but it has been in existence for fifty odd years.

Mr. SEVERANCE: Continuously?

Mr. LEWIS: Continuously, yes.

Mr. SEVERANCE: Mr. Lewis, prior to the acquisition of the stock of the Southern Pacific by the Union Pacific road were you solicited for freight shipments by agents of the Southern Pacific?

Mr. LEWIS: Yes, sir.

Mr. SEVERANCE: And also by agents of the Oregon Railroad & Navigation Company?

Mr. LEWIS: Yes, sir.

671 Mr. SEVERANCE: Are you now solicited for shipments by these respective lines as against each other?

Mr. LEWIS: No, sir.

Mr. SEVERANCE: Where do your goods come from?

Mr. LEWIS: They come from the east and the middle west and California largely.

Mr. SEVERANCE: Did you formerly at times ship over the Southern Pacific in response to these solicitations?

Mr. LEWIS: I don't think we ever shipped very much, no.

Mr. SEVERANCE: Did you ship some that way?

Mr. LEWIS: I think there was, an occasional carload or so was sent in, of some goods from New York, or from Europe that would come by way of New Orleans.

Mr. SEVERANCE: Yes; you do not ship that way now, or do you at times?

Mr. LEWIS: I think there is an occasional shipment from the south that comes by way of the Southern Pacific.

Mr. SEVERANCE: But you are not solicited for Atlantic seaboard shipments that way now?

Mr. LEWIS: Not to my knowledge, no.

Mr. SEVERANCE: What way does most of your stuff come in?

Mr. LEWIS: It comes in by the Union Pacific and the Northern Pacific and the Great Northern; that is, from the east, of course.

Mr. SEVERANCE: Yes, and not by way of Sacramento?

Mr. LEWIS: Not to my knowledge, no.

Mr. SEVERANCE: In what part of the country do you wholesale?

Mr. LEWIS: Oregon, Washington and Idaho, a little in California, and some to Alaska.

Mr. SEVERANCE: You ship down the line of the Southern Pacific towards San Francisco a part of the way, don't you?

Mr. LEWIS: Yes, sir.

Mr. SEVERANCE: How far down?

Mr. LEWIS: Well, we don't ship much beyond Ashland.

672 Mr. SEVERANCE: How do you make your shipments up the Columbia River, by rail or water?

Mr. LEWIS: Why wherever there is water competition we ship it—well, we ship whichever way the shipper instructs us to, but we can ship up to The Dallas to-day by water and a part of last year we could ship up as far as Kennewick and Pasco, and those points on the Columbia River by water.

Mr. SEVERANCE: That is all.

Mr. COTTON: The Northern Pacific, Great Northern and Union Pacific are your principal rail lines over which you ship at the present time?

Mr. LEWIS: Yes, sir.

Mr. COTTON: In fact, they always have been, have they not, Mr. Lewis?

Mr. LEWIS: Yes, sir.

Mr. COTTON: There has been no change for a number of years?

Mr. LEWIS: No; the Union Pacific has gotten the bulk, the greater portion of our business always.

Mr. COTTON: The Union Pacific has handled the bulk of your business always?

Mr. LEWIS: Yes.

Mr. COTTON: Now when your business comes in over the Great Northern it reaches Portland via what road?

Mr. LEWIS: Sometimes we order it around by way of Seattle and sometimes it comes through by way of Spokane and the O. R. & N.

Mr. COTTON: And there is no limitation upon your shipping that way, is there?

Mr. LEWIS: What do you mean by limitation?

Mr. COTTON: Well, I mean the O. R. & N. does not officiously undertake to restrict your shipments in any way, do they?

Mr. LEWIS: No; they don't like us to do it though, but there is no limitation on our ability to do it.

Mr. COTTON: You don't know of any limitation of your ability to ship by any of the old routes, do you?

Mr. LEWIS: No, sir. Well, except this Ogden gateway
673 that you hear about; I don't think that you can ship by that route to-day; I am not sure of that, though.

Mr. COTTON: But you never did ship that way, did you?

Mr. LEWIS: Yes.

Mr. COTTON: Some?

Mr. LEWIS: Some.

Mr. COTTON: And that was through the solicitation of the D. & R. G. and other eastern connections.

Mr. LEWIS: Yes; but occasionally when we would get "put out," what we would consider wrong treatment on the part of the Union Pacific, we would ship the cars around there.

Mr. COTTON: Yes; But other than that you don't know of any change which has taken place in the transportation or shipping conditions up here?

Mr. LEWIS: No, sir—that is, from the east?

Mr. COTTON: Yes, that is from the east?

Mr. LEWIS: No.

Mr. COTTON: That is all.

Mr. SEVERANCE: When you say when you get "put out" with the Union Pacific you ship around by the Ogden gateway, you mean by Sacramento, don't you?

Mr. LEWIS: No; I mean Denver and Rio Grande road.

Mr. SEVERANCE: And thence here over the Sacramento route?

Mr. LEWIS: No, thence here over the O. R. & N. We used to make a distinction between the Short Line and the O. R. & N. in giving them freight.

Mr. SEVERANCE: How is that?

Mr. LEWIS: I say we would occasionally make a distinction between the O. R. & N. and the Short Line in giving them freight.

Mr. SEVERANCE: Well, how? The Oregon Short Line doesn't reach Portland?

Mr. LEWIS: Yes; that is a part of the Union Pacific system. All goods that come over the Union Pacific come over the Union Pacific and then the Oregon Short Line, then the O. R. & N. to Portland.

674 Mr. SEVERANCE: I understand that, but the Oregon Short Line is a road that connects at Ogden with the Union Pacific?

Mr. LEWIS: Yes.

Mr. SEVERANCE: The Oregon Railroad & Navigation Co. does not reach Ogden, they only go to Huntington, don't they?

Mr. LEWIS: Yes; they only go to Huntington, don't they?

Mr. SEVERANCE: I don't understand your answer.

Mr. LEWIS: I may have said the Short Line; I meant to say the Union Pacific.

Mr. SEVERANCE: Oh, the Union Pacific.

Mr. LEWIS: Yes.

Mr. SEVERANCE: Those were the days when they were separate, not during the reign of the Union Pacific.

Mr. LEWIS: No; that has been comparatively recently.

(Witness Excused.)

THOMAS MCCUSKER was called as a witness, and being first duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live?

Mr. MCCUSKER: Portland.

Mr. SEVERANCE: How long have you lived in Portland?

Mr. MCCUSKER: Eighteen years, a little over.

Mr. SEVERANCE: What is your business?

Mr. MCCUSKER: The real estate business now.

Mr. SEVERANCE: How long have you been in that business?

Mr. MCCUSKER: Since the 1st of December, one year ago.

Mr. SEVERANCE: Prior to that time what was your business?

Mr. MCCUSKER: For about sixteen years with the Southern Pacific, and about a year ago, in October, I believe, I was with
675 the Harriman lines as Assistant General Agent of the O. R. & N., the Union Pacific and Southern Pacific.

Mr. SEVERANCE: What was your position with the Southern Pacific road?

Mr. MCCUSKER: Contracting Freight Agent.

Mr. SEVERANCE: During all the time that you speak of?

Mr. MCCUSKER: No, a part of the time. First, I was handling claims and work in the office.

Mr. SEVERANCE: How many years were you contracting freight agent prior to 1901?

Mr. MCCUSKER: I think I was Contracting Freight Agent for the Southern Pacific for thirteen or fourteen years.

Mr. SEVERANCE: Now, during that time, Mr. McCusker, what were your duties?

Mr. MCCUSKER: As Contract Freight Agent they were to solicit freight for the Southern Pacific both via the Sunset Gulf line, the Sunset all rail, and the Southern Pacific via Ogden and Sacramento.

Mr. SEVERANCE: Now during those days prior to 1901, did you in soliciting freight by way of Ogden work in connection with any line leaving east from Ogden other than the Union Pacific?

Mr. McCUSKER: I worked with the Missouri Pacific, the Rock Island, Burlington and the Rio Grandes.

Mr. SEVERANCE: What road was your strongest competitor for business into Portland when you were representing the Southern Pacific alone?

Mr. McCUSKER: We considered the Union Pacific and O. R. & N. the strongest competitors.

Mr. SEVERANCE: What classes of goods did you solicit shipments of?

Mr. McCUSKER: All classes of merchandise.

Mr. SEVERANCE: And from what points?

Mr. McCUSKER: All points east; the Atlantic seaboard, Chicago territory, Pittsburg territory, Missouri River territory.

676 Mr. SEVERANCE: And in a general — who were the persons solicited for shipments; were they wholesale men here in Portland?

Mr. McCUSKER: Wholesale men and retail men.

Mr. SEVERANCE: And did you also solicit shipments out of Portland?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: To points competitive with the Oregon Railroad & Navigation Co. and Union Pacific?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: State what classes of Commodities were shipped out of here in competition with the Southern line?

Mr. McCUSKER: Hops and prunes, hides, and I don't know about the lumber shipments; that is, so far as the Union Pacific was concerned.

Mr. SEVERANCE: Speak a little louder, I can't hear you?

Mr. McCUSKER: I say regarding the lumber I don't believe that we solicited the lumber in those days in competition; in fact, I know we did not via Ogden; those were the principal commodities.

Mr. SEVERANCE: Hops and prunes?

Mr. McCUSKER: Hops, prunes, potatoes and hides, and things of that kind.

Mr. SEVERANCE: Well, is the production of hops large or small in this community?

Mr. McCUSKER: Large.

Mr. SEVERANCE: And whereabouts?

Mr. McCUSKER: Principally in the Willamette Valley. I presume 90 per cent. of the growth, that is the Oregon hops grown, Oregon and Washington hops grown perhaps are within the Willamette Valley.

Mr. SEVERANCE: That is a very large traffic, isn't it?

Mr. McCUSKER: Yes, sir, quite a territory.

Mr. SEVERANCE: How is that?

Mr. McCUSKER: Quite a territory; yes, quite large; grown in Linn, Lane Counties, Marion County, Washington County, Polk County, and some in Multnomah County.

677 Mr. SEVERANCE: How did the hops, the shipment of which you solicited, move to the east?

Mr. McCUSKER: Largely Sunset; any Atlantic seaboard and European shipments went Sunset, Sunset Gulf.

Mr. SEVERANCE: Was the Oregon Railroad & Navigation Company and the Short Line and Union Pacific a competitor with you for that business?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: And was it your strongest competitor?

Mr. McCUSKER: Yes, I considered it so.

Mr. SEVERANCE: How did they get their hops into Portland from the Willamette Valley?

Mr. McCUSKER: The boats of the O. R. & N. Company and of the Oregon City Transportation Company, and frequently via the Southern Pacific lines.

Mr. SEVERANCE: Who would bring them into Portland?

Mr. McCUSKER: The shipments that originated in the valley were solicited not only by the O. R. & N., and Union Pacific, but the Northern, Great Northern, all lines. Hops were, an average year perhaps running,—oh, from seventy-five to a hundred thousand bales.

Mr. SEVERANCE: How many carloads would that make?

Mr. McCUSKER: Well, it is a hard matter to tell in carloads; an average car would not exceed over 15,000, and that would be a pretty large car.

Mr. SEVERANCE: Fifteen thousand pounds?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: How many pounds in a bale?

Mr. McCUSKER: From 180 to 200, I think, in that neighborhood.

Mr. SEVERANCE: Now the Oregon Railroad & Navigation Company had boats on the Willamette, didn't they?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: How far up did those boats run?

678 Mr. McCUSKER: When the water would permit, they would run to Corvallis.

Mr. SEVERANCE: How far is that?

Mr. McCUSKER: About ninety miles.

Mr. SEVERANCE: Ninety miles from Portland?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: By rail or by boat?

Mr. McCUSKER: By rail. I don't know what the river distance would be.

Mr. SEVERANCE: Well, you say they went up as far as Corvallis when the water would permit.

Mr. McCUSKER: Yes.

Mr. SEVERANCE: At times, they were unable to get there.

Mr. McCUSKER: Oh yes, frequently unable to.

Mr. SEVERANCE: Then how far up would they go?

Mr. McCUSKER: Well, they would go to Salem, Dayton, Independence—they would go as far as they could.

Mr. SEVERANCE: Well, they always went as far as Salem, didn't they?

Mr. McCUSKER: Well, I could not say as to that; it is possible sometimes they would run only to Dayton.

Mr. SEVERANCE: Run what?

Mr. McCUSKER: To Dayton.

Mr. SEVERANCE: Dayton?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: How far is Salem from here?

Mr. McCUSKER: 52 miles by rail.

Mr. SEVERANCE: Now, is the Willamette River in the center of this hop district?

Mr. McCUSKER: Yes, I should say it was.

Mr. SEVERANCE: So the hop district is tributary to boats on the river?

Mr. McCUSKER: Tributary to the boats; yes, sir.

Mr. SEVERANCE: And it is also tributary to the rail line of the Southern Pacific?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: And the same hops could be shipped either way?

679 Mr. McCUSKER: Yes; that is, a good portion of it; it would have to be hauled to the river the same as it would the cars.

Mr. SEVERANCE: How is that?

Mr. McCUSKER: It would have to be hauled to the river the same as it would to the car.

Mr. SEVERANCE: I understand; but the river line of steamers and the Southern Pacific Railroad Company tapped the same territory to a large extent?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: And that is the territory in which these hops are grown?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: Now when hops moved over the O. R. & N. they were brought to Portland by the boats and then put into cars here, were they not?

Mr. McCUSKER: Yes, by the boats, as I said, or rails; sometimes we brought them in, if they happened to be in our possession, and routed that way.

Mr. SEVERANCE: And you had soliciting agents at work in the valley and you worked there yourself?

Mr. McCUSKER: No, I didn't work in the valley. The traveling freight agents and the local station agents solicit the valley business, but a great many of the shippers or dealers were located in Portland.

Mr. SEVERANCE: And those shipments were solicited by you?

Mr. McCUSKER: A great many of them were solicited by me, but largely by our traveling representatives.

Mr. SEVERANCE: That is in the valley?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: But I mean as far as the shipments controlled by the men here in Portland?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: They were under your jurisdiction?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: And the O. R. & N. had agents actively at work soliciting the same traffic?

Mr. MCCUSKER: Yes, sir.

680 Mr. SEVERANCE: Now, Mr. McCusker, when those hops came into Portland by boat did they always go out all rail, or would they sometimes go by the O. R. & N. boats to San Francisco?

Mr. MCCUSKER: I don't think they went by boat to San Francisco; I don't remember of any going by boat.

Mr. SEVERANCE: They went east by the O. R. & N. and its eastern connections?

Mr. MCCUSKER: The O. R. & N., the Northern or Southern.

Mr. SEVERANCE: Yes. Well now, did you also route hops east by Sacramento?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: When you were soliciting for the Southern Pacific.

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: And from Ogden how would they move on to the east?

Mr. MCCUSKER: Via the Rio Grandes in connection with the Burlington, Rock Island, or Missouri Pacific, or Union Pacific.

Mr. SEVERANCE: Yes, or the Union Pacific?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Did these lines east of Ogden, such as the Rio Grande, the Missouri Pacific and Rock Island have soliciting agents here?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: And did you work with them in securing traffic,—through traffic, I mean?

Mr. MCCUSKER: I worked with them providing they were not soliciting against the Southern Pacific.

Mr. SEVERANCE: Well, that is what I mean, when they were soliciting business?

Mr. MCCUSKER: I frequently had to compete with the Rio Grandes or these other lines trying to solicit it by the O. R. & N.

Mr. SEVERANCE: When they were working with the O. R. & N.?

681 Mr. MCCUSKER: When they were working—of course when they were working for or willing to ship via Southern Pacific, why I worked with them.

Mr. SEVERANCE: Your sole duty was to get all the traffic you could over the rails of the Southern Pacific.

Mr. MCCUSKER: That was the point exactly.

Mr. SEVERANCE: Either via Ogden or via the Sunset?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: And without reference to what road it might move over after it reached Ogden?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Now in a general way in soliciting business for the Southern Pacific, was there any difference made in the effort by you to handle orders by reason of the point of origin of the traffic;

that is, would you endeavor to throw any class of business via the Sunset, and another class via Ogden, or how?

Mr. McCUSKER: The Atlantic seaboard business we tried to get via the Sunset Gulf.

Mr. SEVERANCE: So as to get the entire haul?

Mr. McCUSKER: To get the long haul on it; that was the object, yes, sir. If we could not get it via Sunset we would take it via Ogden, of course.

Mr. SEVERANCE: How did Chicago business move in those days so far as the Southern Pacific's share of it is concerned?

Mr. McCUSKER: Via Ogden.

Mr. SEVERANCE: Via Ogden, and Sacramento, or not?

Mr. McCUSKER: Yes.

Com'r LANE: When was that?

Mr. McCUSKER: That was prior to the consolidation of the Southern Pacific with the Union Pacific?

Com'r LANE: For how long a period prior to that?

Mr. McCUSKER: Ever since my connection with the company.

Com'r LANE: A large body of freight moved that way?

Mr. McCUSKER: Considerable freight moved that way, yes sir.

682 Com'r LANE: The same rates you have via Ogden to Portland that way?

Mr. McCUSKER: Yes; the same rates were in effect via Ogden as via all the other lines.

Mr. SEVERANCE: And you would get that business at Ogden from what line?

Mr. McCUSKER: We would get it from the Rio Grandes or the Union Pacific.

Mr. SEVERANCE: And the Rio Grande when it came that way would get it at Denver, I suppose, or Colorado Springs, from the Rock Island or Burlington or the Missouri Pacific?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: And sometimes you got it also from the Union Pacific, did you not?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: Now, were you under any instructions in those days to favor one line or the other east of Ogden in working for business?

Mr. McCUSKER: No, sir.

Mr. SEVERANCE: You did not care which way it moved so long as you got the haul from Ogden to Portland?

Mr. McCUSKER: So long as I got the haul; I worked with all lines so long as I got the haul.

Mr. SEVERANCE: And that was done with the consent of your superiors, wasn't it?

Mr. McCUSKER: Oh yes.

Mr. SEVERANCE: Who was, or who were the parties representing the Oregon Railroad & Navigation Company at Portland at that time, who occupied a position similar to yours with the Southern?

Mr. McCUSKER: Mr. A. A. Morse.

Mr. SEVERANCE: Mr. A. A. Morse?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Where is Mr. Morse now?

Mr. MCCUSKER: I saw him in the building here a while ago in the room.

Mr. SEVERANCE: What is his business at present?

683 Mr. MCCUSKER: Well, I don't know; he is special agent of some kind for the O. R. & N. He was General Agent, he was Contracting Freight Agent, and then became General Agent and has been succeeded by Mr. McCorquodale, and he is Special Agent of some kind, I don't know what his duties are.

Mr. SEVERANCE: Of what company was Mr. Morse the General Agent?

Mr. MCCUSKER: The O. R. & N. and the Union Pacific.

Mr. SEVERANCE: And Union Pacific?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: He was not an officer, not an official of the Southern Pacific?

Mr. MCCUSKER: He was, yes, about a year ago, I believe—two years ago, rather. My connection—when I went from the Southern Pacific to the O. R. & N. he became General Agent of all the lines, and I became Assistant General Agent of all the lines.

Mr. SEVERANCE: That is, Mr. Morse, was then your immediate superior?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: When you were representing all the Harriman lines here?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: Who is the other gentleman you spoke of, Mr. McCorquodale?

Mr. MCCUSKER: Yes; he is the present General Agent of the O. R. & N. and Southern Pacific lines.

Mr. SEVERANCE: And was he here in the days when you were connected with the road?

Mr. MCCUSKER: Yes; he has had several positions; he has been in the office, and, I believe, traveling freight agent.

Mr. SEVERANCE: For what road?

Mr. MCCUSKER: The O. R. & N., and I believe at one time he was connected with the Short Line when they were all separated, had separate solicitors.

Mr. SEVERANCE: For the Oregon Short Line?

Mr. MCCUSKER: For the Oregon Short Line when they had separate solicitors.

684 Mr. SEVERANCE: That is, as distinguished from the O. R. & N.?

Mr. MCCUSKER: Yes; and he was also at Spokane with this company, I believe.

Mr. SEVERANCE: Now at the time you were the Contracting Freight Agent of the Southern Pacific prior to the acquisition of the Southern Pacific stock by the Union Pacific, who was your immediate superior officer?

Mr. McCUSKER: Mr. E. P. Rogers, for a number of years, and Mr. C. H. Markham and Mr. R. B. Miller and Mr. W. E. Coman.

Mr. SEVERANCE: Now take them up backwards; who is Mr. Coman?

Mr. McCUSKER: Mr. Coman is now Assistant General Freight Agent of the Harriman lines in Oregon.

Mr. SEVERANCE: Both lines?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: Southern and O. R. & N.?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: And who is Mr. Miller?

Mr. McCUSKER: Mr. Miller is General Freight Agent of these lines.

Mr. SEVERANCE: And what are the other gentlemen?

Mr. McCUSKER: Mr. Markham was General Freight and Passenger Agent of the Southern Pacific lines in Oregon.

Mr. SEVERANCE: Where is he now?

Mr. McCUSKER: He is now in Beaumont, Texas, connected with the McGuffey Oil Company.

Mr. SEVERANCE: Oh, he has left the railroad service?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: After the two roads were working in harmony here, what position did Mr. Markham have here, if you remember?

Mr. McCUSKER: After——?

Mr. SEVERANCE: After 1901, yes.

Mr. McCUSKER: He left Portland and went to San Francisco, I believe, as Assistant Traffic Manager, and from there to
685 Texas as General Manager of one of the lines; then he severed his connection with the company and is manager of the McGuffey Oil Company now.

Mr. SEVERANCE: Do you know a gentleman here named Overbaugh?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: What is his first name?

Mr. McCUSKER: Charles, I believe.

Mr. SEVERANCE: And what is his business?

Mr. McCUSKER: I believe he is now superintendent or assistant superintendent of the water lines. I saw from the papers——

Mr. SEVERANCE: Well, you would simply know from the paper?

Mr. McCUSKER: Yes.

Mr. SEVERANCE: Was he working for the paper or any of these companies when you were employed by them?

Mr. McCUSKER: He was Traveling Freight Agent for the O. R. & N.

Mr. SEVERANCE: Now, Mr. McCusker, after the spring of 1901, when the two companies commenced operating together, when Mr. Stubbs took charge of the traffic of all of the lines in July, 1901, after that time was there any difference in your duties, or were you acting under any different instructions as to soliciting traffic?

Mr. McCUSKER: Not immediately afterwards.

Mr. SEVERANCE: When were you, if at all?

Mr. McCUSKER: I can't say just when, but some little time after that we were called in a meeting with Mr. Campbell.

Mr. SEVERANCE: Mr. Ben Campbell?

Mr. McCUSKER: Mr. Ben Campbell, who was Traffic Manager, I believe, at that time here, or General Freight Agent of the O. R. & N. We were told to solicit Atlantic seaboard business via Sunset; that is, certain business where the local to New York would not be too great; and other business west of there, while I was not told to actively solicit that, at the same time I was told to influence it via the Union Pacific.

686 Mr. SEVERANCE: Well, were the same instructions given to the Oregon Railroad & Navigation Company's representatives?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: At that time?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: Was any reason given why it was desired that the business should be divided in this way, Mr. McCusker?

Mr. McCUSKER: Well, the reason was that they wanted the most revenue for the least service, was about the way I figured it. They did not want to perform the long service for the same revenue that they would get for a short service, and they wanted the freight from the territory that would give them the best revenue for the system.

Mr. SEVERANCE: And by bringing it all the way Sunset from New York all the revenue came to the Southern Pacific?

Mr. McCUSKER: All except the local, which they would have to absorb from the point of origin.

Mr. SEVERANCE: And if it came by the Union Pacific of course they only got the routing west of Omaha.

Mr. McCUSKER: Yes. In the solicitation of that business, however, if the men did not want to ship Sunset, of course we did not try to force him to ship Sunset, to jeopardize his business; they would ship it the other way; but we were told to influence it that way.

Mr. SEVERANCE: That is, if you were unable to procure that business to move Sunset, then you were instructed to obtain it over or via the Union Pacific?

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: And you were also instructed at that time to work the Southern Pacific Ogden route with the Union Pacific?

Mr. McCUSKER: No, sir.

Mr. SEVERANCE: You did not solicit business by Sacramento in other words, is that the case?

687 Mr. McCUSKER: The Ogden gateway was closed to business for Portland via Sacramento.

Mr. SEVERANCE: Via Sacramento?

Mr. McCUSKER: Yes, sir.

Com'r LANE: When was that done?

Mr. McCUSKER: That, I could not say the date, but it was after the consolidation of the lines; in fact I believe the divisions don't apply that way now today via Ogden and Sacramento to Portland on any business.

Com'r LANE: How did they close it?

Mr. MCCUSKER: I presume they closed it by withdrawing the rates, or the divisions rather.

Com'r LANE: Was that done?

Mr. MCCUSKER: Yes. We arbitrarily diverted freight by the Union Pacific.

Mr. SEVERANCE: By the Union Pacific you mean——

Mr. MCCUSKER: By the Short Line.

Mr. SEVERANCE: By the Short Line.

Mr. MCCUSKER: Yes.

Com'r LANE: You mean that all the previous existing rates by way of Ogden and Sacramento were withdrawn?

Mr. MCCUSKER: The division was changed in some way, I don't know just what; but we had instructions not to solicit any business via Ogden.

Com'r LANE: Who gave you those instructions?

Mr. MCCUSKER: They came from Mr. Campbell, Traffic Manager.

Mr. SEVERANCE: That is, you say solicit by way of Ogden; you mean from Ogden here by way of Sacramento?

Mr. MCCUSKER: I mean when I say via Ogden, we figured that Southern Pacific via Sacramento.

Mr. SEVERANCE: Yes, that is what you mean?

Mr. MCCUSKER: But then via Ogden was the gateway; Sacramento was not the gateway, Ogden was the gateway.

Mr. SEVERANCE: Then the substance of it as I understand
688 it, is that the instructions given to all these gentlemen that were handling this matter of soliciting business were not to solicit business by way of Ogden, Sacramento to Portland, but Ogden direct by the Short Line?

Mr. MCCUSKER: Yes; anything west of the Atlantic seaboard was to come Union Pacific, Short Line and O. R. & N.

Mr. SEVERANCE: And not by Sacramento?

Mr. MCCUSKER: No, sir.

Mr. SEVERANCE: Now prior to this amalgamation of interest, Mr. McCusker, was lumber shipped out of here into say the Rocky Mountain territory over the Southern Pacific?

Mr. MCCUSKER: I don't think so.

Mr. SEVERANCE: You don't think so?

Mr. MCCUSKER: No.

Mr. SEVERANCE: You don't know of lumber moving over it?

Mr. MCCUSKER: I don't think any lumber moved that way; not to my knowledge; I can't recall if it did.

Mr. SEVERANCE: You don't remember that?

Mr. MCCUSKER: No.

Mr. SEVERANCE: Mr. Campbell said the other day at Seattle that it did.

Mr. MCCUSKER: Well, I would not say that it didn't; it might have done so.

Mr. SEVERANCE: What about the movement of wool from this region to the Atlantic seaboard; take the Willamette Valley wool.

Mr. MCCUSKER: The Willamette Valley wool we tried to ship via

Sunset, Sunset Gulf, solicit it that way, and tried to,—we competed for it strongly in that way.

Mr. SEVERANCE: I did not hear that. Mr. Stenographer, read that answer.

Answer read.

689 Mr. MCCUSKER: You understand that wool was sometimes brought to Portland to be baled here. Consequently, when it got here it might be a matter of competition for all hands.

Mr. SEVERANCE: Well, did the wool in the old days prior to the amalgamation move to the east both Sunset and Ogden?

Mr. MCCUSKER: I could not say; I presume that it did, yes; I could not say; that is, Valley wool, I mean.

Mr. SEVERANCE: Yes; that is what I am talking about, the Valley wool.

Mr. MCCUSKER: Yes. I could not say about Ogden, because the wool shipments were to Boston points and we tried naturally to get that via the long haul; I could not say whether it moved via Ogden or not; I presume that some of it did, but I would not swear to that.

Mr SEVERANCE: Did any live stock move from this region to the east?

Mr. MCCUSKER: Via the Southern Pacific?

Mr. SEVERANCE: Yes.

Mr. MCCUSKER: I don't think so. I don't think they would solicit that on account of the mountain haul and the extra distance.

Mr. SEVERANCE: Well, you don't remember of soliciting live stock?

Mr. MCCUSKER: No, I never solicited any live stock.

Mr. SEVERANCE: That is what I mean.

Mr. MCCUSKER: No.

Mr. SEVERANCE: Now, Mr. McCusker, was there any competition here in those days for passenger business between the Southern Pacific and the Oregon Railroad & Navigation?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: How was it on passenger traffic between here and San Francisco?

Mr. MCCUSKER: Now you understand that I was not in the passenger department.

Mr. SEVERANCE: Oh, you were not in the passenger department.

690 Mr. MCCUSKER: No; I only know that there was the competition.

Mr. SEVERANCE: Yes; but you were not soliciting passenger business?

Mr. MCCUSKER: No, I was not in the passenger business.

Mr. SEVERANCE: Your work was confined to freight?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Now do you remember whether years ago there was any competition between the Southern Pacific and the O. R. & N. and its eastern connections in rates?

Mr. McCUSKER: Yes, there was competition between all lines regarding rates.

Com'r LANE: Now was that condition different in 1900 from what it was in 1896 or 1897?

Mr. McCUSKER: Yes, sir. The rates in recent years have been the same rate via all lines; the same tariff was applied. There was a time, but it is a number of years ago, that I hear them referring to what they call "old times," when there was a tariff to San Francisco proper. Using the combination from San Francisco to Portland, it gave the Southern Pacific an advantage of ten cents a hundred. It was a published tariff, however, and we handled considerable business both carload and less than carload on that rate.

Com'r LANE: From here there.

Mr. McCUSKER: From the east here; and of course *vice versa* on New York business. This was called the Sunset tariff or Southern Pacific tariff to San Francisco. Then by agreement or pressure brought by the other roads the tariffs were amended to correspond on all lines so that at the time of the consolidation there was no difference in favor of the Southern Pacific as against the others, and for sometime prior to that.

Com'r LANE: So that in 1901 when this consolidation took place the conditions as to tariffs were just the same as they are today?

Mr. McCUSKER: So far as I know, yes.

691 Com'r LANE: How many years before 1901 had that condition existed?

Mr. McCUSKER: Well a number of years; I could not say how long, but it must have been at least five, possibly more; I don't believe that that old tariff had been in effect for ten years or possibly more than ten, when that was straightened out. I can't give you the dates; of course they have got the tariffs on file; that could be obtained.

Com'r LANE: Up to that time was there considerable competition in rates between the Sunset Route and the Union Pacific for the Portland business?

Mr. McCUSKER: Well, up to that time I presume there was more or less—I presume you have reference to cutting the rates?

Com'r LANE: Yes.

Mr. McCUSKER: Possibly at that time there might not have been so much cutting of rates for the reason that ten cents differential took the business to the Southern Pacific. Then in order of course to meet that the other lines had to cut the rate or meet that competition prior to the readjustment of the tariff.

Com'r LANE: But they did not do that by filing a new tariff?

Mr. McCUSKER: Yes, they did subsequently, but not at that time. They filed supplementals, I believe, making a tariff change; there was some change anyhow; the tariff was readjusted. The cut rates, however, were in effect after the rates were all the same when they got actively engaged in competing for business.

Com'r LANE: Now did those cut rates exist up to 1901?

Mr. McCUSKER: No, I don't—well, possibly they did; yes. Yes, I guess they did. There was more or less cutting of rates, I could not say just how much.

Com'r LANE: That was as against the Union Pacific, the Southern Pacific would cut a rate?

Mr. MCCUSKER: No; as against any line; the Northern
692 Pacific or the Great Northern; it was one road trying to get the business. It frequently happened that the line west, possibly the Union Pacific west, the Northern or the Great Northern did not cut the rate, but the trunk line or the Missouri River lines did cut the rate; but the solicitor who got that would offer the inducement over his connections.

Com'r LANE: Was the Union Pacific at that time in the same position that the Great Northern was and Northern Pacific as to the cutting of rates as against the Southern?

Mr. MCCUSKER: They were all on a par at that time, yes, sir. Rates were the same by all lines.

Com'r LANE: That is all.

Mr. SEVERANCE: Is there a large amount of potatoes raised here in the Valley?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: And in the days that these lines were competitive was there active solicitation for the shipment of those potatoes?

Mr. MCCUSKER: The shipments of potatoes from the Valley went via Southern Pacific into Texas and Louisiana, and down in there, and I presume,—I don't know, I could not say whether they were competing for that particular business, but I presume they were; that was as a rule solicited by the outside men.

Mr. SEVERANCE: By the men that were up in the Valley?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Now what about fruits to the east, apples?

Mr. MCCUSKER: We handled no fruits via Southern Pacific. Fruits coming from Southern Oregon went over other lines for the reason that they had to use refrigerator cars, and I believe the Southern Pacific's charge, or the charge via on the refrigerator cars was fifty dollars that way; it was more anyhow; it was enough to turn the business this way; and the service being a couple of days longer the shipper naturally wanted to get quick action.

693 Mr. SEVERANCE: On fruit?

Mr. MCCUSKER: Yes; no fruit could be shipped of course via the Sunset.

Mr. SEVERANCE: I see. Did no fruit go via Southern Pacific and Sacramento?

Mr. MCCUSKER: No, I don't think so, unless local. You mean east?

Mr. SEVERANCE: Yes.

Mr. MCCUSKER: No, I don't think so; that is what I meant; I don't think it went that way.

Mr. SEVERANCE: You said the Sunset.

Mr. MCCUSKER: I say no fruit was taken that way.

Mr. SEVERANCE: I understand; But did any go via Sacramento and Ogden?

Mr. MCCUSKER: It is possible some did; I can't say.

Mr. SEVERANCE: You don't know about that?

Mr. McCUSKER: No. Most of it went the other way though.

Mr. SEVERANCE: Now you stated what was said at a meeting by Mr. Campbell about endeavoring to throw the seaboard business obtained to the Sunset route, or that it could be done; what further instructions, if any, did you have as to the effort you should make with reference to that business, if the shipper objected to sending it Sunset?

Mr. McCUSKER: Our instructions were then to endeavor to get it for the Union Pacific.

Mr. SEVERANCE: Well, did you after that time act under those instructions?

Mr. McCUSKER: We always acted on those instructions; yes, sir.

Mr. SEVERANCE: What difference or change was there in your duties after you became Assistant General Agent of all lines here?

Mr. McCUSKER: Then I solicited for all lines, still following those instructions of getting it Sunset or via the Union Pacific.

Mr. SEVERANCE: But you did not solicit for one line except to get the best haul; you did not solicit one line against the
694 other, but you tried to get it for your lines?

Mr. McCUSKER: Yes, sir, that is all.

Mr. SEVERANCE: That is all, as against the other lines.

Mr. McCUSKER: Against the Northern lines; in fact, the Missouri lines, or any line; we competed all the way to Omaha, of course.

Mr. SEVERANCE: So that instead of the Southern Pacific standing alone here for business from the east and working indiscriminately with any other line with which it might connect and from which it could get business, it worked solely with the Union Pacific.

Mr. McCUSKER: Yes, sir.

Mr. SEVERANCE: And they did not attempt to take business from each other, as you had formerly?

Mr. McCUSKER: No, sir.

Mr. SEVERANCE: Did you have anything to do with soliciting Oriental business?

Mr. McCUSKER: No, sir.

Mr. SEVERANCE: Now what class of business was there moving between here and San Francisco for which you solicited?

Mr. McCUSKER: I really could not say now the business. There was occasional hides; of course the lumber went down there, but that was not against the O. R. & N.; schooners would take the lumber cheaper. These box shooks was one commodity.

Mr. SEVERANCE: Box shooks; now just state what box shooks are.

Mr. McCUSKER: Well, they are knocked down boxes; the boards to make a box before they are nailed up, in other words.

Mr. SEVERANCE: Well, I knew what they were but I could not pronounce it; I wanted to have you explain it. Now, those were shipped from here to San Francisco.

Mr. McCUSKER: Yes, and different points in California.

Mr. SEVERANCE: Over your line of road?

Mr. McCUSKER: Yes, sir.

695 Mr. SEVERANCE: Did they also move to San Francisco over the boats of the O. R. & N.?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Or by the boats of the O. R. & N.?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: Where were these articles made?

Mr. MCCUSKER: Right across the river, some of them; the Standard Box Company, and some of them right up here at Jefferson Street.

Mr. SEVERANCE: And was that business actively solicited by the O. R. & N. boats and yourself as representing the Southern Pacific?

Mr. MCCUSKER: I know it was solicited by me, and I presume it was by them.

Mr. SEVERANCE: Because they got a part of it?

Mr. MCCUSKER: They got some of it. I know I was trying to get it away from them on certain shipments I remember of.

Mr. SEVERANCE: Now you spoke of hides; where did the hides come from?

Mr. MCCUSKER: Portland.

Mr. SEVERANCE: That is from the packing houses here at Portland?

Mr. MCCUSKER: From the dealers here. They came in carloads and less than carloads from the country into Portland, and they were baled and shipped both to San Francisco and to the east from Portland.

Mr. SEVERANCE: How did those hides move from here to San Francisco?

Mr. MCCUSKER: They moved by rail and water.

Mr. SEVERANCE: And were you soliciting that business as against the O. R. & N. boats?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: Now on shipments of hides; I have asked you about shipments of hides to San Francisco; now what about shipments of hides to the east; how did they move?

Mr. MCCUSKER: They moved via the rail lines and they moved via the Sunset.

696 Mr. SEVERANCE: Did they move via the O. R. & N. and the Union Pacific?

Mr. MCCUSKER: I presume so; they got their share of them; possibly more so than we did; we didn't get so much of them; we solicited them, however.

Mr. SEVERANCE: Solicited them from those people to whom they were brought in Portland, and who baled them?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: And you got some, did you, by that solicitation?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: Now after the common management here how were they solicited, if you know?

Mr. MCCUSKER: They were solicited via the Union Pacific, and I am not positive whether we solicited that via Sunset or not; I would not say as to that, but I presume that we did.

Mr. SEVERANCE: Well, you solicited it without caring which way it went as long as you got it?

Mr. MCCUSKER: No; we usually on Atlantic seaboard business we aimed to get the long haul.

Mr. SEVERANCE: To get it for the Sunset, if you could?

Mr. MCCUSKER: Yes.

Mr. SEVERANCE: And did some of the hides go to the Atlantic seaboard points?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: Are there paper mills up here in the Valley?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: Where does the paper go?

Mr. MCCUSKER: Well, I think that that is local consumption; I never solicited that, because it is out at Oregon City and up the river?

Mr. SEVERANCE: You had nothing to do with the paper?

Mr. MCCUSKER: No, I had nothing to do with that.

Mr. COTTON: You say you had nothing to do with paper?

697 Mr. MCCUSKER: No, sir?

Mr. COTTON: Didn't solicit it?

Mr. MCCUSKER: No, sir.

Mr. SEVERANCE: He said it was out of town. The reason was because it was out of the city?

Mr. MCCUSKER: It was out of the city and the traveling freight agent, or sometimes the arrangement was made in the office.

Mr. SEVERANCE: Well, you don't mean by that then that your road did not solicit it, but that you personally did not?

Mr. MCCUSKER: No, no; I mean that I personally didn't solicit it.

Mr. SEVERANCE: One thing I forgot to ask you; which way did Cincinnati common points business move to Portland?

Mr. MCCUSKER: When it was Southern Pacific before the consolidation it moved by the Queen & Crescent, or the L. & N. to New Orleans, then to Portland via the Sunset all rail; that was our solicitation; some of it moved, however, via Ogden when we could get it the other way.

Mr. SEVERANCE: If you could not what?

Mr. MCCUSKER: When we could not get it via the long haul we would take the short haul, take it at Ogden and Sacramento?

Mr. SEVERANCE: And did considerable business come out that way for those two roads?

Mr. MCCUSKER: Yes, sir.

Mr. SEVERANCE: What class of business?

Mr. MCCUSKER: Well, there was whiskey and merchandise of different classes, canned goods, I think vehicles sometimes in that neighborhood, I can't say; it was just the general class of merchandise that would come from that particular territory.

Mr. SEVERANCE: Well, was there any difference, so far as came under your observation, in the movement of that class of commodities from that territory after the amalgamation of the roads?

698 Mr. MCCUSKER: Well, the instructions were to get it via Union Pacific and Omaha.

Mr. SEVERANCE: And did it largely move that way rather than the Southern route?

Mr. MCCUSKER: I think that any business that we had afterwards moved via that line.

Mr. SEVERANCE: How is that?

Mr. MCCUSKER: Any business that we had to my knowledge moved via the Union Pacific.

Mr. SEVERANCE: I think that is all I have to ask Mr. McCusker.

Com'r LANE: You desire to cross examine, I suppose?

Mr. COTTON: Yes.

Com'r LANE: We will adjourn at this point until two o'clock this afternoon.

PORTLAND, OREGON, *Jan.* 24, 1907,
2 o'clock p. m.

Mr. SEVERANCE: I want to excuse Mr. McCusker for a moment while I recall Mr. Honeyman.

Mr. T. D. HONEYMAN, Recalled as a witness, who testified as follows:

Mr. SEVERANCE: One thing I forgot when you were on the stand this morning, Mr. Honeyman. Have you in Portland an organization known as the Chamber of Commerce?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: You are a member of that organization are you not?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: In a general way, what are the purposes of that organization?

Mr. HONEYMAN: To advance the interests of Portland commercially.

699 Mr. SEVERANCE: Have you a transportation committee in that Chamber?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: Having charge of transportation matters affecting Portland?

Mr. HONEYMAN: Of matters affecting transportation?

Mr. SEVERANCE: Of matters affecting transportation as affecting Portland?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: Do you, from time to time, publish reports from that committee?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: You are a member of that committe, are you not?

Mr. HONEYMAN: Yes.

Mr. SEVERANCE: I will show you exhibit 2, and ask you if this is a report of your transportation committee?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: The names signed at the bottom are the names of that committee?

Mr. HONEYMAN: That is sub-committee of the transportation committee.

Mr. SEVERANCE: And this report was gotten out by that sub-committee?

Mr. HONEYMAN: It was gotten out by the attorney for the sub-committee, J. N. Teal.

Mr. SEVERANCE: Looked over and signed by you gentlemen.

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: That particular report was prepared by your counsel, Mr. Teal?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: There are a lot of statistics in this report. Were those prepared by Mr. Teal?

Mr. HONEYMAN: Yes, sir.

Mr. SEVERANCE: And examined afterwards, I assume, by you gentlemen?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: And to the best of your belief this is an
700 accurate report, did you so consider it, when you signed it?

Mr. HONEYMAN: Yes sir. However that is a report dated July 1905, and then it was a subject of some criticism. There was some fault found with it.

Mr. COTTON: Will you please speak a little louder.

Mr. HONEYMAN: This was the original report gotten out by the sub-committee dated July 1905. It was a subject of some criticism, and if it is to be made a part of this record, there is a later report dated December 1905, that would not be quite so pessimistic. I merely suggest that as a protection to the committee.

Mr. SEVERANCE: I think I have a copy of that other report. Mr. J. N. Teal you say prepared this data?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: Is this a subsequent report which I hand you?

Mr. HONEYMAN: Yes, that is the subsequent report.

Mr. SEVERANCE: This report marked Exhibit 3 is the subsequent report to which you refer?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: And that is signed by the same committee?

Mr. HONEYMAN: By the same committee.

Mr. SEVERANCE: And also by Mr. Teal?

Mr. HONEYMAN: Also by Mr. Teal.

Mr. SEVERANCE: Was that report prepared by Mr. Teal?

Mr. HONEYMAN: Yes sir.

Mr. SEVERANCE: I will offer it in evidence in connection with Mr. Honeyman's testimony, these two reports marked Exhibits 2 and 3.

Cross-examination:

Mr. COTTON: Mr. Honeyman, was Mr. Teal less pessimistic in December then he was in June?

Mr. HONEYMAN: The first report was a caustic arraignment of the road, Mr. Cotton, for the reason of lack of development through

the State. As I remember, it was found fault with and crit-
701 icised as being unfair. The later report gives the roads credit for some new construction, and I think the whole thing has to be taken together to arrive at an understanding. I merely suggested that as a protection to the committee.

Mr. COTTON: In preparing these reports Mr. Teal largely does the work?

Mr. HONEYMAN: Yes, sir.

Mr. COTTON: You gentlemen have not taken time to go over them particularly or critically, have you?

Mr. HONEYMAN: No.

Mr. COTTON: How is that with reference to this railroad commission bill?

Com'r LANE: I don't think we will go into that now. That is outside of this matter entirely.

Mr. COTTON: The sentiments which are expressed in all these reports, are they always the sentiments of the transportation committee or of Mr. Teal only?

Com'r LANE: I think you can examine as to these two reports.

Mr. COTTON: That is what I am referring to now.

Mr. SEVERANCE: That is the way I understood the question.

Mr. HONEYMAN: There is a good deal of difference of opinion that comes up in the committee meetings, Mr. Cotton.

Mr. COTTON: The sentiments are not always those of the entire committee.

Mr. SEVERANCE: Do you mean the sentiments expressed in these reports, which the gentlemen signed?

Mr. COTTON: Yes.

Mr. SEVERANCE: Do you mean they have signed something they did not approve of?

Mr. COTTON: Yes.

Mr. SEVERANCE: Well, I think Mr. Honeyman should understand the question.

Mr. COTTON: Did all these gentlemen signing the reports always approve of everything said therein?

702 Com'r LANE: Do you know, Mr. Honeyman, whether that is so or not?

Mr. HONEYMAN: Why, I think there are some things about it a little bit severe, Mr. Lane.

Com'r LANE: Well, speaking for yourself, do you approve and indorse all that is said in these reports?

Mr. HONEYMAN: Taking the two reports together I think that they present about as fair a statement to the Chamber when the report was made as we could possibly do, or get together on.

Com'r LANE: Do you know whether all of the other members of the committee are of that same feeling or not, or have they so expressed themselves?

Mr. HONEYMAN: Well, I could not say.

Mr. COTTON: This committe wanted a line through central Oregon?

Mr. HONEYMAN: Yes, sir.

Mr. COTTON: And the December report was published to express

the state of things as you understood it actually existed in December?

Mr. HONEYMAN: Yes, sir.

Excused.

Mr. THOMAS MCCUSKER, Recalled to the stand, and his examination continued:

Cross-examination.

Mr. COTTON: Mr. McCusker you stated that no live-stock, or practically none moved via Sacramento, because of the mountain haul and the extra distance.

Mr. MCCUSKER: Yes.

Mr. COTTON: Kindly explain about that extra distance and the mountain haul?

Mr. MCCUSKER: I believe there is a law in Oregon regarding the unloading at certain points within certain time, of livestock, and to my knowledge I know I have not solicited any of the freight.
703 I do not beileve any one has; it is possible, but I do not know it. I know I was told not to solicit any livestock.

Mr. COTTON: That was long prior to 1901?

Mr. MCCUSKER: Yes.

Mr. COTTON: Now, what about the extra distance; how much farther is it to Ogden via Sacramento Route than by the O. R. & N. and the Oregon Short Line, do you know?

Mr. MCCUSKER: No, I do not. The mountain haul takes it a little bit longer; we figure it a couple of days against us on Chicago; at least two days.

Mr. COTTON: It is practically the increased distance from here to Sacramento, is it not?

Mr. MCCUSKER: It is possible that it is; that the extra mountain haul, you cannot make the time on the mountains that you can by the other route.

Mr. COTTON: How far is it from here to Sacramento?

Mr. MCCUSKER: It is about 680 miles, I should say, or in that neighborhood.

Mr. COTTON: And when you get through taking freight by Sacramento, you would get it to Ogden?

Mr. MCCUSKER: How is that?

Mr. COTTON: After you hauled freight down to Sacramento and then hauled it East you would get it at Ogden?

Mr. MCCUSKER: Yes.

Mr. COTTON: And that is as far as the Southern Pacific got it?

Mr. MCCUSKER: Yes, sir.

Mr. COTTON: Just exactly as when the Union Pacific gets it today, taking it down on the O. R. & N. and the Short Line?

Mr. MCCUSKER: I think they get it by Granger, don't they?

Mr. COTTON: Don't they get it either way?

Mr. MCCUSKER: Possibly, yes, but I think they take it by Granger.

Excused.

704 W. C. TILLSON, Called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Tillson, where do you live?

Mr. TILLSON: Salem, Oregon.

Mr. SEVERANCE: What is your business?

Mr. TILLSON: Prune-packing and handling some grain and feed.

Mr. SEVERANCE: Your principal business however, is handling prunes, is it not?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: What is the extent of your annual business in the shipment of prunes, Mr. Tillson?

Mr. TILLSON: I think our tonnage this year has been about four and one-half million pounds.

Mr. SEVERANCE: And to what points do you ship?

Mr. TILLSON: We ship to a good many points in the United States, several in Canada, and quite a good many cars have gone for export.

Mr. SEVERANCE: Do you ship to all parts of the East?

Mr. TILLSON: Yes.

Mr. SEVERANCE: Including the sea-board and also to Europe?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: How many years have you been in that business?

Mr. TILLSON: About eight years.

Mr. SEVERANCE: Prior to 1901 when the Union Pacific and the Southern Pacific became more friendly than they had been theretofore, were you solicited for traffic?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: By the representatives of what lines?

Mr. TILLSON: Oh, practically all lines, the O. R. & N., the Union Pacific, the Southern Pacific, the Great Northern, the Northern Pacific, and the lines also East of the Missouri; they were all after business.

Mr. SEVERANCE: They had agents up there all the time in the season?

705 Mr. TILLSON: They had their traveling freight agents around quite frequently.

Mr. SEVERANCE: In those days, which way did you ship your prunes?

Mr. TILLSON: Well, we had no special route for shipping. We shipped wherever we could get the business facilities. Very often routing was given by the purchaser of the fruit. In many cases we did not have the routing. Where we had the routing we would ship wherever it was most convenient to ourselves.

Mr. SEVERANCE: And would these gentlemen who were soliciting freight assist you in getting facilities?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: What routes did the commodities take to the East?

Mr. TILLSON: I think we done more shipping over the Union Pacific than any other one line, although we shipped a great many

cars over the Rio Grande from Austin. We shipped quite a number over the Northern routes, that is, the Northern Pacific, but not but very little, if any, by the Sunset Route in those days.

Mr. SEVERANCE: But you did ship some by the Sunset?

Mr. TILLSON: I think we did, a little.

Mr. SEVERANCE: But you shipped a good many by Sacramento, and then Ogden, didn't you?

Mr. TILLSON: I don't think we ever routed any that way in those days, no.

Mr. SEVERANCE: How did they move?

Mr. TILLSON: Where they go South they would take the Sunset Route.

Mr. SEVERANCE: They went the Sunset Route?

Mr. TILLSON: Hold on, I think we have—yes, we did ship some that way too; yes sir, I knew we did.

Mr. SEVERANCE: Yes, you shipped by the Southern Pacific, South Sacramento and over the mountains East of Ogden.

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: And then by some other route or other from there on?

706 Mr. TILLSON: Yes, sir.

Mr. SEVERANCE: And the Southern Pacific had a man there who was principally soliciting your business that way or by the Sunset?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: To the exclusion of all of the other lines?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Now, since the Southern Pacific and the O. R. & N. have been operating more or less together, what is the fact with reference to the work performed by the roads to secure shipment?

Mr. TILLSON: There is no soliciting done as far as the Southern Pacific and its allies go. At least we have not seen any.

Mr. SEVERANCE: There is no soliciting is there of the Southern Pacific as against the O. R. & N.?

Mr. TILLSON: No, none whatever.

Mr. SEVERANCE: Now, which way do your prunes move at the present time?

Mr. TILLSON: Nearly all go by the Union Pacific, the O. R. & N. and the Short Line.

Mr. SEVERANCE: They come into Portland and go East by the O. R. & N.?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Now, have you made any attempt to ship by other route since that?

Mr. TILLSON: We have had to get many cars routed by the buyers by other routes, and we have not succeeded in getting cars, and the result has been that we have ignored routing orders and shipped in any way that we could get the cars.

Mr. SEVERANCE: What roads were there that your buyers have routed over that you were unable to get the cars for?

Mr. TILLSON: Over the Great Northern and the Northern Pacific.

Mr. SEVERANCE: Have you had any difficulty in getting cars to ship East from Ogden over the Rio Grande?

707 Mr. TILLSON: I don't think we have tried this year.

Mr. SEVERANCE: Prior to this year, the last five or six years?

Mr. TILLSON: Well, we used to route a good deal that way, but I do not remember routing anything that way for the last two or three years.

Mr. SEVERANCE: Can you give any reason why you ceased to route that way Mr. Tillson?

Mr. TILLSON: Why we used to route that way?

Mr. SEVERANCE: Yes.

Mr. TILLSON: We were offered some special inducements, used to be.

Mr. SEVERANCE: How is that?

Mr. TILLSON: We used to be offered special inducements years ago.

Mr. SEVERANCE: That was common to all of the roads, was it not?

Mr. TILLSON: Oh yes, it was not special to us at all.

Mr. SEVERANCE: But why did you cease to route by the Rio Grande? Was there any trouble in getting cars sent in to ship that way?

Mr. TILLSON: I do not think so; we would not get a Rio Grande car if we were going to route that way, not often. We could ship in most any car on the Eastern road and route it that way, but it would not be necessary to get one of their cars for their haul would be no longer than quite a number of other roads that the fruit would pass over.

Mr. SEVERANCE: Up to a few years ago you used to route a good deal of stuff over the Rio Grande?

Mr. TILLSON: Yes sir, we routed quite a good bit that way.

Mr. SEVERANCE: Can you tell why you quit?

Mr. TILLSON: Well, I thought all things being equal in the way of transportation and cars that we had a more direct route and a little better service over the Union Pacific.

Mr. SEVERANCE: Your facilities seemed to be better that way?

Mr. TILLSON: Yes sir.

708 Mr. SEVERANCE: You had better luck getting cars?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Providing you routed that way?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Did you formerly ship any prunes to Portland by boat and thence over the O. R. & N.?

Mr. TILLSON: Yes, we used to ship a good bit that way.

Mr. SEVERANCE: On what boats?

Mr. TILLSON: On the *the* O. R. & N. Boats when they were running.

Mr. SEVERANCE: Were shipments solicited that way?

Mr. TILLSON: Oh yes.

Mr. SEVERANCE: By the O. R. & N.?

Mr. TILLSON: Yes sir, by their agents at Salem.

Mr. SEVERANCE: Is their solicitation of that kind now?

Mr. TILLSON: No sir.

Mr SEVERANCE: How is the boat service on the Willamette River running in connection with Portland and the railroad lines running out of here as compared with what it used to be?

Mr. TILLSON: The service is just about the same as it used to be; I don't notice any difference.

Mr. SEVERANCE: As far as Salem?

Mr. TILLSON: Yes, have a daily boat as far as Salem all the year round.

Mr. SEVERANCE: Is that the O. R. & N.?

Mr. TILLSON: No sir.

Mr. SEVERANCE: Well, that is what I am speaking of.

Mr. TILLSON: No sir, the O. R. & N. is not running boats there.

Mr. SEVERANCE: How long ago did they quit running boats there?

Mr. TILLSON: Oh, I think it was two or three years ago?

Mr. SEVERANCE: Up to two or three years ago the O. R. & N. always ran boats from Salem and picked up commodities
709 there destined for the East and brought them into Portland in competition with the Southern Pacific Railroad, did it not?

Mr. TILLSON: Well I would not say how long ago they did quit.

Mr. SEVERANCE: But before they quit they did that?

Mr. TILLSON: As long as they were running I think it was a competitive line for freight.

Mr. SEVERANCE: With the railroad?

Mr. TILSON: Yes sir, they would issue through bills of lading the same as the railroads would.

Mr. SEVERANCE: What is the line of boats that is up there now?

Mr. TILLSON: The Oregon City Transportation Company.

Mr. SEVERANCE: Who is the manager of that company?

Mr. TILLSON: I think Captain Graham, if I am rightly informed.

Mr. SEVERANCE: Does the O. R. & N. run boats part way up to Salem now?

Mr. TILLSON: I am sure I do not know. They do not come to Salem; whether they have any boats on the Willamette at all or not, I do not know; they may run to Dayton possibly.

Mr. SEVERANCE: Does this Oregon City Transportation Company issue through bills of lading?

Mr. TILLSON: Well, I do not know whether they do or not.

Mr. SEVERANCE: Your shipments do not go by water now?

Mr. TILLSON: No, I do not think they do. I remember shipping a car by them this fall, and they had the bill of lading issued here in Portland, and I do not think they do issue you through bills of lading.

Mr. SEVERANCE: Where did that car go?

Mr. TILLSON: Went over the O. R. & N. from Portland to Cleveland, Ohio.

Mr. SEVERANCE: How are the rates on those boats?

Mr. TILLSON: The rate is identical with the rail rate, there is no difference.

710 Mr. SEVERANCE: Have you ever been informed by the manager of the boat line or by the railroad officials as to whether or not there is any arrangement or agreement to maintain those rates?

Mr. TILLSON: I was told, I think by Captain Graham, that the condition by which the O. R. & N. withdrew their boats was that their rates would be made identical with the railroad rate. I know they have been the same, and my recollection is that that is what he told me. There is no competition in rates whatever.

Mr. SEVERANCE: Were there any prunes brought in here from your country by the boats in the old days and shipped South to San Francisco by steamship?

Mr. TILLSON: I hardly think so.

Mr. SEVERANCE: You don't know of any shipments that way?

Mr. TILLSON: No sir.

Mr. SEVERANCE: The boats of the O. R. & N. run in connection with that railroad?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Have you also shipped potatoes from that region?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: To a considerable amount?

Mr. TILLSON: No, we have not been large shippers of potatoes.

Mr. SEVERANCE: But you have shipped some?

Mr. TILLSON: Oh yes, five or ten or twenty cars each year, possibly; somewhere along there in a small way.

Mr. SEVERANCE: How did you formerly ship those potatoes?

Mr. TILLSON: We have shipped a good many by boat to Portland and then by boat down, but now we are shipping entirely by rail.

Mr. SEVERANCE: Were you formerly, prior to the Union Pacific and Southern Pacific getting together, solicited for shipment of potatoes by the respective lines?

Mr. TILLSON: Yes sir, we were by the steamboat, but
711 I don't remember ever having been solicited by the railroad.

Mr. SEVERANCE: But you were by the steamboat line?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Now, you say potatoes are all moved by rail?

Mr. TILLSON: Yes sir. We cannot ship by water.

Mr. SEVERANCE: Why is that?

Mr. TILLSON: I do not know. We made application for a shipment of some, only possibly a week ago, and the party told me they could not take them, they could not get them taken at Portland, but whether it was a temporary congestion which made it impossible or not, I do not know. At all events they refused the business, and said they could not handle them.

Mr. SEVERANCE: How long have you been shipping potatoes entirely by rail when they went to San Francisco?

Mr. TILLSON: We have not shipped any by water for three years.

Mr. SEVERANCE: Are you any longer solicited to ship them by water?

Mr. TILLSON: No sir.

Mr. SEVERANCE: Was the rates originally in force at the time you shipped by boat, less than the rate by rail?

Mr. TILLSON: I think the rate used to be less by water. I know it did, but I think at the present time, if you could ship at all, it would be identical with the railroad rates; that is my understanding.

Cross-examination:

Mr. COTTON: Mr. Tillson, the Northern Pacific and the Great Northern and the other roads are still soliciting your business, are they not?

Mr. TILLSON: We have had two or three calls, I think, from their traveling freight agents this year; that is the Northern Pacific and the Great Northern.

Mr. COTTON: As a matter of fact the Great Northern
712 and the Northern Pacific have had no cars to do business out of your country at all, have they?

Mr. TILLSON: We have not seen any of them, we have not had any at least.

Mr. COTTON: You have tried to get some and could not get them?

Mr. TILLSON: Yes sir.

Mr. COTTON: From whom did you try and get those cars?

Mr. TILLSON: Throught the local agent at Salem, through the Southern Pacific Agent.

Mr. COTTON: And you were unable to get any Northern Pacific or Great Northern cars to ship in?

Mr. TILLSON: No, we would not get them.

Mr. COTTON: Did you ship at all by way of the Sunset Route?

Mr. TILLSON: Yes sir.

Mr. COTTON: You are quite a heavy shipper now, are you not?

Mr. TILLSON: We ship quite a good bit, yes.

Mr. COTTON: Are you shipping that way now?

Mr. TILLSON: Well, they have not wanted freight that way from us for some little time. They prefer to route it the other way owing to some difficulty over their line, as I understood.

Mr. COTTON: But that has been very recently?

Mr. TILLSON: Yes, sir; the fore part of the season they were anxious for Sunset routing, but a little later they did not want it that way.

Mr. COTTON: That was after the earthquake?

Mr. TILLSON: Oh, yes; some physical conditions I understood.

Mr COTTON: After the earthquake?

Mr. TILLSON: Oh, yes sir, this fall, I mean. Owing to some physical difficulties, I understood.

Mr. COTTON: But that was some breakdown on the railroad?

Mr TILLSON: Something of that kind.

Mr. COTTON: You felt free to ship either way that you wanted to, didn't you?

713 Mr. TILLSON: Why we have been letting the roads, in our Atlantic seaboard shipments, in order to get the cars, letting them route them any way they pleased, so long as we could get the cars.

Commissioner LANE: Can you get the cars unless you do that?

Mr. TILLSON: We found we could get them a good deal more promptly if we did not interfere with the routing.

Mr. COTTON: What was the reason of that, do you know?

Mr. TILLSON: Well, I don't know; I am not running the railroad end of it.

Mr. COTTON: Sometimes they had cars one way and sometimes they had cars to go another way to the Atlantic seaboard.

Mr. TILLSON: Yes, very likely.

Mr. COTTON: Is not that so?

Mr. TILLSON: I presume it is.

Mr. COTTON: They were not insistent in either way?

Mr. TILLSON: I had the impression that when they got an eastern car they wanted home, they would rather send it home loaded than empty.

Mr. COTTON: And it all depended on where the car was going home to?

Mr. TILLSON: Yes, that is what I imagine.

Mr. COTTON: But they did not insist on your sending it one way or another, but would tell you from time to time that they had a car that was at home at Omaha, and tell you at times that they had a car that was at home by the other route, didn't they?

Mr. TILLSON: Well, now, I would give them a list of shipments I wanted to make; for instance, I had one to Kansas City, and I had one to St. Louis and one to Chicago, and the agent would say, "I can furnish you a car for Kansas City; here is a car I can give you for Chicago," but would not let me have that car for some other point, and we would load the car for whatever point it was necessary.

Mr. COTTON: Those were foreign cars as a rule?

714 Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Most of your cars are.

Mr. COTTON: And they were trying to get them home?

Mr. TILLSON: Well, now, I don't know; that was my supposition.

Mr. COTTON: That is what they told you; that they had a car that they had to get to Kansas City or some other point, and they asked you to load accordingly?

Mr. TILLSON: They would say: "Here, we can give you a car today for St. Louis," or "We can give you a car for Philadelphia," or wherever it might be, and if we had a load that would fit that car they would give it to us; otherwise we could not have it.

Commissioner LANE: Supposing you had the offer of a car for Philadelphia, could you route that any way you wanted to from Philadelphia?

Mr. TILLSON: Well, possibly, if we had insisted on it, but we did not insist. We ignored routing orders so far as they were given to us, and let the railroads route any way they pleased so long as they would furnish us the cars. Possibly if we had insisted on a particular routing, we would have gotten it; I don't know.

Mr. COTTON: That has just been this year, has it not?

Mr. TILLSON: Yes sir.

Mr. COTTON: That is due to the car shortage.

Mr. TILLSON: I presume so.

Mr. COTTON: Prior to this year you had no difficulty about routing, did you?

Mr. TILLSON: Well sometimes. They were exceedingly anxious for Sunset shipments because they got the long haul; that was very natural. Yes, they wanted Union Pacific routing. I don't think that they made it an absolute condition on furnishing cars that we route that way, but they would insist rather strong on it.

Mr. COTTON: Sunset or Union Pacific?

Mr. TILLSON: Either Sunset or Union Pacific. For in-
715 stance, if we wanted a Great Northern car I think there would have been some trouble.

Mr. COTTON: Wouldn't they want a Great Northern car?

Mr. TILLSON: No, I mean if we wanted to route via the Great Northern or Northern Pacific.

Mr. COTTON: Why? Did you ever try to ship that way?

Mr. TILLSON: Oh yes, we had a good many orders, routing orders that went that way, and we soon learned that it was no use to insist on it if we would get good service.

Mr. COTTON: What service did the Southern Pacific furnish except to take the car to Portland?

Mr. TILLSON: Well, we did not route them that way, because we could not get the cars.

Mr. COTTON: You could not get a Great Northern car?

Mr. TILLSON: No, not without a whole lot of trouble and a whole lot of delay.

Mr. COTTON: Who furnished the Great Northern cars, the Southern Pacific or the Great Northern Company?

Mr. TILLSON: We would make our application through the Southern Pacific local agent.

Mr. COTTON: You are a fairly large shipper now by the Sunset, are you?

Mr. TILLSON: Oh, I don't know whether you would call us a large shipper. We handle quite a lot of fruit.

Mr. COTTON: Any substantial difference in your ability to ship by those routes now than what it was some years ago?

Mr. TILLSON: We have had very good service this year; that is, we have had cars furnished us as promptly I think as we could reasonably expect for our prunes. We really have no cause to complain of delay in furnishing cars this year for fruit shipments.

Mr. COTTON: Then while they have been able to furnish you cars for Eastern shipment, and have furnished those cars quite
716 promptly, the only thing they have done is to say to you from time to time where a car had to go, and that is about all?

Mr. TILLSON: Yes sir.

Mr. COTTON: That is all.

Mr. SEVERANCE: Now, Mr. Tillson, I judge from your testimony that if you want to ship to the East over the Great Northern you are required to get a Great Northern car in there in some way; is that right?

Mr. TILLSON: Well, yes.

Mr. SEVERANCE: Now you are on the Southern Pacific aren't you?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: Do you have any trouble in shipping on the Southen Pacific and O. R. & N. in any kind of a car?

Mr. TILLSON: No, they would give us those cars when it was possible.

Mr. SEVERANCE: That is to say, if you want to ship off the Southern Pacific line onto any line except the O. R. & N., you would have to get a particular kind of car?

Mr. TILLSON: Yes sir.

Mr. SEVERANCE: But if you were routing South or East over the O. R. & N., although it had to come down over the Southern Pacific to Portland to reach the O. R. & N., they would give you any kind of a car?

Mr. TILLSON: Yes, I think so. We used to have all sorts of cars I know.

Mr. SEVERANCE: In the old days when these two roads were competing one against the other, each agent did all he could to get cars to go over his particular line?

Mr. TILLSON: Oh, yes.

Mr. SEVERANCE: But at the present time, while you say you have been giving pretty good service in the way of furnishing cars, the Southern Pacific has taken upon itself the routing of the cars?

Mr. TILLSON: Practically so, yes sir.

Mr. SEVERANCE: And the competition as to routing them
717 and the extra facilities furnished from time to time have gone up?

Mr. TILLSON: Yes sir.

Mr. COTTON: In the earlier days when the Southern Pacific and the O. R. & N. both had agents there, the O. R. & N. agent and the Southern Pacific agent both tried to get Northern Pacific and Great Northern cars in there for you for Great Northern and Northern Pacific shipment, did they?

Mr. TILLSON: I think the Southern Pacific did. I think their great effort was to go Sunset route.

Mr. COTTON: In the earlier days you had just as much difficulty in getting the Southern Pacific to put in an O. R. & N. car as you have now in getting them to put in a Northern Pacific or Great Northern car?

Mr. TILLSON: We used to ship then by water. We would ship then by the O. R. & N. boats.

Mr. COTTON: Cannot you ship by Mr. Graham's boats down to Portland now?

Mr. TILLSON: Yes sir.

Mr. COTTON: And out over the Northern Pacific and the Great Northern?

Mr. TILLSON: Yes sir, but he can't issue, or won't issue, through bills of lading.

Mr. COTTON: Is that our fault?

Mr. TILLSON: Why it isn't the Southern Pacific's fault surely.

Mr. COTTON: Do the O. R. & N. boats issue through bills of lading over the Great Northern and the Northern Pacific?

Mr. TILLSON: Yes sir, the agent used to give us through bills of lading; I know that.

Mr. COTTON: Over the Northern Pacific?

Mr. TILLSON: Yes.

Mr. COTTON: On the boat?

Mr. TILLSON: Yes.

Mr. COTTON: And over the Great Northern on the boat?

Mr. TILLSON: Yes sir. I don't know how he did it. Possibly he got them issued in Portland, and gave them to us the next
718 day. I won't be sure, but I know he used to get us through bills of lading. I don't think he did issue them himself; I think he must have got them in Portland.

Mr. COTTON: What kind of a bill of lading or receipt do you get from Graham now?

Mr. TILLSON: I have not shipped but one car of prunes over his line this year, and he had the bill of lading issued in Portland, and I didn't get it for possibly ten days after the fruit was shipped.

Mr. COTTON: That was over what road?

Mr. TILLSON: That was over the O. R. & N. from Portland.

Mr. COTTON: Did you try to ship over the Great Northern or the Northern Pacific by way of his boat?

Mr. TILLSON: No; I wanted to over the O. R. & N., but I could not get a car. The reason for shipping that particular car that way was that I had a contract to get the goods out at a certain time and I could not get a Southern Pacific car, so I made the shipment by water, so as to be in contract time for the shipment.

Mr. COTTON: Prior to 1901 when you wanted to ship over the Great Northern or the Northern Pacific, how did you get your cars then?

Mr. TILLSON: I think they used to order them from their local agent in Portland.

Mr. COTTON: The local agents of the Great Northern and the Northern Pacific?

Mr. TILLSON: Yes sir.

Mr. COTTON: But now you have been trying to get them through the local agents of the Southern Pacific?

Mr. TILLSON: Yes sir.

Mr. COTTON: But you don't get them?

Mr. TILLSON: We don't get them, but I will say this; we have not tried very hard this year, because we realized it was no use.

Mr. COTTON: The fact of the matter is you have had pretty good car service from the O. R. & N. and the Southern Pacific, haven't you?

719 Mr. TILLSON: So long as we could get the cars we didn't care whose they were or where they came from.

Mr. COTTON: But you have been able pretty nearly all the year to get cars to make your fruit shipments with pretty good regularity?

Mr. TILLSON: Yes sir.

Mr. COTTON: Have had, taking all things together, excellent service?

Mr. TILLSON: Yes sir.

Witness excused.

LOUIS LOCHMAN, called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live?

Mr. LOCHMAN: Salem.

Mr. SEVERANCE: What is your business?

Mr. LOCHMAN: Hop business.

Mr. SEVERANCE: How long have you been in the hop business in Salem?

Mr. LOCHMAN: Fifteen years.

Mr. SEVERANCE: Prior to 1901 what was the fact up there as to whether you were frequently solicited for shipments of hops by representatives of different railroads?

Mr. LOCHMAN: Yes, sir, we were solicited by the representatives of all the different railroads; the transcontinental lines.

Mr. SEVERANCE: Were you solicited separately by the Southern Pacific and the Oregon Railroad and Navigation Company and its Eastern connections?

Mr. LOCHMAN: We were.

Mr. SEVERANCE: Are you now?

Mr. LOCHMAN: No sir.

Mr. SEVERANCE: Mr. Lochman, how did you ship your hops to the East in those days, over what lines?

Mr. LOCHMAN: The Southern Pacific, Union Pacific and D. & R. G.

720 Mr. SEVERANCE: Did they move by Sacramento to Ogden and then over the Union Pacific or D. & R. G.?

Mr. LOCHMAN: No.

Mr. SEVERANCE: How did they move?

Mr. LOCHMAN: They moved over the O. R. & N. and Short Line and then by the Denver & Rio Grande.

Mr. SEVERANCE: How did they come to Portland from Salem?

Mr. LOCHMAN: By the Southern Pacific.

Mr. SEVERANCE: By rail?

Mr. LOCHMAN: By rail and boat.

Mr. SEVERANCE: That is, the O. R. & N. boats?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: How long ago did those boats quit running?

Mr. LOCHMAN: Two or three years ago I think, probably longer.

Mr. SEVERANCE: Do you ship hops by the O. R. & N. now starting them by boat from Salem?

Mr. LOCHMAN: No sir.

Mr. SEVERANCE: They go by rail now, do they?

Mr. LOCHMAN: We cannot ship them by boat from Salem over the O. R. & N. now; the boats are not running.

Mr. SEVERANCE: But I didn't know whether you could ship over the other line of boats that has been spoken of.

Mr. LOCHMAN: Yes, we can.

Mr. SEVERANCE: Do you?

Mr. LOCHMAN: We do.

Mr. SEVERANCE: To what points do you consign hops that you ship down as far as Portland over that steamboat line?

Mr. LOCHMAN: New York and London.

Mr. SEVERANCE: How do they move to the East?

Mr. LOCHMAN: The hops that have been shipped by boat have nearly all gone by the Rio Grande lines and then the connecting lines from Denver East.

Mr. SEVERANCE: Have you made any effort to route cars directly from Salem by the Rio Grande?

721 Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Will you state just what success you had in doing so?

Mr. LOCHMAN: We have had no success.

Mr. SEVERANCE: What has been the trouble?

Mr. LOCHMAN: Well, the agent at Salem notified all parties in order to ship by Rio Grande lines it would be necessary to secure Rio Grande cars, and in their absence we had to go either Union Pacific or Southern Pacific.

Mr. SEVERANCE: Is any distinction made as to the kind of car you are compelled to use if you ship over Union Pacific or Southern Pacific?

Mr. LOCHMAN: The Southern Pacific Sunset cars went Sunset; Union Pacific went over Union Pacific.

Mr. SEVERANCE: But I am speaking at the present time. At the present time you can ship either on the Southern Pacific or Union Pacific in any car that happens to be in the yards, can't you?

Mr. LOCHMAN: Yes.

Mr. SEVERANCE: But if you want to consign anything over the Rio Grande you must procure a Rio Grande car?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Have you by reason of that fact been able to make shipments over the Rio Grande?

Mr. LOCHMAN: We have not.

Mr. SEVERANCE: Did you formerly make large or small shipments that way?

Mr. LOCHMAN: Large and small.

Mr. SEVERANCE: And you have been in the business for fifteen years?

Mr. LOCHMAN: Yes.

Mr. SEVERANCE: What soliciting agents are now in the field up there requesting consignments of hops?

Mr. LOCHMAN: You mean of trans-continental lines?

Mr. SEVERANCE: Yes.

Mr. LOCHMAN: The Rio Grande man is about the only
722 one except the local agent at Salem for the Southern Pacific and Union Pacific.

Mr. SEVERANCE: The local agent at Salem represents both the Union and Southern?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: How do your hops mostly move now?

Mr. LOCHMAN: By rail.

Mr. SEVERANCE: You don't move any hops to the East by Sunset?

Mr. LOCHMAN: No, they don't care to have the business apparently.

Mr. SEVERANCE: Have you since 1901 shipped hops that way?

Mr. LOCHMAN: Very largely, yes.

Mr. SEVERANCE: Up to what time?

Mr. LOCHMAN: Up to a year ago.

Mr. SEVERANCE: Who routed them?

Mr. LOCHMAN: We did.

Mr. SEVERANCE: How did you happen to commence shipping by rail; who suggested it to you, if anybody?

Mr. LOCHMAN: Well there was no special reason. If the business was going to the Atlantic sea-board naturally the Southern Pacific wanted the long haul, and preferred to have them go Sunset. If we declined to ship them Sunset they were willing to take them for Omaha.

Mr. SEVERANCE: You say at the present time it is going all rail?

Mr. LOCHMAN: All rail.

Mr. SEVERANCE: By all rail do you mean that it goes by Omaha?

Mr. LOCHMAN: I mean via Omaha or else Rio Grande line, what hops might be shipped by boat.

Mr. SEVERANCE: But you don't ship by Sunset Route now?

Mr. LOCHMAN: No.

Mr. SEVERANCE: Who made that change in routing; was
723 it the railroad officials that changed it from Sunset? You said they preferred formerly to ship that way.

Mr. LOCHMAN: The agent at Salem notified us that they preferred to have the business go by Union Pacific.

Mr. SEVERANCE: Notified you to that effect?

Mr. LOCHMAN: Yes.

Mr. SEVERANCE: How long ago?

Mr. LOCHMAN: Four or five months ago; at the beginning of the hop season.

Mr. SEVERANCE: And it has gone that way, has it?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Now in the old days of competition up there in the shipment of hops, what extra facilities, if any, were rendered you or what assistance was rendered you by the agents of the respective lines competing for the business?

Mr. LOCHMAN: Well up to a year ago we could go to work and ship hops in transit to any point north of Eugene; for instance, to Salem and consolidate them there, or we could ship them to Portland without paying a local freight, and consolidate them there, and get free storage.

Mr. SEVERANCE: Where?

Mr. LOCHMAN: To any point for sixty days, on the line of the Southern Pacific.

Mr. SEVERANCE: How is it now?

Mr. LOCHMAN: That is all done away with now. We have to pay local freight and storage from the time the hops are put in the warehouse. The Southern Pacific say now they are acting purely as warehousemen.

Mr. SEVERANCE: They used to be a transportation company, didn't they?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Now, Mr. Lochman, what facilities, if any, were formerly furnished you when you shipped Sunset? Were there any special facilities furnished you there?

Mr. LOCHMAN: We got thirty to sixty days free storage on the Southern Pacific dock at New York.

724 Mr. SEVERANCE: Do you still enjoy that privilege?

Mr. LOCHMAN: No sir.

Mr. SEVERANCE: In fact your stuff don't go that way now?

Mr. LOCHMAN: Very little of it.

Mr. SEVERANCE: Was there any help furnished you in marking your hops and assisting you in getting out your shipments when these men were all competing with one another?

Mr. LOCHMAN: Yes sir, there was. It was not of any consequence, but if we wanted to make a shipment, and a competing line wanted the shipment the agent would say: "Well, I will come down to the warehouse and help you mark the bales and weigh them up," and the shipper would invariably give that particular line the business in consideration of that assistance.

Mr. SEVERANCE: That was the sort of competition that was in vogue there years ago?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: And that has disappeared as between the Southern Pacific and the O. R. & N.?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: How far from here is Dayton?

Mr. LOCHMAN: Twenty or twenty-five miles I guess.

Mr. SEVERANCE: When did the competition for business between the Southern Pacific and the Oregon Railway and Navigation Company stop; it was about 1900 or later?

Mr. LOCHMAN: About that time.

Mr. SEVERANCE: Dayton is this side of Salem?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: The O. R. & N. boats run as far as Dayton don't they?

Mr. LOCHMAN: They do.

Mr. SEVERANCE: And the other line runs further up?

Mr. LOCHMAN: As far as Corvallis.

Mr. SEVERANCE: How far is Corvallis from here?

Mr. LOCHMAN: About 100 miles up the river.

Mr. SEVERANCE: Are these boats that are run by the other line pretty fair boats?

725 Mr. LOCHMAN: Very good.

Mr. SEVERANCE: It appeared at Seattle the other day that the O. R. & N. boat above Salem, I believe, was a skimming dish. These boats running up there now are not skimming dishes, are they; they are pretty good boats, are they not, that run up to Corvallis?

Mr. LOCHMAN: Yes, they take six, seven or eight or ten carloads of hops at a shipment.

Mr. SEVERANCE: There is some stage of water in the Willamette River habitually?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Do you know of any reason why there is not water enough to run the O. R. & N. boats up there as well as the boats of the other line?

Mr. LOCHMAN: No reason that I know of.

Mr. SEVERANCE: That is all.

Mr. COTTON: How long does this boat run up to Corvallis each year?

Mr. LOCHMAN: Until the water becomes so low.

Mr. COTTON: How long does the water stay high enough so it can run?

Mr. LOCHMAN: Probably until June or July; perhaps a little bit later.

Mr. COTTON: What period during the year?

Mr. LOCHMAN: That they run up there?

Mr. COTTON: Yes.

Mr. LOCHMAN: From about December, depending a good deal on the volume of water in the river.

Mr. COTTON: Do they run a boat daily?

Mr. LOCHMAN: To Corvallis?

Mr. COTTON: Yes.

Mr. LOCHMAN: No sir, I think every other day, if I remember right.

Mr. COTTON: They give just as good service as the O. R. & N. ever gave, or a little better?

Mr. LOCHMAN: I wouldn't say so.

Mr. COTTON: Just as good?

Mr. LOCHMAN: Just as good.

Mr. COTTON: But they were running there when the O. R.
726 & N. boats were running for a while, were they not?

Mr. LOCHMAN: Yes sir.

Mr. COTTON: Do you know what became of the O. R. & N. boats?

Mr. LOCHMAN: I do not.

Mr. COTTON: Were they not worn out and lost?

Mr. LOCHMAN: I don't know.

Mr. COTTON: Do you know whether they are on the river now or not?

Mr. LOCHMAN: I think one is.

Mr. COTTON: It took more than one boat to keep up the route, didn't it?

Mr. LOCHMAN: Yes.

Mr. COTTON: Do you know what happened to the other boat?

Mr. LOCHMAN: I believe she sank.

Mr. COTTON: Did they wreck boats very frequently in the Willamette River?

Mr. LOCHMAN: Well they settle on a sand-bar or strike a snag and temporarily laid off until they pull them off with a line.

Mr. COTTON: Deep water navigation up there consists of a boat drawing about six or eight inches of water, doesn't it, up to Corvallis?

Mr. LOCHMAN: That is my understanding; yes.

Mr. COTTON: And it is rather of a skimming dish proposition, isn't it, most of the time?

Mr. LOCHMAN: No expert on the subject.

Mr. SEVERANCE: Do you want the impression to go out, Mr. Cotton, that the O. R. & N. is too poor to buy a new boat?

Mr. COTTON: I think that may be.

Mr. COTTON: Now, Mr. Lochman, in regard to this service; the O. R. & N. is running one boat today to Independence, isn't it?

Mr. LOCHMAN: Not to my knowledge.

Mr. COTTON: Running up to Dayton?

Mr. LOCHMAN: Yes sir.

727 Mr. COTTON: The only boat they have left that is useful for that Willamette River business—it still is on the run, isn't it?

Mr. LOCHMAN: I suppose, to Dayton.

Mr. COTTON: Is the Northern Pacific and the Great Northern and the Denver & Rio Grande man up there now helping to weigh hops?

Mr. LOCHMAN: No sir.

Mr. COTTON: He has stopped weighing too, hasn't he?

Mr. LOCHMAN: The Great Northern and the Northern Pacific haven't been up there soliciting business for the past two years to my knowledge.

Mr. COTTON: The Northern Pacific and the Great Northern have not been up there soliciting business for two years?

Mr. LOCHMAN: Perhaps more.

Mr. COTTON: Does the D. & R. G. man go up and help you weigh hops now?

Mr. LOCHMAN: No sir, he comes up there frequently and solicits business.

Mr. COTTON: The O. R. & N. and the Southern Pacific continued the practice of helping you weigh up hops and gave you free storage and warehouse until about six months ago, didn't they?

Mr. LOCHMAN: They gave us free storage and free in transit movement.

Mr. COTTON: Until about the 20th of August of this year?

Mr. LOCHMAN: Yes sir.

Mr. COTTON: When the new Interstate Commerce Act went into effect?

Mr. LOCHMAN: I don't know; I think that was the time.

Mr. COTTON: And the O. R. & N. and the Southern Pacific therefore continued these practices up until the 28th of August, which the Northern Pacific and the Great Northern discontinued two years ago. Is that right?

Mr. LOCHMAN: I didn't catch the question.

728 Mr. COTTON: Up until the 28th of August this free storage continued, didn't it?

Mr. LOCHMAN: It did.

Mr. COTTON: And stopped only then?

Mr. LOCHMAN: It did.

Mr. COTTON: That was the 28th of August, 1906?

Mr. LOCHMAN: Yes sir.

Mr. COTTON: The Northern Pacific and the Great Northern have not solicited your business for about how long?

Mr. LOCHMAN: Oh, quite a number of years; three or four or five years maybe.

Mr. COTTON: And the D. & R. G. man—when did he stop?

Mr. LOCHMAN: He continues to solicit it by river shipments.

Mr. COTTON: Then these arrangements that you have referred to were not discontinued by virtue of anything which took place in 1901?

Mr. LOCHMAN: Which arrangements?

Mr. COTTON: This free weighing and all that sort of stuff.

Mr. LOCHMAN: I don't quite understand you, Mr. Cotton.

Mr. COTTON: I say this free weighing and free storage——

Mr. LOCHMAN: I don't know what you mean by free weighing. We did our own weighing, but frequently a competing line would assist us in weighing up a lot of hops, but very rarely; it was not common practice, but occasionally happend.

Mr. COTTON: But the free warehouse and consolidation of shipments at given points continued up until this year?

Mr. LOCHMAN: Yes sir.

Mr. COTTON: And did not cease in 1901?

Mr. LOCHMAN: No sir.

Mr. COTTON: That is all.

Mr. SEVERANCE: Mr. Lochman, you said that the D. &

729 R. G. shipments came down to Portland by boat?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Why is that necessary?

Mr. LOCHMAN: Because we could not ship it in Southern Pacific cars over the D. & R. G., couldn't get the cars.

Mr. SEVERANCE: When you got to Portland where there was competition——

Mr. COTTON: Mr. Severance, there was another question I would like to ask Mr. Lochman.

Mr. SEVERANCE: Very well; proceed now.

Mr. COTTON: You have shipped this year more or less by Northern Pacific and Great Northern?

Mr. LOCHMAN: No sir.

Mr. COTTON: None at all?

Mr. LOCHMAN: No sir. Pardon me, Mr. Cotton; We did make shipments of probably four or five cars by boat to the Northern Pacific, but none by the Great Northern.

Mr. COTTON: I see. That is all.

Mr. SEVERANCE: Mr. Lochman, I was asking you at the time Mr. Cotton asked this last question about those shipments over the D.

& R. G. You say in order to make a shipment over that route you have been compelled to ship into Portland by boat?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: When you get into Portland where there is competition for the east between the Harriman lines and the Northern Pacific, you are able to get a car to go over the D. & R. G.?

Mr. LOCHMAN: When we ship our hops from points on the river, when we ship them right through to destination, and we control the routing then. In other words, we ship over the O. C. T. Co. boats right through to London, New York, Chicago or any other point, and send that receipt to the O. R. & N. Company, and it issues a bill of lading on the O. C. T. Company's receipt.

730 Mr. SEVERANCE: And that is because you get the stuff into Portland without putting it into the car?

Mr. LOCHMAN: Yes.

Mr. SEVERANCE: When you get here you can get a car?

Mr. LOCHMAN: Yes sir, I presume so.

Mr. SEVERANCE: Well that is what happens anyhow?

Mr. LOCHMAN: I presume they put them in a D. & R. G. car, but I don't know.

Mr. COTTON: Who did?

Mr. LOCHMAN: I say I should assume they used a D. & R. G. car if it is routed that way. They may have been put in a Short Line car and transported to Ogden and there transferred, and we ship them from the point of origin to destination and take no further interest in it.

Mr. SEVERANCE: They went over the D. & R. G. line ultimately?

Mr. LOCHMAN: I don't know.

Mr. SEVERANCE: You don't know about that?

Mr. LOCHMAN: No sir. They were routed that way.

Mr. SEVERANCE: You presume they went that way?

Mr. LOCHMAN: Yes sir.

Mr. SEVERANCE: Whose bill of lading did they give you?

Mr. LOCHMAN: The O. R. & N. Company.

Mr. SEVERANCE: And the cars were loaded here at Portland and went out over the O. R. & N. to Ogden?

Mr. LOCHMAN: I presume so, we never made any personal examination or supervision over that.

Mr. SEVERANCE: You have no difficulty in making shipments of that kind when you send them down by boat, do you?

Mr. LOCHMAN: None whatever.

Mr. SEVERANCE: There was no refusal to send the business over the D. & R. G. road by the O. R. & N., was there?

Mr. LOCHRAN: No sir; we got our receipt at Salem billed to destination, and got the bill of lading.

Mr. SEVERANCE: You got your cars at Portland?

731 Mr. LOCHMAN: I don't know; I presume so.

Mr. SEVERANCE: But you could not do that at Salem?

Mr. LOCHMAN: No sir.

Witness excused.

J. R. LINN, a witness called and having been duly sworn, testified:

Mr. SEVERANCE: Mr. Linn, where do you live?
Mr. LINN: In Salem.
Mr. SEVERANCE: What is your business?
Mr. LINN: Buying hops.
Mr. SEVERANCE: Where is your market for hops?
Mr. LINN: All over the world, where they consume beer.
Mr. SEVERANCE: You ship a large amount of hops, don't you?
Mr. LINN: We ship a good many.
Mr. SEVERANCE: What is your firm name?
Mr. LINN: Catlin & Linn.
Mr. SEVERANCE: How long have you been in business at Salem?
Mr. LINN: Fifteen years.
Mr. SEVERANCE: Prior to 1901, Mr. Linn, will you state whether there were solicitors up there for both O. R. & N. and Southern Pacific as well as other lines soliciting your business?
Mr. LINN: There was.
Mr. SEVERANCE: Are there now?
Mr. LINN: No.
Mr. SEVERANCE: Which ways in those days did your hops move to the East?
Mr. LINN: New York business principally went Sunset; Chicago business went Union Pacific, or over the O. R. & N. to Ogden, and then both Union Pacific and Rio Grande and other lines from Omaha, sometimes one and sometimes another.
Mr. SEVERANCE: And the eastern agents were those various lines connecting with the O. R. & N. and the Southern Pacific at
732 Ogden were there soliciting business, were they not?
Mr. LINN: Yes sir.
Mr. SEVERANCE: How does your business move now?
Mr. LINN: It moves about the same as it did before, except most all of our hops go Union Pacific or Sunset.
Mr. SEVERANCE: The last few months which way have they gone?
Mr. LINN: Union Pacific.
Mr. SEVERANCE: Who routes them?
Mr. LINN: We do. The Southern Pacific does rather at the present time.
Mr. SEVERANCE: That is what I meant; that is to say, the Southern Pacific states to you the way they prefer to have the hops moved, don't they, whether Sunset or Southern Pacific?
Mr. LINN: They state to you the way you can move them.
Mr. SEVERANCE: Oh, that is it?
Mr. LINN: Yes.
Mr. SEVERANCE: It is not a matter of preference, but it is a matter of their permission to move them.
Mr. LINN: It is a matter of cars.
Mr. SEVERANCE: What way do they insist on moving them at present, or what way do they now say you can move them?
Mr. LINN: Well, they say you can move them any way you have got the cars; they don't dictate particularly; they say, "We have got

a Milwaukee car here, they can go over the Milwaukee from Omaha," or "We have a Rock Island car," or something else, and they prefer it that way; they don't say they must go that way.

Mr. SEVERANCE: But they give you to understand that they prefer to have it go that way?

Mr. LINN: We feel we get better service by letting it go that way.

Mr. SEVERANCE: You get better service by adopting the advice of the Southern Pacific agent?

733 Mr. LINN: Yes, sir.

Mr. SEVERANCE: And sometimes he advises that they go Sunset and sometimes he advises that they go Union Pacific.

Mr. LINN: He has not advised Sunset for several months.

Mr. SEVERANCE: But he did formerly at times?

Mr. LINN: Yes.

Mr. SEVERANCE: And you found from your experience that it is wise to take his advice?

Mr. LINN: Yes.

Mr. SEVERANCE: To get the hops through to the East?

Mr. LINN: Yes.

Mr. SEVERANCE: Did you have any difficulty if you wanted to ship—Suppose you wanted to exercise some discretion in the matter, as you possibly had, and wanted to ship over the Denver and Rio Grande, did you have any difficulty in getting cars?

Mr. LINN: We have not attempted it for the last year.

Mr. SEVERANCE: You have not?

Mr. LINN: No sir.

Mr. SEVERANCE: Can you get plenty of Denver and Rio Grande cars?

Mr. LINN: No.

Mr. SEVERANCE: I am asking you if you desired to ship over the Rio Grande road?

Mr. LINN: We have not tried because we thought it was useless.

Mr. SEVERANCE: You found it was useless. Formerly when there was competition between the O. R. & N. and the Southern Pacific, did you ship into Portland by water?

Mr. LINN: Yes sir.

Mr. SEVERANCE: On the O. R. & N. Boats?

Mr. LINN: Yes sir.

Mr. SEVERANCE: Did your hops move to the east in that way, by O. R. & N. boats and then by the O. R. & N. railroad?

734 Mr. LINN: Yes.

Mr. SEVERANCE: Of course you do not ship by the O. R. & N. boats now, but do you ship by the other boats?

Mr. LINN: We have found it very handy to ship that way this year.

Mr. SEVERANCE: By the other boats?

Mr. LINN: By the boats, yes.

Mr. SEVERANCE: In what way does your stuff move to the east after it gets here when you ship by boat?

Mr. LINN. By Union Pacific and Illinois Central usually or the Northwestern.

Mr. SEVERANCE: Goes by O. R. & N. and Union Pacific?

Mr. LINN: Yes.

Mr. SEVERANCE: And thence over some connecting road?

Mr. LINN: Yes.

Mr. SEVERANCE: Did you ever ship any hops by steamer to San Francisco?

Mr. LINN: Never did.

Mr. SEVERANCE: Do you deal in anything except hops?

Mr. LINN: No.

Mr. SEVERANCE: Is there any representative of the Oregon Railroad & Navigation Company and the Union Pacific up there looking after business except the Southern Pacific agent?

Mr. LINN: No one that I know of except occasionally when Mr. Loundsbury comes up there.

Mr. SEVERANCE: Mr. Loundsbury lives in Portland?

Mr. LINN: Yes.

Mr. SEVERANCE: He is in charge of the district?

Mr. LINN: Yes sir.

Mr. SEVERANCE: The business of both lines is looked after there by the Southern Pacific?

Mr. LINN: Very well.

Mr. SEVERANCE: That is all.

Mr. COTTON: There has been a car shortage this year, has there not?

735 Mr. LINN: Yes sir, serious.

Mr. COTTON: And the difficulty about your shipping, as I understand it, has been that from time to time when you wanted to make a far eastern shipment, the company would tell you that they had a Milwaukee car?

Mr. LINN: Yes.

Mr. COTTON: And therefore would like to have you ship Milwaukee?

Mr. LINN: Yes.

Mr. COTTON: Another day they would tell you they had a Northwestern car and would like to have you ship Northwestern?

Mr. LINN: Yes sir.

Mr. COTTON: Another day a Rock Island car, and would like to have you ship Rock Island?

Mr. LINN: Yes.

Mr. COTTON: And another day, another Iowa line car?

Mr. LINN: Yes sir.

Mr. COTTON: They did not constantly dictate to you or attempt to furnish cars only for one line, did they?

Mr. LINN: Not at all.

Mr. COTTON: They were furnishing you these cars and telling you those were the cars they had, and sometimes they told you two roads on the same day, didn't they?

Mr. LINN: No, I hardly think so.

Mr. COTTON: Didn't you ever try to ship two cars at once?

Mr. LINN: Oh yes.

Mr. COTTON: Wouldn't you sometimes send one over one road and the other car over another road?

Mr. LINN: Our rule was to leave the routing blank east of Omaha and they loaded them as they could.

Mr. COTTON: You didn't care where?

Mr. LINN: No sir.

Mr. COTTON: The rates were all equal, were they not?

Mr. LINN: All the same.

736 Mr. COTTON: It would make no difference to you of any kind, character or description?

Mr. LINN: No.

Mr. COTTON: Do you know Mr. Henshaw, the traveling freight agent of the Southern Pacific?

Mr. LINN: Yes sir.

Mr. COTTON: Didn't he come up there occasionally?

Mr. LINN: Yes, occasionally.

Mr. COTTON: Did you ship by Great Northern and Northern Pacific at all?

Mr. LINN: We never have.

Mr. COTTON: Why?

Mr. LINN: I tried to once or twice years ago.

Mr. COTTON: And they refused rate from the valley into Portland?

—. ——.

Mr. COTTON: They wanted to make a Portland shipment of it?

Mr. LINN: They wanted to make a Portland shipment. That was in the days of intransit movement.

Mr. COTTON: You shipped down here by boat and ultimately they would go out over the O. R. & N. when they came down by boat?

Mr. LINN: Yes sir.

Mr. COTTON: Why is it that you shipped by boat?

Mr. LINN: This year, when we could get hops loaded onto the boat we got our bills of lading. They would get the cars when they got down there and take care of them in the warehouse until we could get the cars. We could get no documents on the railroad unless we got them loaded in the cars.

Mr. COTTON: They do not issue bills of lading when you store them in the warehouse?

Mr. LINN: No sir.

Mr. COTTON: They used to, did they not?

Mr. LINN: Yes sir.

Mr. COTTON: That is what Mr. Lochman meant by saying that the railroad now, when you stored freight in the warehouse, was a warehouseman?

Mr. LINN: Absolutely.

Mr. COTTON: In former years, they used to issue bills of

737 lading when you put the stuff in the warehouse, and you could let it stay there for a season, if you wanted to?

Mr. LINN: No, when they issued bills of lading, the hops were ready to go. Sometimes they would let them stay there awhile, but they were supposed to be on the road.

Mr. COTTON: But you did not have to get them into a car?

Mr. LINN: No, not to get our bill of lading.

Mr. COTTON: And since the 28th of August you have had to put them in the car?

Mr. LINN: We have had to load them in the cars ourselves at our own expense.

Mr. COTTON: Do you remember what took place on the 28th of August?

Mr. LINN: Very well.

Mr. COTTON: That was the Interstate Commerce Act. It made a substantial difference to you hopmen, didn't it, in regard to privileges, consolidations, and things of that kind you formerly had enjoyed?

Mr. LINN: The new rules of the Southern Pacific did.

Mr. COTTON: And that took effect on what date?

Mr. LINN: The last of August.

Mr. COTTON: When your hops came down by boat, did they come down on the O. R. & N. boats or Capt. Graham's boats?

Mr. LINN: Capt. Graham's boats when they were above Dayton.

Mr. COTTON: And Mr. Graham would issue a through bill of lading?

Mr. LINN: No, a shipping receipt, which we would take to our agent in Salem or in Portland and get our bill of lading.

Mr COTTON: On Mr. Graham's shipping receipt, you could get a through bill of lading to destination?

Mr. LINN: Yes sir.

Mr. COTTON: And then you would stop worrying about
738 a car and let your stuff go forward whenever the car was furnished?

Mr. LINN: Yes sir.

Mr. COTTON: Was there any limitation on the route which the shipment would take?

Mr. LINN: No, we routed them usually.

Mr. COTTON: And the stuff ultimately went forward?

Mr. LINN: Pretty slow.

Mr. COTTON: Waiting for cars, was it?

Mr. LINN: Well, we are getting letters daily advising us to trace shipments which have not yet arrived that were shipped months ago.

Mr. COTTON: Is that due to lack of cars or facilities or what?

Mr. LINN: I cannot say.

Mr. COTTON: Those are D. & R. G. shipments?

Mr. LINN: We made no D. & R. G. shipments.

Mr. COTTON: The same delays prevail over all the roads. This act of 1901 which took place, this amalgamation, I believe it is called, did not produce this effect, did it?

Mr. LINN: We had better service years ago.

Mr. COTTON: On all the roads?

Mr. LINN: Yes sir.

Mr. COTTON: That was before the car shortage?

Mr. LINN: Yes sir.

Mr. COTTON: And you had better service in 1895, didn't you?

Mr. LINN: Oh yes.

Mr. COTTON: And very good service in 1895?
Mr. LINN: Very good.
Mr. COTTON: I meant in 1905.
Mr. LINN: No, there was some shortage in 1905.
Mr. COTTON: How about 1904?
Mr. LINN: Not quite so bad.
Mr. COTTON: There was no limitation other than cars placed upon the route which you might want to select, was there?
Mr. LINN: Yes, I think so. There was several years ago.
739 The absorbing of the local rates in the Willamette Valley.
Mr. COTTON: By the Great Northern and the Northern Pacific?
Mr. LINN: Yes.
Mr. COTTON: Other than by the fact that the Northern Pacific and the Great Northern have ceased to absorb Willamette valley locals, there is no change in rates in any way whatsoever that you know of, excepting short cars?
Mr. LINN: That is all.
Mr. COTTON: That is all.
Com'r LANE: Is there any difference in your ability to get cars over the Denver and Rio Grande between 1900 and 1902, and subsequently?
Mr LINN: I think there was a little difference, yes.
Com'r LANE: Was it easier or harder to get a car in 1903 than it was in 1900 over the Denver and Rio Grande?
Mr. LINN: I cannot say as to the difference in those two dates, but it was always harder, when there were plenty of cars, to get cars over the Rio Grande than it was the Union Pacific.
Com'r LANE: Am I to understand that since 1901 there has been any change as to your ability to get cars for transporting your hops over the Denver and Rio Grande?
Mr. LINN: I cannot say exactly as to 1901, but I know it has been impracticable for us to try to ship hops over the Rio Grande for the past four or five years.
Com'r LANE: Before the last four or five years, how was it?
Mr. LINN: It was different. We could get cars.
Com'r LANE: The one difficulty you labor under is the getting of cars, is it?
Mr. LINN: Well, that is usually the worst; that is where we are handicapped.
Com'r LANE: What are the other difficulties?
740 Mr. LINN: Well, that is probably the only difficulty in getting a shipment off.
Com'r LANE: What percentage of your cars would you get over the Denver & Rio Grande prior to a period of four or five years past?
Mr. LINN: I think in 1900 and 1899 we shipped probably fifty to sixty per cent. of our hops from Ogden over the Rio Grande & Rock Island.
Com'r LANE: Why did you stop sending so many that way?
Mr. LINN: It was probable that we sent them that way on account of personal friendship for those people's representatives in this field.

That had something to do with it, and when they could furnish the cars so easily, we shipped the other way.

Com'r LANE: You do not understand, Mr. Linn, that owing to the taking effect of the Interstate Commerce law of the 28th of August, all the privileges you enjoyed, such as concentration and temporary storage, were withdrawn owing to any provision of that law or rule of the Interstate Commerce Commission, do you?

Mr. LINN: It has been given to us in that light.

Com'r LANE: Who gave it to you?

Mr. LINN: Southern Pacific officials; they intimated that that was the fact.

Com'r LANE: I notice that Mr. Lewis W. Hill, vice president of the Great Northern, also announced yesterday that the coal famine in the Northwest was due to the fact that the railroads were denied the right to sell coal commercially under the new Interstate Commerce law; overlooking the fact, singularly, that that law so far as doing business commercially was concerned, would not go into effect until May first, 1908. Any difficulty you experience, I suppose, now, is charged by the railroad men to the Interstate Commerce law, is it not?

Mr. LINN: that is one of the excuses.

Com'r LANE: Do you think the car shortage, if any exists
741 out here, is due to the Interstate Commerce law?

Mr. LINN: No sir.

Mr. SEVERANCE: How are the rates on hops to the east compared with what they were six or seven years ago?

Mr. LINN: The rate was reduced from a two cent basis to a cent and a half basis last August.

Mr. SEVERANCE: And that by all lines?

Mr. LINN: By all lines, but the minimum amount to be shipped was 20,000 lbs. to secure the carload rate; otherwise, the old rate of two cents applied.

Mr. SEVERANCE: Under the old rate, what was the minimum?

Mr. LINN: Any quantity; one bale.

Mr. SEVERANCE: Has there been any other change in the rates in the last six or seven years?

Mr. LINN: Under the old rate, we had movement en transit for consolidation. We could ship from Eugene to Portland and consolidate; and to-day we must pay local freight to consolidate shipments. Any place we make a shipment we must pay local freight and warehouse charges and rehandling charges.

Mr. SEVERANCE: Prior, then, you had this privilege furnished you?

Mr. LINN: Yes sir.

Mr. SEVERANCE: Similar to the milling en transit privilege?

Mr. LINN: Yes sir.

Mr. SEVERANCE: But that was taken away?

Mr. LINN: Yes sir.

Mr. SEVERANCE: And this lower rate was given you but in order to get your carloads as a rule you have to put this local carload rate in?

Mr. LINN: We do quite frequently.

Mr. SEVERANCE: Has there been any other change in the rates in the last few years?

Mr. LINN: Not materially, no. Years ago we had a cent and a half rate, I believe, or one and three-fourths when the price of hops was very low.

742 Mr. SEVERANCE: But rates did go up from what they were formerly to the two cent basis?

Mr. LINN: Yes sir.

Mr. SEVERANCE: Do you remember how many years ago that was?

Mr. LINN: No. It must have been about 1896 or 1897, somewhere along there.

Mr. SEVERANCE: You do not recollect just when?

Mr. LINN: No, I guess it was later than that; probably 1898. I can't say positively.

Mr. SEVERANCE: Mr. Linn, counsel was asking you about the routing of these cars east of Omaha. The Southern Pacific agent does not attempt to interfere with the routing east of Omaha, does he?

Mr. LINN: Never has.

Mr. SEVERANCE: But it is the routing from here to Omaha that he looks after?

Mr LINN: Yes.

Mr. SEVERANCE: And he does not interfere as to that?

Mr. LINN: He requests.

Mr. SEVERANCE: He requests it?

Mr. LINN: Yes.

Mr. SEVERANCE: He says, "I have got a car, Milwaukee and St. Paul car," or something of that sort, "and I want to move this stuff by the way of Omaha by the Union Pacific," and he requests you to have it moved that way?

Mr. LINN: If you bring in your shipping receipt any other way, he asks you, "Why?"

Mr. SEVERANCE: And endeavors to get you to change it?

Mr. LINN: We have changed.

Mr. SEVERANCE: You have changed upon the advice of the agent of the Southern Pacific?

Mr. LINN: Yes.

Mr. SEVERANCE: Do the Union Pacific and the Southern Pacific occasionally have cars of their own at Salem?

Mr. LINN: Well, yes.

743 Mr. SEVERANCE: You see their own cars there, do you?

Mr. LINN: Yes sir. They use them for local business though mostly, I think.

Mr. SEVERANCE: Haven't they moved any hops Sunset by their own cars?

Mr. LINN: I presume they have moved some this year?

Mr. SEVERANCE: Do they ordinarily use foreign cars?

Mr. LINN: I rather think on Sunset shipments, they use Sunset cars. We have had no Sunset business recently.

Mr. SEVERANCE: They use Union Pacific cars that way, too, don't they, or don't you notice the lettering of cars?

Mr. LINN: I don't know.

Mr. SEVERANCE: You would not be able to state that?

Mr. LINN: I was told by the agent some time ago that hops would have to be loaded in foreign cars from this date on, as they would need all their local cars, all our Southern Pacific cars for local business.

Mr. SEVERANCE: And that you would have to take foreign cars?

Mr. LINN: Yes sir.

Mr. SEVERANCE: And also take the advice of the agent as to the route they shall take after they leave the Union Pacific or Southern Pacific lines?

Mr. LINN: We allowed them to do the routing; we had no reason to ask for anything special.

Witness excused.

J. N. TEAL, called as a witness, having been duly sworn, testified:

Mr. SEVERANCE: Mr. Teal, you live in Portland?

Mr. TEAL: Yes.

Mr. SEVERANCE: Are you a member of the bar of this city?

744 Mr. TEAL: Yes.

Mr. SEVERANCE: Mr. Honeyman was on the stand this afternoon, and his attention was called to Exhibits 2 and 3, being the reports of the transportation committee of the Chamber of Commerce of this city. These reports are signed by L. A. Lewis, A. H. Devers, Henry Hahn, T. D. Honeyman, Edward Newbegin, and S. M. Mears, and the second one signed by those same gentlemen and by J. N. Teal, counsel. Mr. Honeyman stated that those reports were prepared by you and that the statistics contained in those reports were prepared by you and submitted to the committee and signed by them. I show them to you and ask you if you prepared them.

Mr. TEAL: Yes. I am familiar with them. I prepared them.

Mr. SEVERANCE: In this report of July, 1905, you gave a statement of the earnings of the O. R. & N. for a series of years together with other facts, charges, and the mileage of the road. From what source did you procure those figures?

Mr. TEAL: Official reports of the company.

Mr. SEVERANCE: You also gave in this a statement of the cost of the Shanico road, that is, a road built by Mr. Lytle and his associates, running from a point of connection with the O. R. & N. down to Shanico, together with the earnings of that road and its surplus after paying interest on its bonded indebtedness for a period of four years, 1901, 1902, 1903, and 1904. From what source did you get that information?

Mr. TEAL: The information about the earnings came from the official records, principally from the records of the Interstate Commerce Commission. The report as to the cost of the road came from official sources, unnecessary to mention where.

Mr. SEVERANCE: You also describe in this report the character

of the country lying south of Shanico, together with its production. From what source did you obtain that information?

Mr. TEAL: Both from personal investigation, personally
745 living there to start with in years gone by, and from reports or from perfectly reliable sources. I had reports perhaps from three different sources, all of which I think were absolutely reliable. I think events since have justified not only that report, but that a great deal more might have been stated about it than is contained in that report.

Mr. SEVERANCE: In this report, considering that proposed road from Shanico to Bend, you quote from a report or recommendation of Chief Engineer Kennedy. Who is he?

Mr. TEAL: Mr. Kennedy used to be chief engineer of the O. R. & N. Company; but a number of years ago there was a gentleman lived in this country by the name of Paul F. Mohr who conceived a plan for building out in that country and building a road, ferrying across the Columbia river and coming down the North Bank; and he had Mr. Kennedy make an examination of the country, and Mr. Kennedy's examination of that country did not extend out as far as the Bend country, and some say it did not go as far as Shanico but it covered a very large extent of country in between the river at Biggs Station and Shaniko, where the Columbia Southern has since been built.

Mr. SEVERANCE: Mr. Teal, you also state in this report as follows: "More than sixteen months ago, it was authoritatively announced by Mr. Harriman in the city of Portland that the road would be extended"—referring to the extension to Bend of the Shaniko road?

Mr. TEAL: Yes sir.

Mr. SEVERANCE (continuing): "But nothing was done, and at the present time, at the request of your committee, an examination of the country has been made." That was a fact, was it, that it was so announced by Mr. Harriman?

Mr. TEAL: It was so announced by Mr. Harriman at a banquet at the Arlington club in this city.

Mr. SEVERANCE: Has that road ever been built?

Mr. TEAL: It has not.

746 Mr. SEVERANCE: How long have you lived in Oregon?

Mr. TEAL: Well, I will put it this way: since I was born.

Mr. SEVERANCE: You were born here, were you?

Mr. TEAL: Yes.

Mr. SEVERANCE: Are you familiar with the country in eastern Oregon?

Mr. TEAL: Oh, I think reasonably so, yes sir.

Mr. SEVERANCE: You have been over it?

Mr. TEAL: Yes sir, a good deal.

Mr. SEVERANCE: You have investments over there?

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: Will you tell me whether that country is of a character to produce large traffic if roads were built into it?

Mr. TEAL: Well, when you are speaking of that country, we better define what we mean.

Mr. SEVERANCE: I mean the country that is now without railroad facilities lying to the east of the Southern Pacific, to the south of the O. R. & N., and to the West of the Oregon Short Line.

Mr. TEAL: Yes, sir, it is an empire.

Mr. SEVERANCE: You have made quite an investigation, have you, Mr. Teal, into the question of railroad construction and development of the western country?

Mr. TEAL: I have tried to, yes.

Mr. SEVERANCE: Do you know of any other territory in the United States of equal extent and of equal richness that is without railroad facilities?

Mr. TEAL: Well,——

Mr. SEVERANCE: Or in the west, we will say?

Mr. TEAL: No, I do not in the west. I do not know so much about the south.

Mr. SEVERANCE: Do you know how far from the railroad some portions of that country are?

Mr. TEAL: Yes.

Mr. SEVERANCE: Take any point; what is the farthest point from the railroad over there?

747 Mr. TEAL: The best way to look at it is, taking what we call the southeastern Oregon country that consists in the neighborhood of probably 40,000 square miles of territory. There are counties out there that have 10,000 square miles in them. There are valleys in which you could pretty nearly lose a state like Rhode Island.

Mr. SEVERANCE: Fertile valleys?

Mr. TEAL: Yes, fertile valleys. There is lumber and every resource you can think of. The fact of the matter is, and there isn't a man in Oregon but what knows it, if that country had been properly developed, this state would have a million or a million and a half of people in it today.

Mr. SEVERANCE: Other portions of the west have been developed during these years by the extension of railroads and branches of railroads, have they not?

Mr. TEAL: Yes, Washington has almost doubled its mileage in the same time that we have been standing still; and at the same time, nearly doubled its population over us, too, although it is one-third smaller than this state.

Mr. SEVERANCE: Do you know of any reason why branches of these roads have not been built in there, except that the whole system here is controlled by the same party?

Mr. TEAL: If you were to ask me to fathom the reason, in view of the earnings of certain of these systems in this state, why this state has not been developed, it is simply a matter impossible for me to answer. I do not understand that system of development.

Mr. SEVERANCE: Everything that comes out of that country at the present time, however it may get out, by team or pack train, or cattle being driven on hoof, has to find its ultimate market by rail

over either the Southern Pacific, the Oregon Short Line, or the Oregon Railroad & Navigation Company?

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: Unless it is taken on the Columbia by water.

Mr. TEAL: Well, it would not go that way. The country I am speaking of, what we call the southeastern Oregon country,
748 outside of the Klamath country of course, gravitates toward the Short Line; that is, what they get of it. The Klamath country goes south, most of it, although they are building a road in there now.

Mr. SEVERANCE: But it must go over one of those three lines of road?

Mr. TEAL: Oh yes.

Mr. SEVERANCE: And this country lies between those three lines?

Mr. TEAL: Yes.

Mr. SEVERANCE: That is, the Southern Pacific and the O. R. & N., and the Oregon Short Line?

Mr. TEAL: Yes.

Mr. SEVERANCE: You said a moment ago that in view of the earnings of this road, it was incomprehensible to you why the country has not been developed. Do you mean developed by the construction of branch lines?

Mr. TEAL: I do.

Mr. SEVERANCE: In making that statement as to earnings, are you aware of the fact, which has already been developed upon this hearing, that within the last few months, the Oregon Short Line has declared and paid a dividend of fifty per cent.?

Mr. TEAL: I am not.

Mr. SEVERANCE: You did not take that into account?

Mr. TEAL: I do not consider the Short Line; I was not considering the Short Line at the time. That was not what was in my mind just at that time. It is a part of the system.

Mr. SEVERANCE: You were considering the earnings of the O. R. & N.?

Mr. TEAL: That was what was in my mind. That is a part of that general system. The Short Line owns all of the stock of the O. R. & N., which is the same thing.

Mr. SEVERANCE: The earnings of the O. R. & N. are very large?

Mr. TEAL: The earnings of the O. R. & N. last year after
749 making every allowance that I know of that is made, and paying a dividend on the preferred stock which is required by their articles, paid twenty-five per cent. dividend on their common, outside of their earnings. I think that is reasonably fair for a country of this size.

Mr. SEVERANCE: That is, the earnings were sufficient to pay the interest on the bonds, a dividend on the preferred stock, and twenty-five per cent. on the common?

Mr. TEAL: Yes, sir, and maintenance and a good many other things, too.

Mr. SEVERANCE: And still, that extension to Shaniko that was prophesied by Mr. Harriman several years ago has not materialized?

Mr. TEAL: No, sir.

Mr. SEVERANCE: To the best of your belief, Mr. Teal, are the statements of fact and the suggestions contained in these reports, Exhibits 2 and 3, signed by these gentlemen, and one of them signed by yourself, accurate and correct?

Mr. TEAL: Yes, sir, excepting one thing which I find I was a little inaccurate about.

Mr. SEVERANCE: What was that?

Mr. TEAL: I refer to the fact that there had never been any adverse railway legislation in this State. I really had forgotten at the time that we did have a railway commission once?

Mr. SEVERANCE: That is sometime ago.

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: How long ago?

Mr. TEAL: Oh, several years; I could not just say when.

Mr. SEVERANCE: But aside from that, you think there are no inaccuracies in the statements?

Mr. TEAL: I do not think so.

Mr. COTTON: Mr. Teal, who were the early directors of the O. R. & N., and where did they reside?

Mr. TEAL: Well, it depends; I suppose you want me to say——

750 Mr. COTTON: Well, from 1885 to 1893?

Mr. TEAL: Oh, I could not say, but I know that Mr. Ladd, Mr. Corbett, Mr. Failing and a number of those gentlemen were directors almost continuously for a number of years, and doubtless were so then.

Mr. COTTON: And they were largely the advisors of Mr. Villard and the other gentlemen who were interested in the O. R. & N. Company in those days, were they not?

Mr. TEAL: Well, I could not say as to that. Mr. Ladd, himself was very largely interested in the road at one time directly.

Mr. COTTON: They exercised a very decisive voice in its management; in other words, they were not merely nominal directors?

Mr. TEAL: No, for a long time, they were not, I think.

Mr. COTTON: And during that period these Portland gentlemen built a large number of the branches which the O. R. & N. Company has in the state of Washington?

Mr. TEAL: During that time the railroads built the branches.

Mr. COTTON: This Eastern Oregon country is no new discovery, such as it is?

Mr. TEAL: No, but Mr. Cotton, it is a decidedly new discovery since 1896, since this road went into the hands of a receiver.

Mr. COTTON: It has been there all the time has it not?

Mr. TEAL: Yes sir.

Com'r LANE: When was the last branch line built by the Oregon Railroad and Navigation Company or the Oregon Short Line?

Mr. TEAL: In this State?

Com'r LANE: Yes.

Mr. TEAL: Well, the only lines that have been built in this State from the O. R. & N. Company since 1897, that I now recall, was

nineteen miles, which was built from La Grande to Elgin.
751 Mr. Lytle built the Columbia Southern out to Shaniko about seventy miles, which I think has been since acquired or controlled by the O. R. & N. Co. And either a year or two years ago there was forty miles built from Arlington out to Condon. I think that constitutes the additional mileage of the O. R. & N. in this state since 1897.

Com'r LANE: Was there a long period prior to the acquisition of this road by the Union Pacific in which no branch lines were built?

Mr. TEAL: Yes sir, it was very hard times.

Com'r LANE: Between what years?

Mr. TEAL: Oh, it is so far back now it is hard to give dates, but the road went into the hands of a receiver in 1894, July 1st. I think Mr. McNeill had charge of it, and I think it stayed in his hands for about two years, and prior to that time it was under the control of the U. P. as I remember, and I do not remember just when before that.

Com'r LANE: You say the last branch was built about 1897?

Mr. TEAL: Oh no, I was giving you the ones built since 1897. You see, we take them from about the time of the re-organization of the O. R. & N. in 1896, say in ten years.

Mr. COTTON: And from 1885 to 1897 what branches were built in this state by the O. R. & N.?

Mr. TEAL: I suppose the Heppner branch must have been built within that time. And I imagine the Pendleton branch to Walla Walla was built at that time.

Mr. COTTON: A line from La Grande to Elgin was under construction in 1891, was it not?

Mr. TEAL: Well, it may have been.

Mr. COTTON: And that was stopped when they stopped the Portland and Puget Sound line?

Mr. TEAL: I don't know as to that.

Mr. COTTON: The Shaniko line was built with O. R. & N. money, was it not?

Mr. TEAL: Yes, it was.

752 Mr. COTTON: As a matter of fact, Mr. Teal, there have been more railroads built, more branches of the O. R. & N. built in the last years, commencing with the Columbia Valley, the Arlington and Condon line and the extension of the Elgin line, under Mr. Harriman's administration, than was ever built in the form of branches under the old administration; is not that so?

Mr. TEAL: What was the first one you mentioned?

Mr. COTTON: Since Mr. Harriman's administration of O. R. & N. there have been more branches built in Oregon than was built under the old administration.

Mr. TEAL: Yes, all that we have now.

Mr. COTTON: What is that?

Mr. TEAL: I have given you all that I know of.

Com'r LANE: I do not get that clearly yet. What lines were built since the Harriman administration came in?

Mr. TEAL: Since the Harriman administration came in the line from Arlington to Condon, forty miles.

Mr. COTTON: The Shaniki line.

Mr. TEAL: Mr. Lytle built the Shaniko line.

Mr. COTTON: The O. R. & N. furnished the money, didn't it?

Mr. TEAL: Mr. Lytle furnished the brains and built it.

Mr. COTTON: Well, he did not.

Mr. TEAL: There might be a difference of opinion on that.

Mr. COTTON: Yes, a very substantial difference.

Mr. TEAL: At any rate Mr. Lytle built the road and we will say with O. R. & N. money, that is seventy miles.

Mr. COTTON: The man who furnishes the money usually furnishes the brains also.

Mr. TEAL: Then he is a sucker to let the other man have the road if he has put up the money for it. Then there was a road from Arlington to Condon of about forty miles.

Com'r LANE: From Arlington to Condon and Shaniko.

Mr. TEAL: But Mr. Cotton says the Elgin branch was built
753 before this, but I thought that was built since that time.

Mr. COTTON: No, the Elgin branch was not. That was built in 1891.

Com'r LANE: Then that is about 110 miles.

Mr COTTON: But the line from Elgin to Wallowa has been built since?

Mr. TEAL: I don't know. I did not know that it was built yet.

Mr. COTTON: It is under construction?

Mr. TEAL: Yes.

Mr. COTTON: Practically completed?

Mr. TEAL: Well, I don't know how far along it is. About two years ago, I have reason to believe, there was very strong and urgent recommendations made from this end of the line for the building of roads, by the people in charge here; and I believe it was the result of those recommendations that the Elgin line is being completed, and I think it will be completed.

Mr. COTTON: The only branch which the O. R. & N. had prior to the Harriman administration was the Heppner branch and the line from La Grande to Elgin, was it not?

Mr. TEAL: In Oregon?

Mr. COTTON: Yes.

Mr. TEAL: Yes sir.

Mr. COTTON: And those are the only branches which were built in Oregon by any past administration, any former administration of the O. R. & N. property?

Mr. TEAL: Yes.

Mr. COTTON: Including the time when it was administered by the Portland people?

Mr. TEAL: Well, they were directors, Mr. Cotton, but I will say yes, because I think Portland people have been about as slow in appreciating some parts of this country as Mr. Harriman has.

Mr. COTTON: It is not a country which appears on its surface to be blossoming with fruit and roses?

Mr. TEAL: Much of it is not.

Mr. COTTON: A good deal of it is not.

754 Mr. TEAL: A great deal of it is not.

Mr. COTTON: The first 25 or 30 miles immediately South of Shaniko are nothing but rocks?

Mr. TEAL: There are a good many rocks there, but I would not say it was all rocks. But it is not good railroad building in getting down there.

Mr. COTTON: And if that country can be developed in some other way as indicated in your report of December 1905, you think it would be better to develop it that way, would you not?

Mr. TEAL: If it will be developed in some other way. But the fact is, it is a matter of indifference how it is developed so long as the railroad goes into that country.

Mr. COTTON: In that report of July 1905, you seemed to quote Mr. Kennedy with reference to the Shaniko and Bend line?

Mr. TEAL: Yes.

Mr. COTTON: Mr. Kennedy has been at great pains to write to you since that, that his letter which you quoted there did not relate to anything beyond Wasco, or a little bit beyond it?

Mr. TEAL: Well yes; I think someone had a talk with Mr. Kennedy, from my talk with him since, and he wrote to me.

Mr. COTTON: He wrote you quite a strong letter on the subject?

Mr. TEAL: No, it was not. When I saw Mr. Kennedy sometime afterwards he was considerably weaker then; as a matter of fact, Mr. Cotton, that states the truth. It was in connection with that line. I have Mr. Kennedy's origianl letter in my possession now.

Mr. COTTON: He simply said Wasco and beyond; he did not say how much beyond?

Mr. TEAL: No, he did not say how far beyond, or how little beyond.

Mr. COTTON: But he wrote you afterwards to the effect that he did not intend to mean even as far as Shaniko?

Mr. TEAL: I don't think he did. I do not think that report
755 intended to cover as far as Shaniko, of Mr. Kennedy's.

Mr. COTTON: Therefore, the idea, which you have conveyed in that report of July 1905, that Mr. Kennedy recommended the construction of the line beyond Shaniko, is not altogether right from Mr. Kennedy's standpoint?

Mr. TEAL: I do not think the report so states.

Mr. COTTON: I think it was quoted very largely for the purpose of indicating that Kennedy did so state?

Mr. TEAL: No, sir, that letter was quoted for the purpose of indicating that it was the policy of the old U. P. lines to build the branches out into this country.

Mr. COTTON: That it was the policy of the old line?

Mr. TEAL: So Mr. Kennedy stated.

Mr COTTON: They never did build any, did they?

Mr. TEAL: I don't know. Or do you mean out here?

Mr. COTTON: Yes.

Mr. TEAL: No.

Mr. COTTON: And these lines, which you refer to in your report of December, 1905, you believe are under construction now?

Mr. TEAL: Many of them are. I know the Coos Bay line is under construction; I know the Elgin branch is under construction. I have every reason to believe and do believe that the line across the state in Southeastern Oregon will be constructed and the Klamath line is certainly being constructed and the North Bank road is being constructed, and the Tillamook road is being constructed.

Mr. SEVERANCE: What North Bank road?

Mr. TEAL: The Hill road.

Mr. SEVERANCE: Mr. Harriman is not assisting very ably in the construction of the North Bank road, is he?

Mr. TEAL: Not materially.

Mr. COTTON: The line across central Oregon and the Natron line and the line to Marshfield and the line across central Oregon and the Elgin extension are all Harriman lines, are they not?

756 Mr. TEAL: Every one of them, yes.

Mr. SEVERANCE: When did that Marshfield line get to be a Harriman line? About three months ago?

Mr. COTTON: No, it was constructed by the Oregon Western Railroad Company.

Mr. TEAL: It is a Harriman line as everybody knows.

Mr. SEVERANCE: Well, to be sure that I know what you were talking about, this autumn Mr. Harriman bought from Spreckles a Steamship line and a road from Marshfield called the Coos Bay, Roseburg and Eastern.

Mr. COTTON: That is an entirely different proposition. Mr. Teal, this is a line from the main line of the Southern Pacific at Drain to Marshfield, is it not?

Mr. TEAL: Yes.

Mr. SEVERANCE: Does it connect with the line of Spreckles, or are they building the whole way?

Mr. COTTON: They are building all the way I understand.

Mr. SEVERANCE: It is not intended as a connection?

Mr. COTTON: Oh, the Spreckles line has no road; it is just a few miles.

Mr. TEAL: The Spreckles road is but a few miles up to a coal mine.

Mr. COTTON: The Eastern Oregon country is very spotted, runs good and bad in spots?

Mr. TEAL: Yes, much of it is.

Mr. COTTON: The best country in Eastern Oregon lie- *at* Burns, Klamath and Lake Counties; is not that so?

Mr. TEAL: You are speaking of the Southeastern Oregon country?

Mr. COTTON: Yes.

Mr. TEAL: You know there is a very good country in Crook County, but you are eliminating that now.

Mr. COTTON: If a line were built from Ontario to Klamath through Burns and down through Klamath and Lake Counties, forming a connection with the Oregon Short Line, and a connec-

757 tion with the Southern Pacific, that would tap much of the good country in Southern Oregon, would it not?

Mr. TEAL: It would tap a great deal of good country, Mr. Cotton

and I think it would really tap the best part of that country, excepting of course the Klamath country, which is just as rich as it is.

Mr. COTTON: Well, I say, going down from Ontario through Burns, Lake, Klamath and down that country and over to Natron.

Mr. TEAL: And then going down South?

Mr. COTTON: Yes.

Mr. TEAL: Yes, it would.

Mr. COTTON: That line as you understand, is under construction?

Mr. TEAL: No, I understood it was coming to Portland, not to California.

Mr. COTTON: But that is an extension across the Lake country to connect with it?

Mr. TEAL: Yes, but I understood you were going to start from Natron and work out through the Burns and Harney country and down the Malheur River to Ontario.

Mr. COTTON: And build a branch up to Burns?

Mr. TEAL: Yes, I hope so.

Mr. COTTON: And then a branch south to Klamath?

Mr. TEAL: That is already being built.

Mr. SEVERANCE: How much of this is under construction?

Mr. TEAL: This Klamath country line is under construction, and it depends upon what you call under construction. I believe when they are really expending their money in good faith, laying out road, acquiring rights of way, etc., that means under construction.

Mr. SEVERANCE: Are they laying any rails or grading down there?

Mr. TEAL: I understand they are.

Mr. SEVERANCE: They are grading on the Marshfield line?

Mr. TEAL: Yes sir.

758 Mr. SEVERANCE: And they are grading on the Natron line?

Mr. TEAL: Yes and on the Klamath line.

Mr. COTTON: And they are building from Ontario how far west?

Mr. TEAL: I think they have acquired that road, Mr. Cotton. That was built by a man from Montana out to Vale, but I think it belongs to the Short Line now.

Mr. COTTON: And you have reason to believe that they are making very extensive surveys through central Oregon at the present time?

Mr. TEAL: Yes, sir, I absolutely believe Mr. O'Brien when he tells me anything that he knows of his own knowledge, and he has reported that officially.

Mr. COTTON: So those lines are under construction. Now, about the Elgin branch?

Mr. SEVERANCE: Well, you say under construction when they are making surveys. There have been a great many surveys all over United States.

Mr. COTTON: Mr. Teal, please explain what you mean by that.

Mr. TEAL: I think it is but fair, because they have got enough sins to answer for anyhow, to say that the road was constructed

out to Vale, and they now own it; and I know Mr. O'Brien would not have told me officially what he did unless it was so, and I know the Klamath line is under construction, and I know the Coos Bay line is under construction and that the Elgin line is under construction.

Mr. SEVERANCE: I was not intimating in any way that Mr. O'Brien had stated to you anything that was not so, but I was merely getting at what you meant by the words "under construction."

Mr. COTTON: In saying that the Klamath line is under construction, Mr. Teal, you mean grading.

Mr. TEAL: Yes, actual work, and I presume they are now working.

Mr. COTTON: And by "under construction" on the Marshfield line you mean grading.

759 Mr. TEAL: Doing everything that is possible to construct the road.

Mr. COTTON: And by "under construction" with reference to the Elgin extension you mean grading?

Mr. TEAL: I do.

Mr. COTTON: And upon the Klamath and Natron line?

Mr. TEAL: They are constructing there, I understand, which I consider a part of this Eastern Oregon line?

Mr. SEVERANCE: What about the main line across the state?

Mr. TEAL: I think that will be a part of the main line.

Mr. COTTON: Do you know how the distance compares from Natron to Klamath with the distance from Klamath to Burns?

Mr. TEAL: I should think it would be shorter from Natron to Klamath than from Klamath to Burns.

Mr. COTTON: It is pretty nearly the same distance.

Mr. TEAL: Well, I was going to say it must be very nearly the same distance.

Mr. COTTON: Do you know how far it is from Burns to the present terminus of the Vale line?

Mr. TEAL: Yes, I have not been over there for a long time, but I should think 60 to 70 miles, somewhere along there.

Mr. COTTON: And that line forming the extension of the Vale line to Klamath you understand they are surveying?

Mr. TEAL: Yes, sir.

Mr. COTTON: Do you know anything about the line to Pilot Rock and south of Pendleton?

Mr. TEAL: Well, yes and no. I mean I have not been up there since they started but I understand there is a road in process of construction from Pendleton to Pilot Rock.

Mr. COTTON: By the O. R. & N.?

Mr. TEAL: Yes, sir.

Mr. COTTON: Then at the present time there would seem to be some railroad activity in the way of construction in the

760 State of Oregon by the Harriman lines?

Mr. TEAL: Yes, sir.

Mr. COTTON: To quite a considerable extent?

Mr. TEAL: Yes, sir.

Mr. COTTON: Do you know about how many miles that would

represent that is under actual construction? What would you say the mileage is now under actual construction in this state by the Harriman lines?

Mr. TEAL: Well, I think as I remember it is about 60 miles from Elgin to Joseph the way they run; it may not be that far. I do not know how they run going to Pilot Rock, but probably 25 or 30 miles from Pendleton. It must be eighty miles almost from Drain to Marshfield any way they can make it.

Mr. COTTON: Going down to the Umpqua straight across, and then down the coast it is longer, is it not?

Mr. TEAL: Yes, I understand. That was about as short a way as they could make it.

Mr. COTTON: They follow the line down the Umpqua River to the coast and then down the coast?

Mr. TEAL: That would make it perhaps 90 miles.

Mr. COTTON: The road across the state, if it is built, the line from Natron to Klamath, how far along is that?

Mr. TEAL: I do not know how far along it is in point of construction?

Mr. COTTON: I mean in distance?

Mr. TEAL: I should think it must be 160 miles or maybe more.

Mr. COTTON: It must be more, because——

Mr. TEAL (interrupting): I do not just know the mileage. They go up the mountains there and have to wind down again, but it is some place between 160 and 200 miles in distance, I should think.

Mr. COTTON: And then the Vale line actually constructed is how many miles?

Mr. TEAL: Probably twenty miles.

Mr. COTTON: That makes 355 miles under actual con-
761 struction at the present time without counting the Central Oregon line at all.

Mr. TEAL: Yes, if that addition is correct, which I have no reason to doubt.

Mr. COTTON: And the Central Oregon line on which they are surveying has a mileage of about how much?

Mr. TEAL: About 350 to 400 miles.

Mr. COTTON: So altogether at the present time the Harriman lines have under construction or under survey with a very fair prospect of construction, in this state in the neighborhood of over 700 miles of railroad?

Mr. TEAL: I believe so.

Mr. COTTON: That is all.

Mr. SEVERANCE: Mr. Teal, this 90 miles to Marshfield is Southern Pacific, is it not?

Mr. TEAL: We call it the Harriman system. Yes, it goes off the Southern Pacific because they connect at Drain, and that is in the direction of Central Oregon.

Mr. SEVERANCE: But that is west to the Pacific Coast from Drain?

Mr. TEAL: Yes, that is going to the coast.

Mr. SEVERANCE: The 160 miles is Southern Pacific, is it not, running down from Natron?

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: That runs in a southeasterly direction to avoid the mountains.

Mr. TEAL: I beg pardon.

Mr. SEVERANCE: Is that a line that could be continued on down and connect around the mountains with the Southern Pacific farther along the line?

Mr. TEAL: Oh yes, unquestionably it will; I imagine that is one purpose of it.

Mr. SEVERANCE: Affords an easier grade than the present grade over the mountains for through business.

Mr. TEAL: I think so.

Mr. SEVERANCE: The 20 miles was already built and was bought.

Mr. TEAL: That is my understanding. I know it pur-
762 ported to have been built by Mr. Parker, a Montana man.

Mr. SEVERANCE: And 25 miles from Pilot Rock to Pendleton is O. R. & N.?

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: And the 60 miles of O. R. & N. is where?

Mr. TEAL: That is from Elgin out to the Wallowa country.

Mr. SEVERANCE: So that there is really under construction by the O. R. & N. 85 miles and by the Short Line about 20 miles and the Southern Pacific is building to reach Coos Bay about 90 miles, and 160 miles is being constructed by the Southern Pacific to get around the mountains, which could be used if desired as a part of the line across the state.

Mr. TEAL: Well, that really could be used for two purposes and certainly will be. That will open up the Klamath country and bring the trade here which we do not get now. I would consider that a valuable line.

Mr. SEVERANCE: Yes, undoubtedly, but so far as now constructed, or actually under construction, leaving out of question the surveys, this large empire as you call it in central and eastern Oregon is as yet unpenetrated by railroads?

Mr. TEAL: Yes, sir.

Com'r LANE: Is there any disposition to block development to the north?

Mr. TEAL: No it was not blocked at all.

Mr. SEVERANCE: You are speaking of the Hill line?

Mr. TEAL: I do not know what is in your mind. Do you mean the North Bank route?

Com'r LANE: I wanted to know if it was the policy pursued here, owing to joint ownership of these roads by Mr. Harriman, which prevents this territory being opened by others.

Mr. TEAL: Oh, it is a notorious fact, I suppose known to every-
body, that knows anything about the circumstances, that
763 there has been one continuous fight down the Columbia River against Mr. Hill's efforts to get to this city; being blocked by the Harriman interests.

Com'r LANE: The Northern Pacific comes into this town, does it not?

Mr. TEAL: Yes, but it comes in by a roundabout way.

Com'r LANE: Has Mr. Hill been trying to get into eastern Oregon country?

Mr. TEAL: There are rumors that he has.

Com'r LANE: But nothing directly or positively has been done?

Mr. TEAL: No.

Com'r LANE: I suppose the only lines that you have to develop — this state at all are the Oregon Railroad & Navigation Company or Union Pacific and the Southern Pacific?

Mr. TEAL: Those two interests at the present time, yes, sir.

Mr. COTTON: What about the Gould lines from the south?

Mr. TEAL: They are not in yet.

Mr. COTTON: They are being constructed are they not?

Mr. TEAL: Towards us?

Mr. COTTON: Well, being constructed across California.

Mr. TEAL: Yes.

Mr. COTTON: You have approached them on the subject of constructing into Oregon, have you not?

Mr. TEAL: Yes, sir, we have encouraged them every way we could.

Mr. COTTON: There is no reason in the world why they cannot come into this country if they want to, is there?

Mr. TEAL: Well, if you have the other things, if you have the money to build with there is not. We have encouraged these other roads, but it is not with any feeling at all, we have encou-
764 raged the O. R. & N., we are delighted to see any of them build that will open up the country.

Mr. COTTON: The North Bank road hasn't anything to do with this interior Oregon country, has it?

Mr. TEAL: I do not know. I do not want to say anything I ought not to say—I do not know whether it has or not.

Mr. COTTON: Mr. Hill has been trying to impede the construction of the Harriman lines north just as much, hasn't he?

Mr. TEAL: I think so.

Mr. COTTON: And equally or more successful if anything, I should say.

Mr. TEAL: I doubt that; I think you have done pretty well up there. But I do not draw any distinction at all.

Mr. COTTON: There isn't any such friendly feeling between those two gentlemen as would cause either of them to keep out of each other's territory.

Mr. TEAL: I do not think they would fall on each other's necks if they saw each other.

Mr. SEVERANCE: What is the road you speak of as the North Bank road, the construction of which Mr. Harriman has been trying unsuccessfully to block? Where does it come from and where does it go to?

Mr. TEAL: It comes from Spokane, I believe down to the Columbia, and then down the north bank of the Columbia River, and crosses on the bridge at Vancouver, thence into Portland on a water level, and builds from Vancouver to the Sound.

Mr. SEVERANCE: You say Mr. Harriman has been endeavoring to obstruct the construction of this road?

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: But he has not been successful?

Mr. TEAL: No, sir, only to a degree.

Mr. SEVERANCE: Where is the line Brother Cotton referred to that Mr. Harriman is trying to construct where Mr. Hill has been throwing rocks on the tracks?

765 Mr. TEAL: Well now, he is over in Hill's territory. You see, this country is all divided up; so when Mr. Harriman gets into Mr. Hill's territory at Seattle, Mr. Hill does not feel happy.

Mr. SEVERANCE: Where is the line Mr. Harriman has under construction that Mr. Hill is trying to stop?

Mr. TEAL: Between Portland and Seattle.

Mr. SEVERANCE: Where does that run; up the Columbia or down the Columbia River?

Mr. TEAL: It goes down the Columbia on the North Bank and then goes on over.

Mr. SEVERANCE: Do you know where the line of the Milwaukee & St. Paul is projected through to the Sound?

Mr. TEAL: No.

Mr. SEVERANCE: That does not come into Oregon?

Mr. TEAL: I am afraid not.

Mr. SEVERANCE: Hasn't it been publicly announced where it went?

Mr. TEAL: Oh yes, sir, it has been. It is supposed to go across, I think, a little above Pasco.

Mr. SEVERANCE: In Washington?

Mr. TEAL: Yes.

Mr. SEVERANCE: And across Idaho?

Mr. TEAL: Oh yes, it has got to cross Idaho.

Mr. SEVERANCE: But does not come down south?

Mr. TEAL: I am afraid not; not yet.

Mr. SEVERANCE: And the Gould line that Mr. Cotton seems desirous of having come up through here is being built from San Francisco, is it not?

Mr. TEAL: It is being built to San Francisco.

Mr. SEVERANCE: From Ogden.

Mr. TEAL: Yes, sir.

Mr. SEVERANCE: That is called Western Pacific?

Mr. TEAL: The Western Pacific.

Mr. SEVERANCE: But the only road or the only owner of roads now here who could readily throw branches into this territory is Mr. Harriman?

Mr. TEAL: Yes, sir.

(Witness excused.)

766 ALEXANDER KERR, called as a witness, being first duly sworn, testified as follows:—

Mr. SEVERANCE: Where do you live, Mr. Kerr?

Mr. KERR: In Portland.

Mr. SEVERANCE: What is your business?

Mr. KERR: Wholesale grocery business.

Mr. SEVERANCE: How long have you been in the business?
Mr. KERR: Since 1893.
Mr. SEVERANCE: What is the name of your firm?
Mr. KERR: Wadhams & Kerr Brothers.
Mr. SEVERANCE: Prior to 1901, Mr. Kerr, were your shipments from the East solicited by the Southern Pacific and Oregon Railroad & Navigation Company representatives?
Mr. KERR: Yes sir.
Mr. SEVERANCE: Separately?
Mr. KERR: Yes sir.
Mr. SEVERANCE: They are not so soliciting now, are they?
Mr. KERR: No sir.
Mr. SEVERANCE: Where do your goods come from chiefly?
Mr. KERR: From the East and South and the Pacific Coast.
Mr. SEVERANCE: Do you bring goods up from San Francisco to some extent?
Mr. KERR: Yes sir.
Mr. SEVERANCE: How do they come?
Mr. KERR: By boat and by rail, both.
Mr. SEVERANCE: Have they always come both ways, more or less?
Mr. KERR: Yes sir.
Mr. SEVERANCE: Prior to 1901 was your trade solicited by the boat line and the rail lines from San Francisco?
Mr. KERR: Well principally by the boat line; it was cheaper by boat.

Mr. SEVERANCE: But the railroad asked for your business;
767 came around and tried to get it, and you did ship some that way, didn't you?
Mr. KERR: Very litte; principally by boat at that time.
Mr. SEVERANCE: What way does your stuff come from the East now?
Mr. KERR: We ship some around the Horn and some by the Union Pacific and some Northern Pacific.
Mr. SEVERANCE: The commodities that come around the Horn by ship are trans-shipped at San Francisco, are they not?
Mr. KERR: Yes sir.
Mr. SEVERANCE: Did you formerly occasionally bring shipments around by the Sunset Route?
Mr. KERR: A few, but principally imports from France.
Mr. SEVERANCE: That was during the days when this business was actively sought by the Southern Pacific, wasn't it?
Mr. KERR: We do still. I think we occasionally now ship from France a shipment or two from France of mushrooms, peas, and articles of that kind by Sunset. That is my recollection.
Mr. SEVERANCE: From New York?
Mr. KERR: We got a through bill of lading, as I understand it.
Mr. SEVERANCE: Well does it come by New York and then around by boat to the Gulf or come direct to the Gulf from France and then up?
Mr. KERR: I can't tell you; I don't know.

Mr. SEVERANCE: Years ago when the Southern Pacific was soliciting business as against the O. R. & N., did you occasionally ship by Sacramento?

Mr. KERR: Very seldom. Our principal shipments were at that time with the Union Pacific. In fact almost exclusively.

Mr. SEVERANCE: But you did ship some that way?

Mr. KERR: Very little.

Mr. SEVERANCE: But now you don't ship any that way?

768 Mr. KERR: Not that way, no sir.

Mr. SEVERANCE: Goods are not routed that way any more, are they, coming over the Union Pacific from the East; they are not routed around by Sacramento, but all sent by the Short Line?

Mr. KERR: The Union Pacific, you mean?

Mr. SEVERANCE: Yes.

Mr. KERR: Yes.

Mr. SEVERANCE: Is that equally so when they come over Rio Grande, or don't you ship over that line?

Mr. KERR: We don't ship over Rio Grande.

Mr. SEVERANCE: Did you use to ship over Rio Grande to some extent?

Mr. KERR: Occasionally.

Mr. SEVERANCE: So that at the present time you get practically all your goods by the Union Pacific and Short Line or by the Northern Pacific?

Mr. KERR: Yes sir.

Mr. SEVERANCE: The Northern Pacific is still soliciting business?

Mr. KERR: Yes sir.

Mr. SEVERANCE: And the Harriman lines as a system solicit business?

Mr. KERR: Yes sir.

Mr. SEVERANCE: But not separately as parts of the system?

Mr. KERR: No, sir.

Mr. SEVERANCE: That is all.

Mr. COTTON: Is the Great Northern also soliciting?

Mr. KERR: Yes, sir, but we do not use them very often.

Mr. COTTON: You have not given them much business?

Mr. KERR: None at all.

Mr. COTTON: For that reason they simply dropped coming to see you?

Mr. KERR: That is practically correct.

Witness excused.

769 H. M. HALLER, called as a witness, was first duly sworn and testified as follows:—

Mr. SEVERANCE: Mr. Haller, where do you live?

Mr. HALLER: Portland.

Mr. SEVERANCE: How long have you lived in Portland?

Mr. HALLER: Eleven years.

Mr. SEVERANCE: What is your business?

Mr. HALLER: Manufacturer's agent.

Mr. SEVERANCE: Are you in business by yourself, or are you a firm?

Mr. HALLER: I am Treasurer of the Kelley-Clarke Company, and Manager of the Portland office.

Mr. SEVERANCE: Where does the company have offices aside from Portland?

Mr. HALLER: Spokane, Seattle, Tacoma, San Francisco and New York.

Mr. SEVERANCE: What line of manufacturer's goods do you handle?

Mr. HALLER: Principally groceries.

Mr. SEVERANCE: Is your business in Portland a large or a small business?

Mr. HALLER: The railroad companies tell us it is rather large.

Mr. SEVERANCE: Well, I don't want to have you embarrassed, Mr. Haller, but you are one of the largest shippers into Portland?

Mr. HALLER: Well, the railroad companies could answer that more definitely than myself. I have not inquired into other people's business.

Mr. SEVERANCE: Can you give any idea how many cars you ship a year?

Mr. HALLER: Oh, we ship a few hundred, and we route a few hundred more for the grocery jobbers.

Mr. SEVERANCE: Out of those several hundred cars that you ship yourself, aside from the several hundred that you route, do you route them yourself, or are they routed for you?

Mr. HALLER: We route them ourselves.

770 Mr. SEVERANCE: From what point of origin do your cars come?

Mr. HALLER: They come from about 25 or 30 states.

Mr. SEVERANCE: Through the East and West?

Mr. HALLER: Beginning with Maine and going down to Virginia, Georgia, Alabama, Mississippi, Louisiana, Texas, California and all through the middle West, and New York, Pennsylvania and New Jersey.

Mr. SEVERANCE: Mr. Haller, prior to 1901 was your business solicited by the Southern Pacific agents, in Portland, as distinguished from the Oregon Railroad and Navigation Co.'s agents?

Mr. HALLER: To some extent.

Mr. SEVERANCE: Did the other lines also have solicitors who called on you, like the Northern Pacific?

Mr. HALLER: Yes, sir, all the lines who had representatives in Portland called on us.

Mr. SEVERANCE: At the present time are you solicited for business via Southern Pacific or Oregon Railroad and Navigation Company as one against the other, or do they have a common solicitor?

Mr. HALLER: We are not solicited for business by the Harriman system, because we give them all of our business, and there is no occasion for them to come to us.

Mr. SEVERANCE: How long have you been doing that?

Mr. HALLER: For several years, for several reasons.

Mr. SEVERANCE: How many years?

Mr. HALLER: We have been giving them all of it for a little over four years that I have had charge of the office here, and practically all of it before that.

Mr. SEVERANCE: In what way does the stuff move that comes in here by the Harriman lines for you?

Mr. HALLER: We route it by different lines east of Chicago; use a few of the lines between Chicago and Missouri River and the Union Pacific. Sometimes we route cars by Pullman in connection with the Rock Island, that is near Denver.

771 Mr. SEVERANCE: When they come out to Denver by Rock Island how do they come West?

Mr. HALLER: Union Pacific, that is the way we route them.

Mr. SEVERANCE: Mr. Haller, did you formerly, in the days when the Southern Pacific and O. R. & N. were competing with each other, route some cars by way of Ogden and Sacramento and up?

Mr. HALLER: Very few cars. The time was a little slow.

Mr. SEVERANCE: But you did give them some business, in response to their solicitation?

Mr. HALLER: Yes.

Mr. SEVERANCE: No business comes that way now?

Mr. HALLER: No, I don't think any business comes that way.

Mr. SEVERANCE: Were you informed after the consolidation of these lines as to which way goods would be brought in here?

Mr. HALLER: No; we never have any railroad man to dictate to us, or even intimate to us, how we shall route our freight.

Mr. SEVERANCE: I don't think you caught what I mean. I mean goods coming over Union Pacific; was there anything said to you as to how they should reach Portland, over what line?

Mr. HALLER: No, we always route the cars clear through to Portland.

Mr. SEVERANCE: When you got information along in 1901 or thereabouts that thereafter these shipments would come over the Short Line exclusively instead of around by Sacramento?

Mr. HALLER: I don't know what time we discontinued shipping by Sacramento. We never were heavy shippers that way, on account of the length of time it took to come around. Mr. McCusker, who was on the stand this morning used to solicit our business for the Southern Pacific, and I believe that about five years ago he didn't come in the office as often as he had previously, and I asked him one day why he had not been after more of our business, and he

772 said that it was coming by Granger and the Short Line, that is, shipments to Portland, instead of around by Sacramento, on account of it being a longer haul and the mountain haul.

Mr. SEVERANCE: So he didn't come to ask for it any more by the other route? That was your conversation with him five years ago?

Mr. HALLER: I think it was about five years ago, somewhere along about that time.

Mr. SEVERANCE: Did you formerly ship some goods by the Sunset Route from the Atlantic sea-board?

Mr. HALLER: We shipped some from the Atlantic sea-board and

some from the Southeast, from Georgia, and we have also shipped Eastbound by Sunset.

Mr. SEVERANCE: What kind of commodities did you ship East?

Mr. HALLER: Canned fruit, canned salmon and evaporated prunes.

Mr. SEVERANCE: Have you shipped them by Sunset to New York?

Mr. HALLER: Yes sir.

Mr. SEVERANCE: And to what other points in the East?

Mr. HALLER: Most of the prunes we shipped East were either for export or to New York City.

Mr. SEVERANCE: Mr. Haller, you still continue to ship that way?

Mr. HALLER: We shipped one or two cars that way this Fall, and we offered the Sunset a couple more, but they told us that the congestion was such from San Francisco South that they could not promise good time. But they did solicit our business for New York right up to the time the congestion became bad in Southern California.

Mr. SEVERANCE: Solicited New York business by way of Sunset so as to get the long haul?

Mr. HALLER: Yes sir, and also solicited East bound business from Atlanta, Georgia; Biloxi, Mississippi; and Atlanta points.

773 Mr. SEVERANCE: From Atlanta points do shipments move both ways both by Sunset and via Omaha?

Mr. HALLER: Yes sir, they have moved by Omaha for the reason that the Louisville & Nashville were not satisfied with the short haul to New Orleans and refused to turn the business over to the Sunset, but brought them up to St. Louis and the other roads stole it; that is what we call it in railroad parlance, stole it, took it away from us.

Mr. SEVERANCE: What about goods originating west of New York City? Did Sunset formerly absorb the local into the seaboard to get the business around by New Orleans or Texas; goods originating East of Buffalo and Pittsburg?

Mr. HALLER: We never made any shipments Sunset except from New York City, Baltimore or Virginia points, and Atlanta, Georgia.

Mr. SEVERANCE: You never shipped from interior points in New York?

Mr. HALLER: No interior points in New York by Sunset.

Mr. SEVERANCE: From points on the Mississippi River South of Memphis the rates by Sunset and Omaha are the same, aren't they?

Mr. HALLER: South of the Ohio and East of the Missouri?

Mr. SEVERANCE: Yes, or along the Mississippi Valley?

Mr. HALLER: Well in a part of the country.

Mr. SEVERANCE: Take New Orleans for instance.

Mr. HALLER: Yes sir, they are the same to Portland from New Orleans, but not the same from some of the Southeastern points.

Mr. SEVERANCE: By the Southeastern you mean in what states?

Mr. HALLER: I mean Atlanta. We have moved business via Richmond and several other small lines, getting the goods into Cincinnati and through to Peoria or Chicago at a lower rate than we could get them around from Atlanta to the Mississippi

774 River over the Southern Railway Company. They had an arbitrary local down there, and it raised the rate.

Mr. SEVERANCE: From New Orleans they are the same?

Mr. HALLER: Yes, sir.

Mr. SEVERANCE: And you have shipped both ways from New Orleans?

Mr. HALLER: Yes sir, shipped by Sunset and by the Illinois Central care of the Great Northern and Union Pacific.

Mr. SEVERANCE: was there ever much difference in the time from New Orleans one way or the other?

Mr. HALLER: Well on account of moving a good many cars we watch such matters very close. In the Winter time we prefer to move the goods by Sunset on account of there not being so much danger from snow blockades and freezing of canned goods. In the Summer time a merchant will prefer to have molasses to come through the territory of the Northern lines so that it will remain in the barrels. It is pretty hot down through Arizona.

Mr. SEVERANCE: You have had shipments coming out from there besides molasses?

Mr. HALLER: We have shipments from Texas and Louisiana.

Mr. SEVERANCE: Do they come both ways?

Mr. HALLER: Yes, sir.

Mr. SEVERANCE: The rates are the same?

Mr. HALLER: There are some of those small points down there where the rice mills are that there is a local and you cannot always figure on the rate being the same. After they get on to the main line of the road they are the same. Of course you understand the rates cannot always apply over the Sunset up to this point, and then further east, like in Spokane where we ship and in some of those points.

Mr. SEVERANCE: But ordinarily speaking, through that territory and points on the main line of the road, commodities can
775 move either way, by Omaha or Sunset to Portland at the same rate, and do move both ways.

Mr. HALLER: Yes.

Mr. SEVERANCE: That would include rice.

Mr. HALLER: It includes rice, molasses and canned goods.

Mr. SEVERANCE: Do you do any oriental business?

Mr. HALLER: Yes, sir.

Mr. SEVERANCE: Do you ship anything to the Orient from Portland?

Mr. HALLER: A few canned goods.

Mr. SEVERANCE: By the Portland Asiatic line?

Mr. HALLER: Yes.

Mr. SEVERANCE: Do they come in here from the east or from the south?

Mr. HALLER: They originate in Portland.

Mr. SEVERANCE: They are local?

Mr. HALLER: Yes, they are canned here.

Mr. SEVERANCE: Do you import anything from the Orient?

Mr. HALLER: Yes, we bring some goods in from China and Japan, Singapore.

Mr. SEVERANCE: To what points do you ship them, to the coast?

Mr. HALLER: Some of them go through to New York, some to Denver, some to Salt Lake and some to Montana points.

Mr. SEVERANCE: And over what lines of steamships do you bring them from the Orient?

Mr. HALLER: We have brought them in over three different lines, the Portland & Asiatic, the Boston Steamship Company and Hill's steamboat line.

Mr. SEVERANCE: Have you a house in San Francisco?

Mr. HALLER: Yes, sir.

Mr. SEVERANCE: Do you import by San Francisco also by the Pacific Mail?

Mr. HALLER: Very little.

Mr. SEVERANCE: The goods that come in by Portland & Asiatic move to the east over the O. R. & N. when they go east?

776 Mr. HALLER: Yes, sir, except those going to the Sound move east over the Great Northern and the Northern Pacific.

Mr. SEVERANCE: Are goods consigned from the Orient right through to Boston or are they rebilled at Portland?

Mr. HALLER: If we have sold them we route through to Boston. If we have not, we stop them here until we sell them.

Mr. SEVERANCE: You have a warehouse here, have you?

Mr. HALLER: We do not control a warehouse at this time; we did for seven years.

Mr. SEVERANCE: What kind of goods do you bring from the Orient? Do you bring matting?

Mr. HALLER: No, we bring peanuts, rice, sago, tapioca, pepper, pineapple, and I think we have brought in a few pieces of hard wood.

Mr. SEVERANCE: When you import goods from the Orient, Mr. Haller, where is the steamship routing determined; is it done by some representative of yours in the Orient or do you do it here?

Mr. HALLER: That is generally handled by our Seattle office. They have a manager of the foreign department there who looks after this.

Mr. SEVERANCE: Does he give instructions to your representatives of the east as to how the commodities shall be routed?

Mr. HALLER: We will instruct our agent in Japan to route goods Portland & Asiatic when we want to handle them at Portland, and by one of the Northern lines when we want to handle them at Seattle.

Mr. SEVERANCE: But that routing is not fixed in the Orient, but is determined at Seattle, is it? What I want to get at is this: You have agents in the east who make your purchases for you, don't you?

Mr. HALLER: Yes.

Mr. SEVERANCE: By the east I mean the Orient?

Mr. HALLER: Yes, sir.

Mr. SEVERANCE: Do those gentlemen who make the pur-

777 chases for you route the goods through, or are they instructed as to the steamships?

Mr. HALLER: It depends on how we buy them. If we buy them f. o. b. we route them. If we buy them c. i. f. they route them.

Mr. SEVERANCE: How do you buy most of your stuff over there c. i. f. or f. o. b.?

Mr. HALLER: We buy peanuts c. i. f., pineapples f. o. b.

Mr. SEVERANCE: And in that case when bought c. i. f., do your agents there route them, or the person you buy them from?

Mr. HALLER: Our agents as a rule, I think. I am not positive.

Mr. SEVERANCE: You have agents at most of the ports of call in the Orient?

Mr. HALLER: We have at two or three points in Japan, a couple in China, Manila, Singapore, Rangoon and Bombay and on around through the Isthmus, Southern Europe and also in Northern Europe, England, Liverpool and London.

Mr. SEVERANCE: That is all.

Mr. COTTON: Mr. Haller, you say you ship at the present time almost entirely by Union Pacific?

Mr. HALLER: Yes, sir.

Mr. COTTON: There is no reason on the part of the railroad company which compels you to ship that way, is there?

Mr. HALLER: No, we do not take any dictation from them.

Mr. COTTON: You are free to ship any way you want to by any of those routes?

Mr. HALLER: Yes, sir.

Mr. COTTON: You do not know of any limitation upon your ability to ship here?

Mr. HALLER: No there is none, we have reasons, several of them, for shipping Union Pacific.

Mr. COTTON: But I mean there is no reason why, except your personal reasons, why you should not ship any way you want to?

778 Mr. HALLER: We can ship any way we want to.

(Witness excused.)

Com'r LANE: We will take an adjournment until tomorrow morning at ten o'clock.

Adjourned until 10 o'clock January 25th, 1907.

PORTLAND, OREGON, *January* 25, 1907,
10:00 a. m.

Com'r LANE: Are you ready to proceed, gentlemen?

E. NEWBEGIN was recalled and further testified as follows:

Mr. COTTON: Mr. Newbegin, in testifying yesterday you did not mean to say that the Ogden gateway was closed to the Denver & Rio Grande via Huntington, did you?

Mr. NEWBEGIN: No, I didn't say that.

Mr. COTTON: I did not so understand you, but just understood that the Ogden gateway was closed.

Mr. NEWBEGIN: What I mean by that was, Mr. Cotton, that the gateway was closed for bringing cars via Sacramento.

Mr. COTTON: Yes; but the Ogden gateway via Huntington is still open?

Mr. NEWBEGIN: Now, I don't know enough about the railroads back there, whether you come via Ogden to come to Huntington, I don't know.

Mr. COTTON: Yes, you come from Ogden and come by the Short Line to Huntington in connection with the D. & R. G.

Mr. NEWBEGIN: I am not familiar with the railroads up there and I don't want to testify about that; I know nothing about them except in a general way.

Mr. COTTON: Well, the D. & R. G. still interchanges business with the O. R. & N.?

779 Mr. NEWBEGIN: With the O. R. & N.?

Mr. COTTON: Yes.

Mr. NEWBEGIN: I don't know as to that.

Mr. COTTON: You don't know whether that is closed or not?

Mr. NEWBEGIN: Not now. I do know this, that you can't ship cars via Ogden to Sacramento.

Com'r LANE: You can?

Mr. NEWBEGIN: You cannot.

Mr. COTTON: But you don't know whether you can ship by the O. R. & N. and the D. & R. G. or not?

Mr. NEWBEGIN: At this time?

Mr. COTTON: Yes.

Mr. NEWBEGIN: I could not say, no.

Com'r LANE: I didn't so understand him to testify.

Mr. COTTON: But he said the Ogden gateway was closed.

Mr. NEWBEGIN: What I refer to as the Ogden gateway, and I think you know what I referred to, is this; that today you cannot ship a car via Ogden via Sacramento to Portland, trans-continental freight.

Mr. COTTON: With my road I did not regard that as closing the Ogden gateway, that is the O. R. & N.

Mr. SEVERANCE: Well the stockholders of the Southern Pacific might.

Mr. COTTON: That is a different matter; that is a matter that is very easily explained why it is closed; if your Honor would like to know about that feature it is very easily explained.

Com'r LANE: I presume you will put on some railroad officials while we are here; is that your intention?

Mr. SEVERANCE: I intended to call Mr. Miller and he will explain that.

Mr. LOVETT: It is not our intention to call any witness, your Honor, anywhere.

Com'r LANE: Did you intend to call them?

Mr. SEVERANCE: I intend to call Mr. Miller; he can explain that, of course.

780 Mr. COTTON: Now, Mr. Newbegin, you stated some transaction about the diversion of a car or cars; when did that take place?

Mr. NEWBEGIN: Well, when I left here yesterday, when the court excused me I was the happiest man in the room; I thought I had something easy; and I went over to the office and got two young men to help me and we started in to find records. Well, like anything

that you never expect to use again, when that thing transpired I never had any idea I would be called to testify on it any more than a man expects his daily transactions of today to be put on the witness stand five or six years from now, and I could not find anything positive. The only thing I could find was this; that in 1902, the fall of 1902, I think it was September and October, we had two cars by Ogden via the Rio Grandes into Portland by the Southern.

Mr. COTTON: Sacramento?

Mr. NEWBEGIN: Yes, Sacramento; and that leads me to believe, now I would not want to swear positively, because if any of you gentlemen would go back five or six years it would be very hard to place those things, that the diversion of the cars happened in the winter of 1902-3; that is to say that we ordered the goods in November or December, and they were shipped after the first of 1903 and were diverted and came into Portland over the O. R. & N., when our intention was that they should come by the Southern Pacific.

Mr. COTTON: The reason given you was that the Sacramento-Ogden gateway was closed, there were no longer any rates.

Mr. NEWBEGIN: We had been shipping largely Southern Pacific, and as I recall it now, after picking up a piece here and there yesterday, I got after the Southern Pacific for diverting cars before that, and they made an exception in my case, and I think that is the reason why these two or three cars came in in September; and on the strength of those cars coming in in September, we gave
781 them some freight to come Southern, and that came, I think, over the O. R. & N. in 1903.

Mr. COTTON: Now you can ship by the D. & R. G. and the O. R. & N., or any other line,—the Northern Pacific or Great Northern, down into the Willamette Valley, can't you?

Mr. NEWBEGIN: How is that now, Mr. Cotton?

Mr. COTTON: I say, you can ship from the east via the D. & R. G. at Huntington or the Northern Pacific and Portland, or the Great Northern and Portland down into the Willamette Valley on Southern Pacific points, can't you, today?

Mr. NEWBEGIN: Well, I will say that shipments as a rule via the Great Northern and the Northern Pacific to the Willamette Valley are not satisfactory.

Mr. COTTON: What is the trouble?

Mr. NEWBEGIN: You will have to ask somebody that knows more about it than I.

Mr. COTTON: Well, where does the trouble occur?

Mr. NEWBEGIN: Well, they usually try to transfer it to a boat, or something of that kind; anyhow they happen to make it uncomfortable for you,—so uncomfortable we always route ours Union Pacific so as to have no trouble.

Mr. COTTON: Who makes it uncomfortable?

Mr. NEWBEGIN: I would not like to say because I don't know.

Mr. COTTON: Don't the Northern Pacific control their own traffic out of here? If they don't want to send it by rail and prefer to send it by boat that is their business, isn't it?

Mr. NEWBEGIN: Well, I don't know; they might think they con-

trol it, but there might be conditions which they have no control over.

Mr. COTTON: Well, if the route is open by rail, who transfers—do you suppose the Southern Pacific goes to an N. P. car and puts it on a rival boat line?

Mr. NEWBEGIN: That would be a matter, I should think, the railroad men could speak of better than I.

Mr. COTTON: Well now, would you imagine that——

782 Mr. SEVERANCE: Well now, I don't suppose we want a mere speculation, your Honor?

Mr. COTTON: Well, he is speculating the other way, as if we were interfering with it.

Com'r LANE: I will let him answer.

Mr. NEWBEGIN: I will say this; in making our shipments in the Willamette Valley we find it to our advantage to ship by the Union Pacific in preference to the Northern anyway.

Mr. COTTON: Why?

Mr. NEWBEGIN: Because with them we get better service.

Mr. COTTON: Where does that bad service occur, from Portland into the Valley by way of boat, or from Portland into the Valley by way of rail?

Mr. NEWBEGIN: Well, that is hard to say. We might say that the objection to transferring goods from rail to boat might have something to do with it; we might say, Mr. Cotton, that the objection in regard to claims might have something to do with it,—that is for damages.

Mr. COTTON: Yes; claims against whom, the Southern Pacific?

Mr. NEWBEGIN: Either the Southern Pacific or the Great Northern. For instance if we have a claim against the U. P. or the O. R. & N., it is easier to get it fixed up than it is the Southern Pacific or the Great Northern.

Mr. COTTON: I see. Recently you have been shipping over the Union Pacific?

Mr. NEWBEGIN: Yes, largely with them.

Mr. COTTON: Is that a matter of your preference, or compulsion?

Mr. NEWBEGIN: Well, I judge it is our preference; we usually pay the freight.

Mr. COTTON: You don't know of any limitation upon your ability to ship other than by the Sacramento route, do you?

Mr. NEWBEGIN: No.

Mr. COTTON: And therefore your shipments this way are

783 just a matter of your own convenience and because you think you get better service that way.

Mr. NEWBEGIN: Yes.

Mr. COTTON: That is all, sir.

Mr. SEVERANCE: Mr. Newbegin, prior to the time that the Oregon Railroad & Navigation and Southern Pacific interests were together, I believe you testified yesterday that the bulk of your business came via Sacramento?

Mr. NEWBEGIN: Well, I think so.

Mr. SEVERANCE: Yes.

Mr. NEWBEGIN: I think so.

Mr. SEVERANCE: And at about the time you speak of, 1902 or 1903 you were unable to ship at all to Sacramento, but the shipments had to come via the O. R. & N.?

Mr. NEWBEGIN: Well, I think the railroads could fix the date very easily, because they know just as well as I do—no, they know a great deal better than I do just when Mr. Harriman, or whoever had charge of that, ordered that gateway closed.

Mr. SEVERANCE: Well, but it is a fact you can't ship that way now?

Mr. NEWBEGIN: It is a fact you cannot ship a car from the east; that is, unless it has been changed recently; to my knowledge you can't ship a car via Ogden via Sacramento to Portland.

Mr. SEVERANCE: That is what I thought. Now you say,—Mr. Cotton asked you if it was not a matter of preference with you to ship by the Union Pacific; that preference arises out of the fact that it is more comfortable for you, and you get better service than if you attempt to ship over some other line; isn't that it?

Mr. NEWBEGIN: Just at this time the Union Pacific route is open and the Great Northern is closed, and we naturally ship the Union Pacific.

Mr. SEVERANCE: Certainly; but so far as shipments up into the Willamette Valley are concerned, when you ship over some line other than the O. R. & N., do your cars go through?

784 Mr. NEWBEGIN: Yes; certainly they go through. If we ship Northern Pacific or Great Northern they will go through as far as Albany and Salem, because there are boat connections; you can transfer to boat from here. For instance, if a car came over the Great Northern you can transfer it to the boat.

Mr. SEVERANCE: That is not what I am speaking of; do the cars themselves come through, or do they have to transfer to boat here at Portland.

Mr. NEWBEGIN: Now, Mr. Severance, I would not say but my understanding is most of the shipments are transferred to boats here; I don't know positively, I don't want to swear to these things because I am not posted.

Mr. SEVERANCE: That is, transferred to boats——

Mr. NEWBEGIN (interrupting): I will say this: we usually ship our cars now for the Willamette Valley by the Union Pacific, Oregon Short Line and O. R. & N., care of the Southern Pacific, because we think we get better service.

Mr. SEVERANCE: That is, the cars go right through all rail?

Mr. NEWBEGIN: Yes, all rail.

Mr. SEVERANCE: There is no transfer to boat?

Mr. NEWBEGIN: Not if they come Union Pacific and Oregon Short Line.

Mr. SEVERANCE: That is what I mean if they come Union Pacific; that is all, I guess.

Mr. COTTON: When they are transferred here to a boat, to whose boat are they transferred?

Mr. NEWBEGIN: Well, I guess that does not matter much, because it is just the same, whether it is Mr. Graham's boats or yours.

Mr. COTTON: Well, going up into the country above Salem it is Mr. Graham's boat, isn't it?

Mr. NEWBEGIN: Well, I would not say, I don't know; but it does not make any difference, the rates are the same, and as I understand it you have a working agreement; I don't know it, but that is what I have been told, it is generally reported.

785 Mr. COTTON: But if your car goes to Albany it don't go by boat, does it,—the Northern Pacific car?

Mr. NEWBEGIN: Sometimes of the year it could go by boat.

Mr. COTTON: I mean don't they actually; or have you made any shipments that way?

Mr. NEWBEGIN: As I stated awhile ago we usually ship by your lines, Mr. Cotton, because we think——

Mr. COTTON: How long ago, Mr. Newbegin, did you make shipment by the Northern Pacific to Albany?

Mr. NEWBEGIN: I could not say.

Mr. SEVERANCE: Have you any recollection of how long ago it was?

Mr. NEWBEGIN: The last recollection I have very vividly was we had a claim against the Great Northern amounting to about $35, and we had so much trouble getting that claim—it was a just claim, and in getting it adjusted we always felt that you folks, I don't say that you did, I can't swear that you did, I can't say, but we always felt, that is, I felt as manager for our firm that you folks didn't get after the Great Northern as much as you should to pay their part, in order to let us feel that your line was the way to ship the freight and we had such a time getting that claim we said in the future we would ship the way that we would have no interference.

Mr. COTTON: Do you know where the loss occurred?

Mr. NEWBEGIN: You could not tell whether the freight was damaged between here and Salem, or between Council Bluffs and Huntington, could you?

Mr. COTTON: No. It was not between Council Bluffs and Huntington when it came in on the Northern.

Mr. NEWBEGIN: You could not tell whether it was between Portland and Salem; it was damaged in the car; you could not tell where it was damaged.

Mr. COTTON: Possibly the railroads might have had some record as to rough handling, or something of that sort?

786 Mr. NEWBEGIN: That I don't know; I don't know where it was damaged.

Mr. COTTON: Do you remember the number of your claim?

Mr. NEWBEGIN: No.

Mr. COTTON: Have you any papers that would indicate this claim of $35?

Mr. NEWBEGIN: Excuse me; don't ask me to look up any more papers five or six years old.

Mr. COTTON: How old is it? Possibly we have a system and we could find it in our office.

Mr. NEWBEGIN: I think it would be five or six years, Mr. Cotton.

Mr. COTTON: Because of that claim and the difficulty you had

in getting it paid you stopped shipping by the Northern lines substantially?

Mr. NEWBEGIN: Well, I don't know; I would not want to swear it was because of that claim alone, Mr. Cotton.

Mr. COTTON: I mean because of that and other little difficulties.

Mr. NEWBEGIN: Yes, I mean to say this: We thought it was policy and we would get better service all around to ship that way.

Mr. COTTON: Do you ship any stuff in and out of Portland over the Northern Pacific?

Mr. NEWBEGIN: In and out of Portland?

Mr. COTTON: Yes.

Mr. NEWBEGIN: How do you mean; do you mean on the northern lines?

Mr. COTTON: Yes.

Mr. NEWBEGIN: Why, I think so.

Mr. COTTON: Well, I mean through stuff from the east; do you have through stuff from the east coming in here over the northern lines to Portland?

Mr. NEWBEGIN: Sometimes.

Mr. COTTON: Well, I mean now——

787 Mr. NEWBEGIN (interrupting): Yes, I think we have got three or four cars on the northern line now that we wish were on your line, too, just now, because we would get a little better service.

Mr. COTTON: The bulk of your business, however, comes in over the Union Pacific to Portland?

Mr. NEWBEGIN: Yes, sir.

Mr. SEVERANCE: The blockade on the Northern Pacific is occasioned by the snow blockade now, isn't it?

Mr. NEWBEGIN: We don't have quite as much trouble on the Northern Pacific as there is on the Great Northern, but it is the snow blockade, I understand; I don't know.

(Witness excused.)

FLETCHER LINN called as a witness, being first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Linn, where do you live?

Mr. LINN: In Portland.

Mr. SEVERANCE: What is your business?

Mr. LINN: I am manager of the Oregon Furniture Mfg. Co.

Mr. SEVERANCE: You manufacture furniture here in Portland?

Mr. LINN: Yes, sir.

Mr. SEVERANCE: And ship it out from here?

Mr. LINN: Yes, sir.

Mr. SEVERANCE: Do you bring commodities in from the east?

Mr. LINN: Not very much now, no, sir.

Mr. SEVERANCE: Principally outgoing shipments?

Mr. LINN: Nearly all outgoing.

Mr. SEVERANCE: Previous to 1901 how did you ship from here to San Francisco, if you ship that way at all?

Mr. LINN: Previous to 1901?
Mr. SEVERANCE: Yes.
Mr. LINN: Well, we shipped by rail or boat.
Mr. SEVERANCE: At that time was there competition as
788 between the boat and the rail lines; were they each soliciting business from here to San Francisco; I mean did they have solicitors out?
Mr. LINN: Well, I don't recall whether they did at that time or not.
Mr. SEVERANCE: Well, several years ago; I won't put it in 1901.
Mr. LINN: We never had much soliciting done for freight in California at all, and I could not state.
Mr. SEVERANCE: Isn't it a fact, sir, that these two lines were trying to get your business, the boat line and the rail line, from here to San Francisco and California points?
Mr. LINN: Not that I recall, no, sir.
Mr. SEVERANCE: Did you ship both ways?
Mr. LINN: We shipped principally by rail, not very much by boat.
Mr. SEVERANCE: But some by boat.
Mr. LINN: Very little; the rates were about the same and we shipped altogether by rail; it was more convenient for us.
Mr. SEVERANCE: The rates were about the same, were they?
Mr. LINN: Yes, sir.
Mr. SEVERANCE: Now has there been any change made recently in freight rates from Portland to San Francisco by boat?
Mr. LINN: Yes, there is on furniture.
Mr. SEVERANCE: That is what I mean, on your goods. What change was there?
Mr. LINN: Well, the rate has been made so large by boat we can't ship by boat any longer.
Mr. SEVERANCE: Was there some change made in the method of computing the weight?
Mr. LINN: Yes, it was formerly taken by weight and not by measurement.
Mr. SEVERANCE: Now by measurement?
Mr. LINN: Yes.
Mr. SEVERANCE: And that increases the freight rates how much by boat?
789 Mr. LINN: Well, it is about four times the rate by rail.
Mr. SEVERANCE: About four times the rate by rail on furniture?
Mr. LINN: Yes.
Mr. SEVERANCE: So that you have to move everything now——
Mr. LINN: By rail.
Mr. SEVERANCE: By rail. That is all.
Mr. COTTON: No change in the rail rates?
Mr. LINN: I think there has been a slight increase in the last three years.
Mr. COTTON: Well, but I mean within the last—when the steamship rates were made?
Mr. LINN: No, I think not.

Mr. COTTON: The rail rates remained the same?
Mr. LINN: Remained the same.
Mr. COTTON: And prior to this change you shipped largely by rail, didn't you?
Mr. LINN: Yes.
Mr. COTTON: And the rail rates have not gone up?
Mr. LINN: No.
Mr. COTTON: Therefore, the raise in the ocean rates has not affected your shipments?
Mr. LINN: It has affected us, because we can't get service to get our goods out, and the result is we can't ship them at all now.
Mr. COTTON: That is, you can't get the service on the rail?
Mr. LINN: We can't—that is, for carload business; we have to ship everything for less than carload lots.
Mr. SEVERANCE: How is that?
Mr. LINN: You can't get cars to load full cars; we have to haul everything and ship it in less than carloads.
Mr. COTTON: You don't know, Mr. Linn, anything about ocean conditions and the demand for lumber from here to San Francisco, do you?
Mr. LINN: Not—Oh, I know there is a big demand for
790 space; we can't get space by steamer very well at all.
Mr. COTTON: There are other lines of steamers besides those of the O. R. & N. running.
Mr. LINN: Well, there are a couple of lines; I don't know just who are the owners of them.
Mr. COTTON: The raise was common to all the ocean lines, wasn't it?
Mr. LINN: Yes, sir.
Mr. COTTON: It took place how long ago, sir?
Mr. LINN: About,—I think four or five months ago perhaps.
Mr. COTTON: Four or five months ago?
Mr. LINN: Yes; perhaps not so long.
Mr. COTTON: I thought it was only about thirty days ago.
Mr. LINN: No; it is longer than that; I know it has been three months.
Mr. COTTON: Three months?
Mr. LINN: Yes; because we have claims that are that old.
Mr. COTTON: That is all, is it?
Mr. SEVERANCE: Just one question. You say you can't get cars to ship to San Francisco to ship in carload lots and you have to ship l. c. l.?
Mr. LINN: Yes, sir.
Mr. SEVERANCE: How long has that been the case?
Mr. LINN: Four or five months.
Mr. SEVERANCE: Since the time these steamer rates went up?
Mr. LINN: No; it was before that.
Mr. SEVERANCE: Before that?
Mr. LINN: Yes.
Mr. SEVERANCE: Have you formerly shipped carload lots to San Francisco?

Mr. LINN: Yes, sir.

Mr. SEVERANCE: From whom did you get the information that you would be obliged to ship l. c. l.?

Mr. LINN: We simply can't get cars. We order cars and we can't get them; we have to get them out some way or other,
791 and we have to notify our customers the only way we can get them out is in a wagon load at a time.

Mr. SEVERANCE: That is all.

Com'r LANE: Is there a general car shortage in this system out here?

Mr. LINN: It seems to be at our place; I think there is a general shortage, but I think there are general conditions that make it a little worse where we are located.

Com'r LANE: What are those conditions?

Mr. LINN: Well, we are on the west side of the river and do not have access to the terminal grounds at the present time, and there are few cars on that side.

Com'r LANE: You don't find that there is any difference between your condition and anybody else's condition?

Mr. LINN: Well, not on this side of the river; I think people who have access to the terminal grounds get more than we do.

Mr. COTTON: How far is that factory from the terminal grounds?

Mr. LINN: It is about three miles in a direct line.

Mr. COTTON: How far does a car have to go from the terminal grounds in order to reach your factory, how far does it have to travel?

Mr. LINN: I judge about eighty miles; forty miles out and forty miles back; still on California business there is no—it is a direct route.

Mr COTTON: Yes, but you know there has been an embargo against California shipments at various times this year on the Southern Pacific line owing to the congestion of traffic down there, hasn't there been?

Mr. LINN: Well, that has been principally at Oakland and San Francisco. We have found trouble getting cars for any part, but as I stated, I think it is due to the location of our factory at the present time, a pure shortage in that district.

Mr. SEVERANCE: What tracks is your factory on?

792 Mr. LINN: On the Southern Pacific.

Mr. SEVERANCE: The Southern Pacific?

Mr LINN: Yes.

Mr. SEVERANCE: Well then what has the location of your factory got to do with the failure to get cars?

Mr. LINN: Well, we are on the west side of the river on the branch, not the main line of the Southern Pacific. Most of their business comes in on the main line into the terminal grounds, and of course that is where they have most cars.

Mr. SEVERANCE: They have a connection, haven't they?

Mr. COTTON: Forty miles from town.

Mr. LINN: It is about forty miles out and forty miles back; it is a haul of about eighty miles.

Mr. SEVERANCE: Well, your rates are just the same as they are from any other part of Portland, are they not?

Mr. LINN: Just the same, yes.

Mr SEVERANCE: And still they won't set cars over there for you to ship carload lots to California?

Mr. LINN: Well, we have not been able to get them recently.

Mr. SEVERANCE: Rates are much higher l. c. l. than carload lots, aren't they?

Mr. LINN: Yes, much higher of course.

Mr. SEVERANCE: How much higher, do you remember?

Mr. LINN: I should judge almost double.

Mr. SEVERANCE: How far do you have to team to get to their tracks where they will allow you to put a little in cars occasionally?

Mr. LINN: About three miles.

Mr. SEVERANCE: That is an expense you have to pay yourself?

Mr. LINN: Yes.

Mr. SEVERANCE: And that has been going on for four or five months, you say?

Mr. LINN: Yes, about five months, I should judge.

Mr. SEVERANCE: That is all.

793 Mr. COTTON: Can't you ship carloads from Portland as well as anybody else?

Mr. LINN: From what point do you mean?

Mr. COTTON: Well, the——

Mr. LINN: Terminal grounds?

Mr. COTTON: Yes, the terminal grounds.

Mr. LINN: Yes, we can.

Mr. COTTON: You can ship all the carloads from there you want to, can't you?

Mr. LINN: We will ship them if they will give us the cars.

Mr. COTTON: Well, but I mean just the same as any other Portland merchant.

Mr. LINN: Well, I don't know; we can't get cars; I know that others do get them.

Mr. COTTON: Well, but I mean from the——

Mr. LINN: Terminal grounds?

Mr. COTTON: Yes, from the terminal grounds.

Mr. LINN: Yes; we would like to get some cars right now, if we could get them.

Mr. COTTON: There is no difference between you and anybody else, is there?

Mr. LINN: Well, I don't know; I think there is, Mr. Cotton.

Mr. COTTON: What?

Mr. LINN: From what I gather I think others are getting cars at the terminal grounds; that is the excuse given us, that if we had access to the terminal grounds we could get the cars more readily. We don't get them. I know we have not had any there for four months.

Mr. COTTON: Have you asked for any at the terminal grounds?

Mr. LINN: Yes, we have an order in now. At the terminal grounds?

Mr. COTTON: Yes.

Mr. LINN: We will take them whenever we can get them.

Mr. COTTON: Have you any orders in at the terminal grounds?

794 Mr. LINN: No, we have not, but I will get them in pretty quick, I think, after this interview,

Mr. COTTON: Well, but you have been insisting upon these cars being delivered to you around here eighty miles?

Mr. LINN: No, we have not, Mr. Cotton; we have ordered the cars and we have called up, I think, every department of the Southern Pacific in the course of a few days, and if they could have provided them one place or another we would have been glad to have taken them; I think they know that.

Mr. COTTON: You have always ordered them on your own track down there?

Mr. LINN: We didn't order them any place particularly, but we ordered cars.

Mr. COTTON: Well, but that was understood, wasn't it?

Mr. LINN: Well, I suppose it was perhaps understood.

Mr. COTTON: Yes; and that service switching around there eighty miles for you has always been done free, hasn't it?

Mr. LINN: For switching around?

Mr. COTTON: Yes; they have charged nothing for delivering cars around there to you?

Mr. LINN: Yes, they would for California business, I suppose. Oh, do you mean taking a car in for California?

Mr. COTTON: Yes.

Mr. LINN: No, we only pay switching charges. Where we deliver to local parties, have a car shipped from there in to dealers in the city we pay ten dollars for it.

Mr. COTTON: But on a car going out of town you pay no switching charges?

Mr. LINN: No.

Mr. COTTON: You have not asked for any cars here at the terminal grounds, have you?

Mr. LINN: No, I have not; but I don't think I would have gotten them if I had.

795 Mr. COTTON: Well, suppose you try?

Mr. LINN: I will try, as I say, from now on.

Mr. COTTON: You have read the Oldsmobile song, haven't you? Suppose you try and see what occurs?

Mr. LINN: But I have filed a good many complaints. I think your officials will say that I have had it up with them pretty actively.

Mr. COTTON: I expect you have. Everybody else has been pressing for cars. I expect most probably they have not felt very much like hauling a car eighty miles to save you a wagon haul into the city of Portland; that is all.

Mr. SEVERANCE: Still years ago, you did not have that trouble, did you?

Mr. LINN: No, sir.

Mr. SEVERANCE: That is all.

Mr. COTTON: How long have you been out there?

Mr. LINN: We have been shipping from there about two years.
Mr. COTTON: Yes; that's all.

(Witness excused.)

H. WITTENBERG, being called as a witness and having been first duly sworn, testified as follows:

Mr. SEVERANCE: What is your business?
Mr. WITTENBERG: I am a manufacturer of crackers and confectionery and biscuits.
Mr. SEVERANCE: What is the name of your firm?
Mr. WITTENBERG: Pacific Coast Biscuit Company.
Mr. SEVERANCE: At what place do you do business, and where do you have a factory?
Mr. WITTENBERG: Spokane, Seattle, Tacoma, Portland, Sacramento, San Francisco, and Los Angeles.
Mr. SEVERANCE: How many years have you been in business?
Mr. WITTENBERG: About 28 years, sir.
Mr. SEVERANCE: What is your connection with the business; what is your official connection?
796 Mr. WITTENBERG: I am the general manager.
Mr. SEVERANCE: Of the whole system?
Mr. WITTENBERG: Yes, sir.
Mr. SEVERANCE: How long have you lived in Oregon?
Mr. WITTENBERG: Forty-four years.
Mr. SEVERANCE: Are you familiar with the country in Eastern Oregon?
Mr. WITTENBERG: Fairly so.
Mr. SEVERANCE: And Central Oregon?
Mr. WITTENBERG: Fairly so. I have tramped through there when I was a boy, parts of it.
Mr. SEVERANCE: What is the nature of that country so far as its adaptability to settlement is concern l?
Mr. WITTENBERG: I think it is a very good country. It consists of grazing, farming, fruit lands, and mineral. I think it is one of the finest sections of the Northwest if given transportation facilities, and it has suffered for that for many years,—ever since we have lived in Oregon.
Mr. SEVERANCE: And still suffers?
Mr. WITTENBERG: And is still suffering, regardless of many promises that have been made.
Mr. SEVERANCE: What promises have been made?
Mr. WITTENBERG: We have had promises for many years that people in charge of the railroads here would give us roads to develop that section of the country, and we are still hoping that that will be carried out. Farmers, cattlemen, mining people are compelled to haul their product or drive as far as two hundred miles, making it impossible to raise many products that might be raised in that section of the country. Take it in the country towards Bend, I will merely cite an instance; we are promised an extension of that line——
Mr. SEVERANCE: Promised by whom?

Mr. WITTENBERG: By the Harriman interests. About two years ago or three years ago word was sent out here if a fund of $300,000 would be raised in the city of Portland or in the state of Oregon, if that many bonds would be taken, there would be
797 no question but what the road would be extended. Quite a number of the citizens of Portland got together; I was in the crowd; and in 24 hours we raised $300,000, and so notified the Harriman interests. We have never heard of that road being extended.

Mr. SEVERANCE: The extension stopped when you got the money subscribed, did it?

Mr. WITTENBERG: It was stated that it was necessary for the people of Oregon to show that they had faith in this section of the country so as to enable the people in the east to say to the eastern capitalists that these people had faith in this section, therefore they would take no chance in coming out and building those roads, or that road.

Mr. SEVERANCE: The impression was given to you then, or the statement was made to you that it was necessary to raise this money to build this extension from eastern capitalists?

Mr. WITTENBERG: To show our faith in this country.

Mr. SEVERANCE: Yes, and that had to be done in order to induce eastern capitalists to put up money.

Mr. WITTENBERG: That is natural, yes sir.

Mr. SEVERANCE: There was not any suggestion made that the O. R. & N. had money enough in the treasury to build that line without assistance?

Mr. WITTENBERG: There was a statement made that the people had money, but they wanted the people of Oregon to show faith in the enterprise.

Mr. SEVERANCE: I see; and you showed your faith?

Mr. WITTENBERG: Yes.

Mr. SEVERANCE: But you did not get the road?

Mr. WITTENBERG: No, sir.

Mr. SEVERANCE: It appeared here yesterday from the examination of Mr. Teal that certain branch lines are under construction. I think Mr. Cotton included a line that had recently been bought, or built by somebody else running from the Oregon Short Line, a line running southeastwardly to a point in connection with the Southern Pacific, and I think another line which I believe is
798 an extension of the present branch of the Oregon Railroad & Navigation—Arlington, is that the one?

Mr. COTTON: No; Elgin.

Mr. SEVERANCE: Yes, I mean Elgin.

Mr. WITTENBERG: That road, I believe, is under construction, Mr. Severance. There is quite a number of branches that the Harriman lines have under construction, or contemplated construction; that has been the case for several years. The great difficulty has been that the gentlemen who represent, or who are at the head of the Harriman lines have given the people of Portland and the State of Oregon a great many promises which, up to this time, have not been carried out.

Now, these lines have been surveyed and some contracts have been let and grading is being done, but it is being done, in my opinion, in such a slow manner as to make it possible that some of us will reach old age before they are completed, and that possibly our children may reap the benefit of the development that will be made in future years, but that at present citizens of this community can virtually look forward to no immediate results from a business point of view from those lines that are being contemplated except where it has been an attempt to head off some competition. There was never so much energy expended as in the north bank road. I assure you that the Oregon people are alive and heading that off if possible, and if the same efforts had been made on the other lines contemplated, we would have had several or many miles of railroad in the interior of Oregon.

Mr. SEVERANCE: That is, if they had spent their money and time in building roads instead of trying to prevent somebody else building roads?

Mr. WITTENBERG: I agree with you.

Mr. SEVERANCE: Yes. Now, Mr. Wittenberg, what do you know about the situation over here in the Deschutes Valley?

Mr. WITTENBERG: Well, I know nothing about that, Mr. Severance, except from hearsay.

799 It is stated that the Harriman lines are objecting to the Hill lines going up the Deschutes River. I don't know what the facts are about that. I don't blame the Harriman lines trying to prevent competition; of course that is natural, but sometimes it may be short sighted.

Mr. SEVERANCE: Now prior to 1901, Mr. Wittenberg, did the Southern Pacific and O. R. & N. each have their solicitors coming around to get your business?

Mr. WITTENBERG: Yes, sir.

Mr. SEVERANCE: Were they active?

Mr. WITTENBERG: Very active indeed; both so far as the Short Line freight is concerned, as well as between here and San Francisco. And I wish to state on that point, so far as San Francisco is concerned, we had a splendid water line soliciting business between here and San Francisco to and from, as well as Southern Pacific lines. Since that time the water lines between here and San Francisco have reached such an obsolete state that even they cannot give us sailing dates, and we have not as good transportation facilities by water between here and San Francisco as we had thirty years ago. Steamships between here and San Francisco thirty years ago were better and more in number. They had regular sailing dates 25 years ago, and twenty years ago we had three days sailing dates, five days sailing dates; fifteen years ago we had three-day sailing dates, and today there are times when there is not a steamer for two or three weeks; there have been those times; and the rate is made between here and San Francisco which today is higher than it has ever been for many years, and on top of that they merely state they cannot take the freight.

Mr. SEVERANCE: Have there been any recent increases in freight charges by steamer between San Francisco from Portland?

Mr. WITTENBERG: Today the rates on some articles have gone into effect to exceed the old rate by eighty per cent.

800 Mr. SEVERANCE: This new rate is effective today, isn't it?

Mr. WITTENBERG: Yes, sir.

Mr. SEVERANCE: Got it just in time for this hearing?

Mr. WITTENBERG: The rate on our line today has been advanced eighty per cent.

Mr. SEVERANCE: On your line of goods?

Mr. WITTENBERG: Yes; from 25 cents to 45 cents.

Mr. SEVERANCE: How is the rail rate?

Mr. WITTENBERG: So far the rail rate is the same; I don't believe it will stay that way very long.

Mr. SEVERANCE: How does the rail rate now compare with the steamer rate?

Mr. WITTENBERG: The rail rate on our line of goods is 28 cents in carloads by rail and 45 cents by steamer.

Mr. SEVERANCE: And you don't know what is going to happen from the railway?

Mr. WITTENBERG: Only what I might suspect or surmise.

Mr. SEVERANCE: Well, Mr. Wittenberg, I would like to ask you with reference to the manner in which you are required to pack your goods that you ship by the Southern Pacific from here to California.

Mr. WITTENBERG: That is by all lines, Mr. Severance; the classification is the same, and the method of packing is the same.

Mr. SEVERANCE: Yes, that is all right; between here and California points how do you pack your goods?

Mr. WITTENBERG: They are all in crates or packages.

Mr. SEVERANCE: What is the rule as to similar goods coming by the transcontinental lines from the east?

Mr. WITTENBERG: Well, up to a year and a half ago, about a year ago, I think, they were compelled to pack them in a similar manner; but the eastern companies, the large companies petitioned the railroad people to permit them to pack their goods loosely in cars without crates or packages, which made a difference of 30 per cent. in their freight bills. I will state further that up to a year ago,

801 or a little more, that the freight rate on our line of goods from the east in carload lots was $2.20 on less than carload lots. That was reduced to $1.90 in carload lots, and $2.20 in carload lots; that was again reduced to $1.65 in carload lots; with the additional accommodation of permitting the eastern railways,—the eastern manufacturer, to place his goods in cars without a crate or box, making an additional reduction, if you please, of at least 30 per cent. That applied westbound but not eastbound. On a request of my own after considerable effort we made it eastbound as well as westbound, but it was impossible for the coast men to ship east and do business in our line in the middle west; people in the east will not use the coast goods, while coast people will use eastern products.

I will state further another petition was made recently; I don't believe it is in effect at this time; it has not gone into effect, or I think it goes into effect today at Spokane,—an additional reduction of 15 cents per hundred pounds. The petition is made to put that reduction into effect; whether it has gone into effect or not I don't know.

Mr. COTTON: These petitions are addressed to all the trans-continental roads, aren't they?

Mr. WITTENBERG: Well, they emanate generally from some one line and other lines take them up. The petition to-day is to the Harriman lines, to San Francisco. Those rates have been reduced really one-half from the east as to what they were a year and a half ago, while we on the Pacific Coast here are confronted with the increase of eight per cent. between here and San Francisco, making it a hardship for manufacturers of the northwest to compete with the eastern manufacturer in San Francisco.

Mr. SEVERANCE: Now, in your line the goods manufactured in the east are quite largely concentrated, aren't they?

Mr. WITTENBERG: Fairly so. Chicago is a very large manufacturing point in our line.

802 Mr. SEVERANCE: Yes. And there are certain other large manufacturers?

Mr. WITTENBERG: Yes, sir.

Mr. SEVERANCE: What are their names?

Mr. WITTENBERG: The National Biscuit Company.

Mr. SEVERANCE: That is the principal one, is it?

Mr. WITTENBERG: That is, by a great percentage. They perhaps control 60 per cent. of the production of the United States.

Mr. SEVERANCE: Now these manipulation rates by giving them a reduction and raising your rates has had the tendency of enabling them to compete more favorably in your immediate territory?

Mr. WITTENBERG: Certainly, sir. They do and have been granted these rates regardless of the fact that they were all underselling us.

Mr. SEVERANCE: If you know, how is the passenger service between here and San Francisco by boat as compared to what it formerly was?

Mr. WITTENBERG: I think it is abominable. There is no comparison either by boat or by rail as regards San Francisco. The passenger accommodations of people going and coming from Portland to the east, or going from here to San Francisco, or coming from San Francisco, does not compare with any other location in the United States, unless it might be in some unsettled district. We have not got a through line from here to the east over the Harriman system; we have a stub from here to Green River; we are liable to lay there twelve hours before we can get through connections to the east. If we are coming from the east to Portland we are thrown off with our baggage at Green River and asked to take the first train out that we can get, while the Overland Flyer to San Francisco goes on. Therefore, people either go to San Francisco or they take the Northern Pacific or Great Northern to Seattle; people who desire to go to Seattle will not come through Portland if they know the situation at Green River. Portland is left off of the map so far as first class accommodations to the traveling public are concerned. The

803 same condition exists between here and Spokane. A train is run out of here at 6:15 with possibly one hundred first class passengers and with a little coal oil can or charcoal stove to serve meals for that hundred passengers and one darkey to do it.

As I have told the people of the Harriman lines, when the north bank road was built they would be running first class trains, but I didn't suppose they would until then.

But that is the condition. I make that trip quite frequently, and there are not any accommodations or service between here and Spokane, except as I have stated, in the way of dining cars. I think every member of the Harriman line will agree with me that that is the fact.

Mr. SEVERANCE: Well, Mr. Wittenberg, there are through sleeping cars from Chicago to Portland, are there not?

Mr. WITTENBERG: There is one sleeper that runs between here and Chicago over the Short Line; that is one of the fast trains; the one that leaves here at 9:15 or 9:30 in the morning, if you reach Green River in time and catch the Overland from San Francisco you make connection and go on with that train; if you happen to be two hours late you are liable to wait until the next train comes along.

Mr. SEVERANCE: That is all.

Com'r LANE: Has the service ever been any better?

Mr. WITTENBERG: Yes; we had better service some years ago; we had better connections some years ago than we have at the present time, Mr. Lane. When the line was operated by the Union Pacific as a through line to Portland, Portland had far better arrangements, if you please, than she has today. The Portland merchants had southern Idaho and Idaho business under that regime, but since the Oregon Short Line has entered into the possession of the stocks of this road, it seems to be that everything must be submitted to
804 the Short Line, and if it is satisfactory to the Salt Lake and the Short Line why we get into Idaho, and if it is not we are handicapped.

I will say I fought for eight years for a reduction into Idaho, and after eight years I did get the reduction.

Mr. COTTON: One of your principal difficulties is that you can't sell goods at Boise City, Idaho, isn't it?

Mr. WITTENBERG: We are selling there, sir; we have sold for many years, Mr. Cotton. We have paid a differential there as high as sixty cents a hundred pounds to get in there as against Salt Lake, a difference of 50 miles, or 90 miles of mileage.

Mr. COTTON: How long has the Southern Pacific run dining cars?

Mr. WITTENBERG: How long?

Mr. COTTON: Yes.

Mr. WITTENBERG: Between here and San Francisco?

Mr. COTTON: Yes.

Mr. WITTENBERG: Oh, seven or eight or nine years, Mr. Cotton, maybe.

Mr. COTTON: Seven or eight or nine years, dining cars?

Mr. WITTENBERG: Well now, I may be mistaken about that; I have eaten in a buffet there and I get it mixed with the dining cars.

Mr. COTTON: But they are running dining cars now, aren't they?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: How long have they been running these dining cars?

Mr. WITTENBERG: Mr. Cotton, I can't give you that date; for several years.

Mr. COTTON: Yes; it is not over four though?

Mr. WITTENBERG: Possibly not, Mr. Cotton.

Mr. COTTON: How many trains did the Southern Pacific run between here and California for years?

Mr. WITTENBERG: How many trains per day?

Mr. COTTON: Yes; passenger trains?

Mr. WITTENBERG: Well, sir, at first they ran one passenger train.

805 They ran that train until it was absolutely impossible to store the people that would get into the cars; they were packed in like sardines.

Mr. COTTON: When was that please?

Mr. WITTENBERG: Well, that may be three or four years ago.

Mr. COTTON: Three or four years ago?

Mr. WITTENBERG: Possibly a little more than that.

Mr. COTTON: Oh yes, I think it is.

Mr. WITTENBERG: Possibly it is, Mr. Cotton.

Mr. COTTON: They have been running two trains to my recollection for the last eight years.

Mr. WITTENBERG: Well, you see, Mr. Cotton, I can't remember just the years.

Mr. COTTON: Yes, I know, but I would like to have you remember the years approximately?

Mr. WITTENBERG: I will try to, Mr. Cotton.

Mr. COTTON: They have been running the two trains for about eight years, haven't they?

Mr. WITTENBERG: Possibly.

Mr. COTTON: And haven't they been running dining cars on both of the trains for about four years?

Mr. WITTENBERG: No, sir; on one train they have run dining cars for about four years, but on the other train they run the buffet cars.

Mr. COTTON: Now, what do they run on both trains?

Mr. WITTENBERG: Diners on both?

Mr. COTTON: Diners on both; so they have increased the dining service on both trains?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: How long have they run observation cars on Southern Pacific lines between here and San Francisco?

Mr. WITTENBERG: Ever since myself and the transportation committee made a big howl to get you to put it on.

Mr. COTTON: How long ago did you howl about that?

Mr. WITTENBERG: I think about two years, maybe.

Mr. COTTON: So for two years past they have been running

806 an observation car between here and San Francisco, which formerly they did not run?

Mr. WITTENBERG: That is correct, sir.

Mr. COTTON: Is that right?

Mr. WITTENBERG: But it was after a terrible effort on our part.

Mr. COTTON: Yes; but you commenced this effort away back prior to 1891, didn't you?

Mr. WITTENBERG: 1891?

Mr. COTTON: 1901.

Mr. WITTENBERG: No.

Mr. COTTON: The demand was just as great then?

Mr. WITTENBERG: Yes, but we were unable to get it.

Mr. COTTON: You were unable to get it, but you have gotten it since within the past two years?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: Is that a pretty good car?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: It is rather a fine car?

Mr. WITTENBERG: We are delighted about that car; it is similar to what they run on every other first class line.

Mr. COTTON: No, it is a little different from what they run on every other one.

Mr. WITTENBERG: No; it is not as good a car as they run out of here on the Northern Pacific Coast Limited.

Mr. COTTON: You think not?

Mr. WITTENBERG: No, sir.

Mr. COTTON: Well, we differ as to taste.

Mr. WITTENBERG: Well, you don't take a bath on a car.

Mr. COTTON: No, I don't.

Mr. WITTENBERG: And I don't either.

Mr. COTTON: And I don't care about getting shaved particularly, either.

Mr. WITTENBERG: I do.

Mr. COTTON: Then cutting out the bath and the shaving why you think it is a better car, don't you?

Mr. WITTENBERG: No.

807 Mr. COTTON: You don't?

Mr. WITTENBERG: No.

Mr. COTTON: Now that car has been running for two years? Now recently the Southern Pacific has put on the third train, hasn't it?

Mr. WITTENBERG: Yes; and Mr. Cotton, I was very much disappointed on getting on that train the other day, about a month ago or five weeks ago, to find that they didn't have an observation car on it.

Mr. COTTON: No, they don't, because they haven't observation cars enough to go around; they run them on the longest daylight run too.

Mr. WITTENBERG: That is why I claim we ought to have enough; the way they make money we ought to be able to get a car.

Mr. COTTON: That may come in the course of time; but that is a faster train than you ever had before?

Mr. WITTENBERG: By two hours; they ought to cut it down six more.

Mr. COTTON: There has never been a train that made the run before that train was put on in much less than thirty-six hours?

Mr. WITTENBERG: If we ever get a good steamship line, Mr. Cotton, it will beat that line hollow.

Mr. COTTON: You never had a train on there before this one that made the trip in less than 36 hours, though, did you?

Mr. WITTENBERG: That never was the fault of the patrons of the road?

Mr. COTTON: What?

Mr. WITTENBERG: That wasn't the fault of the patrons of the road.

Mr. COTTON: No, but I am asking you the fact.

Mr. WITTENBERG: It is a fact that this train makes better time than the O. R. & N. or Southern Pacific ever did on their roads.

Mr. COTTON: Yes; that is during the whole 28 years you have lived here, and during the whole time that the roads were run?

808 Mr. WITTENBERG: You will concede that that is the fact.

Mr. COTTON: Yes. Now you speak about the rates from the east; if the rates to Spokane were reduced to the rates to Portland, what effect would that have on your business?

Mr. WITTENBERG: Not any.

Mr. COTTON: It would not affect your business at all?

Mr. WITTENBERG: No.

Mr. COTTON: You manufacture here?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: And the Iowa road to Spokane don't benefit you any, or do they pay a higher rate on crackers to Spokane than they do to Portland?

Mr. WITTENBERG: From the east?

Mr. COTTON: Yes.

Mr. WITTENBERG: Yes; but very little.

Mr. COTTON: Very little.

Mr. WITTENBERG: Very little.

Mr. COTTON: So you practically are competing against that rate now?

Mr. WITTENBERG: We have a factory at Spokane, Mr. Cotton; it would not make any difference.

Mr. COTTON: Oh, you have a factory at Spokane?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: And you have a factory at San Francisco, do you not?

Mr. WITTENBERG: Yes, we did have; not at present.

Mr. COTTON: And the main reason you wish to ship to San Francisco is on account of the burning down of your factory there?

Mr. WITTENBERG: We have shipped there, sir, for fourteen years to San Francisco.

Mr. COTTON: Your crackers go on the steamers by weight or measure?

Mr. WITTENBERG: By weight.

Mr. COTTON: By weight. Do you know what happened to some of the O. R. & N. steamers, as to whether any of them were lost between here and San Francisco; the Elder, for example?

809 Mr. WITTENBERG: The Elder was lost but found again.

Mr. COTTON: Yes; but she stayed under water for how long?

Mr. WITTENBERG: A long time. I believe the O. R. & N. Co. and Harriman lines gave her up.

Mr. COTTON: They gave her up as a total loss to the insurance companies, didn't they?

Mr. WITTENBERG: I think so, which was found to be wrong.

Mr. COTTON: And about the St. Paul?

Mr. WITTENBERG: The St. Paul was lost.

Mr. COTTON: The St. Paul was lost?

Mr. WITTENBERG: I will state in that connection, Mr. Cotton, that I realize that the O. R. & N. Co. lost several steamers and were very unfortunate; yet we people in other lines of business lose our business; they are burned out and they immediately rebuild; the O. R. & N. Co. has not shown that disposition.

Mr. COTTON: Yes; but their steamers were actually lost, shipwrecked or fired or something of that kind?

Mr. WITTENBERG: Yes, some of them were.

Mr. COTTON: Now, you spoke about a fund of $300,000; were you a subscriber to it?

Mr. WITTENBERG: I was.

Mr. COTTON: That fund was a subscription to Columbia Southern bonds, wasn't it?

Mr. WITTENBERG. Yes, sir.

Mr. COTTON: Those bonds paid five per cent.?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: And you were to take the bonds at ninety?

Mr. WITTENBERG: I have forgotten; something like that at any rate.

Mr. COTTON: Yes; you were to take the bonds at ninety, five per cent. bonds, and they were to be guaranteed by the O. R. & N.?

Mr. WITTENBERG: They were to be listed by the O. R. & N.

810 Mr. COTTON: They were to be listed by the O. R. & N.

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: Then they were to be Columbia Southern five per cent. bonds at ninety, guaranteed by the O. R. & N.?

Mr. WITTENBERG: That was Mr. Harriman's proposition.

Mr. COTTON: Yes; well, what you understood to be Mr. Harriman's proposition?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: Mr. Harriman didn't make it to you?

Mr. WITTENBERG: No, sir.

Mr. COTTON: Then they were Columbia Southern fives to be taken by you at ninety and to be guaranteed by the O. R. & N.?

Mr. WITTENBERG: That was the proposition.

Mr. COTTON: Do you know what O. R. & N. bonds sell for?

Mr. WITTENBERG: Why, I am not in that business; I could not tell.

Mr. COTTON: They are fours, aren't they, and they sell for about one hundred and ten.

Mr. WITTENBERG: I could not tell you that, Mr. Cotton; we were simply accepting a proposition that was made to us.

Mr. COTTON: What you understood was made?

Mr. WITTENBERG: Yes; I will say in that respect that that is the

trouble here; we seldom know what we might expect after what we have understood might be done.

Mr. COTTON: Well, but you never got that understanding——

Mr. WITTENBERG: That is the great difficulty.

Mr. COTTON: You never got that understanding from Mr. Harriman, or any Harriman officer, did you?

Mr. WITTENBERG: People very close to Mr. Harriman.

Mr. COTTON: Who were the people very close to Mr. Harriman?

811 Mr. WITTENBERG: I decline to give the parties' names at this time unless I am compelled to.

Mr. COTTON: Well, I would like to know who they were. They were not employés of the O. R. & N. Co., were they?

Com'r LANE: This is the foundation of the evidence that has previously been given, isn't it?

Mr. COTTON: Yes.

Com'r LANE: Well, you are entitled to it.

Mr. WITTENBERG: Mr. Wilcox and Mr. Ladd.

Mr. COTTON: Mr. T. B. Wilcox?

Mr. WITTENBERG: Yes.

Mr. COTTON: And Mr. William Ladd?

Mr. WITTENBERG: Yes; and Mr. A. L. Mills.

Mr. COTTON: They are not employés of the O. R. & N. Co., are they?

Mr. WITTENBERG: I could not tell you whether they are directors or not.

Mr. COTTON: Did you have any difficulty in summoning up courage enough to think that the eastern Oregon country was good enough to subscribe to Columbia Southern at five, ninety guaranteed by the O. R. & N.?

Mr. WITTENBERG: No, at a moment's hesitation; I am ready to do it again.

Mr. COTTON: Well, I should think you would.

Mr. WITTENBERG: Yes; I would like to see some of the Harriman people have as much confidence.

Mr. COTTON: I think if it had been five at ninety they ought not to have had any trouble in subscribing to it, when the fours were selling at a hundred and ten.

Mr. WITTENBERG: No; but when you are offered a hundred and forty, if you are offered one hundred and forty for ninety would you take it?

Mr. COTTON: Why certainly I would.

Mr. WITTENBERG: So were we, and we would not offer a hundred for them if they were offered to us at ninety.

Mr. COTTON: No; but it didn't take very much faith to
812 make that kind of subscription, it seems to me.

Mr. WITTENBERG: It took a good deal of courage on the part of the eastern people possibly to accept it, because to this date they have not accepted our proposition, nor have they built the line or put up the money themselves.

Mr. COTTON: I should think they would not accept that proposition.

Mr. WITTENBERG: But they could build the line, Mr. Cotton?

Mr. COTTON: That is different. We are talking about this fund. When you were a boy what part of eastern Oregon did you live in?

Mr. WITTENBERG: In the Blue Mountains.

Mr. COTTON: Well, where?

Mr. WITTENBERG: A great many parts of them; I was only there three years.

Mr. COTTON: Whereabouts in the Blue Mountains?

Mr. WITTENBERG: Canyon City, Granite, Sumpter, out to Baker, down on the north fork of the John Day; that about covered it.

Mr. COTTON: Have you ever been in the Prineville-Bend country?

Mr. WITTENBERG: Not in to Prineville; but I know a great deal about that country as we traveled it very extensively with our people; I know the kind of country it is.

Mr. COTTON: Well, I mean personally.

Mr. WITTENBERG: I have not been to Bend personally.

Mr. COTTON: Have you been to Prineville?

Mr. WITTENBERG: No, sir.

Mr. COTTON: Have you been to Shaniko?

Mr. WITTENBERG: I didn't go beyond Wasco.

Mr. COTTON: How far is Wasco from the river?

Mr. WITTENBERG: Well now, I don't know.

Mr. COTTON: Fourteen miles? Ten, isn't it?

Mr. WITTENBERG: I know it is more than that.

Mr. COTTON: I think it is ten.

813 Mr. WITTENBERG: No, it is more than that.

Mr. COTTON: How much more?

Mr. WITTENBERG: I don't know. I had a mill at Wasco, but I never was over there.

Mr. COTTON: How far is Wasco from the Columbia River and the main line of the O. R. & N.?

Mr. WITTENBERG: I could not tell you; I think it is somewhere near twenty miles possibly.

Mr. COTTON: Somewhere near twenty miles?

Mr. WITTENBERG: Maybe more than that.

Mr. COTTON: Maybe more than twenty; and how long is the Columbia Southern railroad?

Mr. WITTENBERG: The Columbia Southern road?

Mr. COTTON: Yes.

Mr. WITTENBERG: About seventy miles.

Mr. COTTON: Then you penetrated in that territory twenty miles on a railroad seventy miles long?

Mr. WITTENBERG: A very short distance.

Mr. COTTON: Have you ever been into Lake and Klamath Counties?

Mr. WITTENBERG: No, sir.

Mr. COTTON: Have you ever been in to Burns?

Mr. WITTENBERG: On account of the hard way of getting there, Mr. Cotton, I have never gone there.

Mr. COTTON: Have you ever been in to Burns?

Mr. WITTENBERG: Not to the town of Burns; I have been down as near as Canyon City.

Mr. COTTON: How far is Canyon City from Burns?

Mr. WITTENBERG: Well now, you would have to give me a map; it is 28 years since I was there.

Mr. COTTON: 28 years ago. Let's see the map.

Mr. WITTENBERG: The country has not changed much in that time, Mr. Cotton.

Mr. COTTON: You say the country has not changed very much?

Mr. WITTENBERG: Not very much. It is so hard to get in and out of there people don't go there.

Mr. COTTON: Then all of the people of Portland have known about this beautiful country for the last 28 years?

814 Mr. WITTENBERG: What is that, Mr. Cotton?

Mr. COTTON: All of the people have known about this beautiful country for the last 28 years.

Mr. WITTENBERG: I don't understand that question.

Mr. COTTON: Well, I say everybody in the state has known about this beautiful interior country?

Mr. WITTENBERG: We have all heard of the Malheur and Burns country, but it is so hard to get in and out of that very few go there. We pay our traveling men for staging it.

Mr. COTTON: How far is Canyon City from Burns?

Counsel here exhibits map to the witness.

Mr. WITTENBERG: Wait until I find it, Mr. Cotton. I will try and get hold of it for you.

Mr. COTTON: There is a scale on the map here some place, I think.

Mr. WITTENBERG: Now here is Canyon; now let's find Burns. Burns is down here; it is south.

Mr. COTTON: Yes.

Mr. WITTENBERG: Now let's see what is this scale here. It is about three inches. How much is the scale? It don't state. I should judge that would be seventy-five miles, wouldn't it? There you are right there (indicating on map).

Mr. COTTON: Yes; I think it is about seventy-five miles from Canyon City.

Mr. WITTENBERG: Is that a fact?

Mr. COTTON: I think so, just about. Canyon City now is about how far from the end of the Sumpter Valley Railroad?

Mr. WITTENBERG: Why possibly 25 miles, isn't it Mr. Cotton? Somewhere near there; maybe not quite that far. That goes to Whitney, doesn't it?

Mr. COTTON: Yes; or Austin. Then notwithstanding the fact Canyon City is now about 25 miles from the end of the railroad, you have not renewed your acquaintance with it for 28 years?

Mr. WITTENBERG: I have not, sir.

Mr. COTTON: And other than having been to Canyon City,

815 Pendleton and some railroad points, you have not penetrated into Central Oregon?

Mr. WITTENBERG: I have been down, as I say, as far as Canyon and the territory between Canyon and Pendleton, if you please, and

between Canyon and the Columbia River. I came out on horseback from Canyon City to the Columbia River.

Mr. COTTON: But you have never been to Lake, Klamath, Burns, Crook or any of those counties?

Mr. WITTENBERG: No. That is what we call Stein Mountains there around Burns; that is cattle raising country. I never was down there. You can't raise anything else there, Mr. Cotton, because you can't get it out.

Mr. COTTON: Stein Mountains are a little south of Malheur and Lake Counties, aren't they?

Mr. WITTENBERG: Yes, just a little.

Mr. COTTON: How far, about how many miles?

Mr. WITTENBERG: I could not tell without looking at the map.

Mr. COTTON: Suppose you look at the map; can you tell me how far south of Burns the Stein Mountains are; I am always interested in Oregon geography.

Mr. WITTENBERG: I wish you would study it and give us more service.

Mr. COTTON: Especially with a gentleman who knows the country.

Mr. WITTENBERG: That is sarcasm. The Stein Mountains? Does that show on here?

Mr. COTTON: I am sure I don't really know where the Stein Mountains are.

Mr. WITTENBERG: You may give me the wrong map.

Mr. COTTON: No. Don't you know where the Stein Mountains are unless they are marked?

Mr. WITTENBERG: The Stein mountain country is in southeastern Oregon. Now I can find that, I don't doubt, if it is on this map.

Mr. COTTON: Well, but couldn't you locate the country even if it was not exactly marked on the map?

816 Mr. WITTENBERG: It is in this section of the country here (indicating on map); that is, it is in southeastern Oregon, but I don't think it is on this map; I don't find it.

Mr. COTTON: I will tell you where it is; it is right down in here where those rivers are (indicating).

Mr. WITTENBERG: Now, I am glad to know that.

Mr. COTTON: Right down in there.

Mr. WITTENBERG: I know they drive cattle down to Winnemucca.

Mr. COTTON: They drive cattle from Burns to Winnemucca through the Stein Mountain country?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: And do you know how far the Stein Mountains are from Burns?

Mr. WITTENBERG: According to your statement here they are not very far.

Mr. COTTON: Here is Burns.

Mr. WITTENBERG: Burns is here, and if they are here I should judge it would be about 150 miles (indicating on map).

Mr. COTTON: 150 miles, a nice morning's walk.

Mr. WITTENBERG: Yes, for a railroad man.

Mr. COTTON: I mean driving cattle, for example.

Mr. WITTENBERG: No; it was not a pleasant walk, Mr. Cotton. It was a very disagreeable drive.

Mr. COTTON: You have never been in the Bend country, have you?

Mr. WITTENBERG: No, sir, not as far as Bend.

Mr. COTTON: Have you ever been along the Crooked River?

Mr. WITTENBERG: No.

Mr. COTTON: Do you know where the Crooked River is?

Mr. WITTENBERG: No. The most of those rivers up there are crooked.

Mr. COTTON: There is a Crooked River, isn't there?

Mr. WITTENBERG: I don't know about that.

Mr. COTTON: Near Prineville?

Mr. WITTENBERG: I could not tell you that.

817 Mr. COTTON: Your geography knowledge is a little limited, isn't it?

Mr. WITTENBERG: Well, that part of the country, except so far as a general knowledge of the country is concerned. I don't know what the mileage is, Mr. Cotton, but I know about what the country is.

Mr. COTTON: Then you have been talking about this beautiful country in times past, and for a number of years it merely is a hearsay proposition.

Mr. WITTENBERG: Well, from such a source that it is not what you would call hearsay; it is our own people who travel through there all the time.

Mr. COTTON: And did they ever describe this country to you piecemeal, or just simply in a general way?

Mr. WITTENBERG: Well, both.

Mr. COTTON: Well, is there any particular part of that country that you feel that you are familiar enough with to tell us from these hearsay statements what it is like?

Mr. WITTENBERG: Well, I will take the Bend country.

Mr. COTTON: The Bend country?

Mr. WITTENBERG: I will take the Bend country, if you wish, from Shaniko to Bend.

Mr. COTTON: From Shaniko to Bend, going south from Shaniko what is the character of the country, taking the first twenty miles.

Mr. WITTENBERG: I will not say the first twenty miles, but will give you, if you wish, a general description of the country. Will that be satisfactory?

Mr. COTTON: Yes; go ahead.

Mr. WITTENBERG: We have there both farming country, it will be farming country when it is irrigated, and which they are trying to do now—to irrigate. We have there fruit country which will be a first class fruit country irrigated. We have there range country. At the present time there is,—that is all range country. That is the description of the country itself, and of higher altitude than that on the Columbia River.

Mr. COTTON: Frosty, isn't it?

818 Mr. WITTENBERG: It is the same as all eastern Oregon country.

Mr. COTTON: They have frost every month of the year——

Mr. WITTENBERG: That is on the highest altitude the same as all eastern Oregon.

Mr. COTTON: At Bend?

Mr. WITTENBERG: Possibly it is.

Mr. COTTON: Isn't Bend located right in the heart of this proposed country you are going to irrigate?

Mr. WITTENBERG: I don't believe, Mr. Cotton, they have the frost, Mr. Cotton, every night in the year.

Mr. COTTON: Every month, I said, not every night; I didn't mean to say night if I did; I meant every month, I may have misspoken myself; do you know?

Mr. WITTENBERG: I am positive there is not a frost every night at Bend.

Mr. COTTON: Do you know what the altitude of Bend is?

Mr. WITTENBERG: I do not; I think I did; 3500 feet.

Mr. COTTON: And near the Cascade Mountains——

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: Do you know what the character of the country is between Shaniko and Bend?

Mr. WITTENBERG: Well, as I have already described it here, sir.

Mr. COTTON: It is all fine agricultural country?

Mr. WITTENBERG: Not all of it, sir, but a great portion of it is susceptible of cultivation.

Mr. COTTON: The first twenty miles is practically nothing but rocks?

Mr. WITTENBERG: That may be, sir; so would it be the case in the gorge of the Columbia River, but beyond it there is beautiful country.

Mr. COTTON: Where does this beautiful country commence?

Mr. WITTENBERG: In southeastern and eastern Oregon.

Mr. COTTON: The only beautiful country down there, Mr.
819 Wittenberg, I will tell you, is along this Crooked River that I thought possibly you might know something about?

Mr. WITTENBERG: That may be the place, Mr. Cotton.

Mr. COTTON: Along Crooked River the country is very beautiful. That is all, sir.

Mr. SEVERANCE: That is all.

Mr. WITTENBERG: Thank you.

Mr. SEVERANCE: Wait; just one question; you were asked about the speed of trains between here and San Francisco, do you remember whether there were faster trains here in 1893 and 1894 than there are now?

Mr. WITTENBERG: Not on the Southern Pacific between here and San Francisco. The speed there has been twenty miles an hour, and this fast train is cutting off two hours of that time which will make it, I presume twenty-one miles an hour, or twenty-two.

Mr. SEVERANCE: That is pretty fast.

Mr. WITTENBERG: Let me see; it is 34 hours, 772 miles, Mr. Severance, is the time, and I assure you we could leave here and make it in 26 hours without hurting anybody and giving us plenty

of time to cross the mountains, and we hope that the Oregon people will give us that service.

I want to say before leaving the stand that personally I have nothing but the kindliest feelings for the local management of the Oregon lines. I consider them friends of mine, and I know they are a splendid set of gentlemen; but the only great trouble that I find in this entire matter is that the source of the administration, if you please, headquarters are too far from the work or operations; the field of operations; that is the great trouble we have here. So far as Mr. Miller, Mr. Cotton, Mr. Coman and the other gentlemen is this line,—Mr. Stubbs, if you please; he lives a great way from us; why, I believe they are doing everything reasonable. Possibly they are handicapped by people at the other end.

820 I want to say one thing further in that respect, if you permit me; that one difficulty we labor under is that we don't believe here in this section of the country that we get as good treatment as the people of California do and that may be owing to some of the people not living with us all the time. We hope that that will improve as time goes on.

Mr. COTTON: Are you through?

Mr. SEVERANCE: Yes; this was a voluntary statement. Go ahead, Mr. Cotton.

Mr. COTTON: Mr. Wittenberg, the road as between here and California has been very considerably improved in the last year or two,—new steel?

Mr. WITTENBERG: Yes, sir.

Mr. COTTON: And the service, in so far as there has been an improvement, has been improved practically within the last four years.

Mr. WITTENBERG: Yes; the greatest improvements have been made in the last two or three years, I think. You continue your work there and you will finally get a good line. I feel, Mr. Cotton, that the great trouble between here and San Francisco, is that on account of it being a single line and only operated by one organization, we don't get quite as good service as we would if there was a double line.

Mr. COTTON: Did you have better service or worse service when Mr. Huntington had the road than you have now?

Mr. WITTENBERG: It was always the same; there never was but one line.

Now, you know Mr. Cotton, we have to depend on the powers that be for our service. The Harriman lines are the logical people to whom we must look in the country in which we operate. There is no use for blaming anybody else for not coming into a country surrounded by another corporation. How can they improve that country? We must depend on the people in charge to meet the wants of the people of that country, and what is done by that corporation is done either under their own ideas or under their policy.

821 An effort made by the people who live in that country to demand it, if they can't enforce their demand—and we can't expect the Great Northern lines or the Northern Pacific lines to give us splendid service between here and San Francisco; neither can we

depend on you to give us first class service between here and Seattle where you have no lines; but in the fields in which you operate we feel that from the money you earn in this community, which you will admit was between five and six millions, we feel we are entitled to a portion of that earnings to be spent in our section of the country, either in the bettering of conveniences to carry on your business and our accommodations, whether that may be the furnishing of more cars, if you please, to take our goods, or more passenger cars to take us to and fro on the lines. But I don't believe you will ask the community here to blame the Northern Pacific lines for lack of service between here and San Francisco.

Mr. COTTON: Any other suggestions, Mr. Wittenberg?

Mr. WITTENBERG: I will say this, Mr. Cotton, that I believe that if the railroad people who are in charge of Oregon's interests, if you please, and their own interests, will assist in developing the undeveloped country, that they will not only make business for themselves, but they will give people an opportunity from the eastern states to come out here and live in the pursuit of happiness and wealth under more favorable circumstances than that in which they now live, and I believe it will be a great benefit to the railroad country as well as ourselves.

Permit me to say, Mr. Cotton, that the jobbers of Portland and the manufacturers of Portland have a very small territory in which to operate, and when that territory is blocked and obstacles thrown in the way of development, it is a pretty hard proposition for the jobbers and people of Portland.

And I will say further, Mr. Cotton, if the jobbers and
822 manufacturers of Portland would get together and not permit this policy to be maintained they would get better results. If they would not accept the promises of the Harriman lines or any other railroad lines, but would demand such work, or some effort, or some demonstration of their ability or their lack of ability to develop this country, it would also lead to something different from what we have to-day.

Com'r LANE: That is all Mr. Wittenberg.

(Witness excused.)

OTTO BREYMAN, called as a witness, being first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Breyman, where do you reside?

Mr. BREYMAN: Portland.

Mr. SEVERANCE: What is your business?

Mr. BREYMAN: Manufacturer of saddlery goods.

Mr. SEVERANCE: How long have you been in business in Portland here?

Mr. BREYMAN: About fifteen years.

Mr. SEVERANCE: From what part of the country, Mr. Breyman, do you import your raw material?

Mr. BREYMAN: Leather we get largely from San Francisco, from California, and hardware, hames, and other things we get from the Atlantic seaboard largely

Mr. SEVERANCE: Prior to the time that the Southern Pacific and the O. R. & N. became interested together, prior to 1901, was the competition for your shipments between San Francisco and Portland by boat and rail?

Mr. BREYMAN: There was, yes, sir; we shipped largely by boat at that time.

Mr. SEVERANCE: How is that?

Mr. BREYMAN: About five years ago we shipped largely by boat leather.

Mr. SEVERANCE: How do you ship now?

Mr. BREYMAN: Rail altogether.

Mr. SEVERANCE: Why?

Mr. BREYMAN: We have no steamer service.

Mr. SEVERANCE: How long has that been the case?

823 Mr. BREYMAN: Well, some little time; several years; I would not say; it has been worse this last year.

Mr. SEVERANCE: Worse the last year.

Mr. BREYMAN: The last two years.

Mr. SEVERANCE: Been gradually growing worse?

Mr. BREYMAN: Well, we have not made any attempt the past year to ship any leather to California. The only shipments we have by boat is the American Hawaiian shipments and Panama shipments.

Mr. SEVERANCE: That is, you bring goods around from the Atlantic seaboard by the American Hawaiian lines?

Mr. BREYMAN: Yes, sir, some.

Mr. SEVERANCE: And then they are trans-shipped at San Francisco?

Mr. BREYMAN: Yes.

Mr. SEVERANCE: Aside from that you have given up trying to ship by boat from San Francisco?

Mr. BREYMAN: Yes, sir.

Mr. SEVERANCE: On account of the poor service, you say?

Mr. BREYMAN: Yes, sir, entirely.

Mr. SEVERANCE: How were the rates years ago on your goods between San Francisco and here?

Mr. BREYMAN: Well, rates on leather used to be 25 cents per hundred pounds, and the company also carried the insurance.

Mr. SEVERANCE: How are they now?

Mr. BREYMAN: We made a contract every year with the O. R. & N. Company steamers to handle our leather, and in that contract they had an insurance clause, I believe. We paid 25 cents a hundred, and I think at one time we paid as low as twenty cents; but I would not be positive, it is so long ago.

Mr. SEVERANCE: What are your rates by rail?

Mr. BREYMAN: Well, from San Francisco it is 31 cents now; from Benecia it is the same; and I think it is 36 cents from Santa Rosa,—I think it is, I would not be positive.

824 Mr. SEVERANCE: Now do you ship from the east somewhat by rail?

Mr. BREYMAN: We do now, yes, sir. We would ship by water if we had the steamers between San Francisco and Portland.

Mr. SEVERANCE: I mean from the east.

Mr. BREYMAN: We would ship by water if we had steamers from San Francisco to Portland, after we get our freight around the Horn.

Mr. SEVERANCE: But you ship by rail rather than send it around by the Hawaiian line now?

Mr. BREYMAN: Yes.

Mr. SEVERANCE: On account of the poor service.

Mr. BREYMAN: We have shipments down in San Francisco today, I think about eight cases to it, that we have to be delivered here; we haven't got it all here yet; we have had two shipments or part shipments from San Francisco, and it has been on the road since June by steamer.

Mr. SEVERANCE: From New York?

Mr. BREYMAN: From New York; and it is down in San Francisco today; a part of it.

Mr. SEVERANCE: Mr. Breyman, you formerly shipped by water, did you?

Mr. BREYMAN: I never have to any great extent, for the reason that during the old Panama line the freight was handled in such bad shape; we have shipped more or less by the Panama line in the past.

Mr. SEVERANCE: What are your rates from the east all rail?

Mr. BREYMAN: On common saddlery hardware $1.75, less than carload lots; we never ship carload. We never asked for a carload rate because no jobber in Portland saddlery and hardware could use it hardly; they don't ship in large enough quantity.

Mr. SEVERANCE: Which way do goods come when they come all rail?

Mr. BREYMAN: Well, when I have the business I always have favored the Union Pacific and Oregon Short Line of late
825 years, the last few years; I have given some to the Northern Pacific, considerable; I aim to divide it up between the companies.

Mr. SEVERANCE: Did you formerly ship some by the Southern Pacific?

Mr. BREYMAN: I used to patronize the Sunset route a great many years ago, not to any extent; in the winter time I did in shipping shoe dressing, I wanted to keep from being frozen; and do now in fact.

Mr. SEVERANCE: Did you ship by Sacramento?

Mr. BREYMAN: No, sir, we shipped by the Sunset route; that was in connection with the Morgan line.

Mr. SEVERANCE: Well, I understand, but you don't ship that way any more?

Mr. BREYMAN: Yes, not much; one shipment came in this fall.

Mr. SEVERANCE: Do any solicitors come around and solicit you to ship that way?

Mr. BREYMAN: No, sir.

Mr. SEVERANCE: The Southern Pacific don't solicit your business now as against the O. R. & N. any more?

Mr. BREYMAN: No, they do not.

Mr. Severance: The Southern Pacific don't solicit your business now as against the O. R. & N. any more?

Mr. Breyman: No, they do not.

Mr. SEVERANCE: Mr. Breyman, there have been several witnesses on the stand who were interrogated about this eastern Central Oregon country; have you ever been out there?

Mr. BREYMAN: I lived in Prineville for five years.

Mr. SEVERANCE: Are you pretty familiar with that country?

Mr. BREYMAN: Well, I have not been there for about—I lived there when I was a boy and have ridden over a great deal of that country on horseback. My father was in business there and I used to go out after his cattle and ride the ranges over that country both around Prineville and Bend and all through there.

826 Mr. SEVERANCE: What kind of country is it?

Mr. BREYMAN: Well, a big part of it is very rocky, rough rimrocks, some parts of it, and valleys along the water; along the Crooked River it is nice coutry.

Mr. SEVERANCE: There is a good deal of good country?

Mr. BREYMAN: Yes; take it around what we call the haystacks; I understand they are irrigating a great deal of that land now that used to be nothing but sagebrush and down towards Bend and beyond it is quite fertile on the south of Prineville; and what they call the desert there, I don't know whether they irrigate that or not.

Mr. SEVERANCE: Mr. Breyman there has been several witnesses here who testified concerning certain promises held out by the Harriman people to extend the Columbia Southern line down to Prineville; did you ever hear any of those promises made by any one connected with the Harriman system?

Mr. BREYMAN: Well, I have heard it generally stated in the papers, it has been published in the papers, and so forth, that the line would be extended; I heard it stated up in the Arlington Club; Mr. Harriman was present and said he would extend the line.

Mr. SEVERANCE: You heard Mr. Harriman say that in the Arlington Club?

Mr. BREYMAN: I heard him state that publicly; I don't think there was anything private about it.

Mr. SEVERANCE: How long ago was it that he made that statement?

Mr. BREYMAN: Oh, I presume a year and a half ago; it might have been two years; I don't think it was over two years ago.

Mr. SEVERANCE: I think that is all.

Mr. COTTON: Mr. Breyman, you don't know whether the steamers are coming up here from the south partly filled or not, do you, at the present time?

Mr. BREYMAN: Well, I would judge not, from the fact that I have gone to the office here and telephoned down to the Ainsworth dock and tried to find out about our freight, and were always

827 informed that the steamers were loaded, and that was the excuse given that our goods were held in San Francisco.

Mr. COTTON: This freight you paid of 25 cents where the company carried insurance, was in force, say ten years ago?

Mr. BREYMAN: Well, it was probably ten years ago, yes.

Mr. COTTON: Now a great many years ago you shipped somewhat by the Sunset; you ship just about as much now as you ever did, don't you?

Mr. BREYMAN: No, I don't think I do, not as much as I used to.

Mr. BREYMAN: Forest was built since I left there.

Mr. COTTON: Well, Forest is down where the road begins to climb the rimrock right west as you come over to Albany and Eugene.

Mr. BREYMAN: Oh yes; I have been down through there.

Mr. COTTON: It is practically at the end of the Crooked River Valley, isn't it?

Mr. BREYMAN: Yes, sir.

Mr. COTTON: And how far is that point from Prineville, how many miles?

Mr. BREYMAN: I presume it is about twenty miles, isn't it—in that neighborhood.

Mr. COTTON: Well, I would say not quite so far.

Mr. BREYMAN: Not quite, eighteen or twenty miles.

Mr. COTTON: Yes; so this valley is about eighteen miles long and from a quarter to a mile wide?

Mr. BREYMAN: That is the valley; it is; but now the country around the haystacks has a plateau on top of the expanse there.

Mr. COTTON: Yes; but Haystack is quite a ways from the Crooked River.

Mr. BREYMAN: Yes.

Mr. COTTON: How many miles?

Mr. BREYMAN: I should say four or five or six miles away from the river.

828 Mr. COTTON: Going south from Shaniko, that is rocky country all the way down Antelope Creek.

Mr. BREYMAN: Yes, that is rocky through there; the Valleys are very narrow in there.

Mr. COTTON: It goes down probably twenty-five miles practically nothing but basaltic rock except in the creek bottoms.

Mr. BREYMAN: Yes; around what you would call Shaniko that is the case.

Mr. COTTON: Extending south from Shaniko to Prineville, except in little creek bottoms——

Mr. BREYMAN: That land on the Hay Creek there on those plateaus I have been told is good farming land; I have been told they are taking it up.

Mr. COTTON: That is south?

Mr. BREYMAN: That is southwest of that.

Mr. COTTON: That is beyond this 25 mile district?

Mr. BREYMAN: Oh yes.

Mr. COTTON: But the first district for 25 miles this side of Shaniko is practically nothing but rock.

Mr. BREYMAN: Steep canyons and rock; yes, sir, that is correct.

Mr. COTTON: Railroads would be very expensive and very difficult to build and nothing to carry out of the country for the first 25 miles?

Mr. BREYMAN: From Shaniko out?

Mr. COTTON: Yes.

Mr. BREYMAN: Well, I don't know about that, the country from Shaniko; I understand the line which was surveyed was to go near Hay Creek, wasn't it; isn't that where the survey was laid out?

Mr. COTTON: Well, then, Hay Creek is more than 25 miles from Shaniko; I am just talking about the first twenty-five miles.

Mr. BREYMAN: That is rough country, yes, sir.

Mr. COTTON: Canyons?

Mr. BREYMAN: Yes.

Mr. COTTON: Basaltic rocks?

Mr. BREYMAN: Yes, correct.

Mr. COTTON: Then you come down to Hay Creek and
829 there is a ranch down there and there is not very much else in that immediate neighborhood, is there?

Mr. BREYMAN: Well, because the company there owns most of that land; they use it for grazing.

Mr. COTTON: Although they try to raise grain on the hill?

Mr. BREYMAN: They never did, because they didn't want to raise grain; they used it for sheep business.

Mr. COTTON: Then you go on another 25 miles and you come to this Crooked River Valley?

Mr. BREYMAN: Yes, that is right.

Mr. COTTON: Then going south from the Crooked River Valley you strike what is known what is desert; that is when you go southeast?

Mr. BREYMAN: Yes, sir.

Mr. COTTON: How wide is that desert?

Mr. BREYMAN: Well, from Prineville over to Lakeview it is about 120 miles, isn't it?

Mr. COTTON: Yes; and how long is the desert?

Mr. BREYMAN: I don't know; I could not say.

Mr. COTTON: Well, about a hundred miles, isn't it, east?

Mr. BREYMAN: I presume so; but I understand they are irrigating a great deal of that land below Prineville on the desert, aren't they?

Mr. COTTON: No, that is over to Bend, just along the foot-hills. This desert then is about 150 miles wide and 100 miles long, and then lying north of it is the Crooked River Valley?

Mr. BREYMAN: Then there is the Ochoco Valley in there.

Mr. COTTON: That is coming up towards Howard?

Mr. BREYMAN: Yes, Ochoco Valley is going towards Howard.

Mr. COTTON: How wide is the Ochoco Valley going from Prineville up in the direction of Howard?

Mr. BREYMAN: The Ochoco Valley would not average over a quarter to a half mile, I presume?

Mr. COTTON: From a quarter to a half mile, and about how long?

830 Mr. BREYMAN: From Prineville up to the Blue Mountains there what is the distance, 25 miles, isn't it?

Mr. COTTON: Yes; 25 miles; that is practically an extension of the Crooked River country.

Mr. BREYMAN: That is one of the branches of it.

Mr. COTTON: So that but for the Crooked River Valley, the Ochoco Valley and a little country around Hay Creek——

Mr. BREYMAN: The Haystack country.

Mr. COTTON: And the Haystack country—how large is that?

Mr. BREYMAN: Well, there is quite a bit of country around there.

Mr. COTTON: About what is the size of it?

Mr. BREYMAN: I presume it must be ten miles long, isn't it?

Mr. COTTON: Ten miles long and about how wide?

Mr. BREYMAN: Well, if you come down—well, that would take you down towards Deschutes and that country.

Mr. COTTON: Let's take the Haystack country; let's take one country at a time.

Mr. BREYMAN: Well, the Haystack country is at least ten miles wide probably; yes, sir.

Mr. COTTON: Ten by six miles, and that takes in what; the Haystack country is what some of the gentlemen have referred to as Agency Plains?

Mr. BREYMAN: That is the same country.

Mr. COTTON: That is the same country. Now we have the desert pretty well fixed.

Com'r LANE: What is that desert now?

Mr. COTTON: The desert is south of Prineville. We will point the desert out to you on this map; that is a part of this beautiful section down there.

Mr. BREYMAN: I understand they are irrigating it down to Bend.

Com'r LANE: Is it like the Yakima country?

Mr. BREYMAN: It is not as productive as that country.

831 Mr. COTTON: Now the country that they are irrigating——

Mr. BREYMAN: Here it is; here is Prineville (indicating on map); here it is right here, down this way.

Mr. COTTON: Runs all the way from Prineville down to Lakeview; it is a desert; now they are irrigating a little bit of that over near Bend, do you know how many acres?

Mr. BREYMAN: No, sir, I do not know anything about it; I don't know how many acres; here is Prineville and here is the desert, what they call the desert, the country here extending this way.

Mr. COTTON: It runs all the way down 150 miles; all in that country is practically what you call the desert.

Mr. BREYMAN: I don't know whether it is the desert, or not; I don't think so.

Mr. COTTON: Well, most of it.

Mr. BREYMAN: They use it—this country in here isn't desert, this country in here isn't desert; there is desert in there (indicating).

Mr. COTTON: Well, but I mean you have described the Crooked River country.

Com'r LANE: What do you mean by desert? I have seen a great many deserts in this western country.

Mr. BREYMAN: Gray sand, juniper brush, and yellow sage.

Mr. SEVERANCE: Is it productive when water is turned on it?

Mr. BREYMAN: Yes, sir.

Mr. COTTON: Does it produce bunch grass?

Mr. BREYMAN: Yes, bunch grass. The desert south of Prineville has always been considered one of the favored ranges for cattle in the winter time, on account of the bunch grass which grows up there; it grows up that high (witness indicating).

Mr. SEVERANCE: Indicating two and a half feet.

Mr. COTTON: Gray sand and juniper brush.

Mr. BREYMAN: Yes, high, sandy.

Mr. COTTON: Very high and very sandy.

Mr. BREYMAN: Yes, sir, rocky.

832 Mr. COTTON: No water on it at all down there.

Mr. BREYMAN: No water.

Com'r LANE: No streams run through there, do they?

Mr. BREYMAN: No.

Mr. COTTON: Except the Deschutes; the Deschutes river goes along here (indicating on map).

Mr. BREYMAN: Yes, along the edge of it, I guess.

Mr. COTTON: Yes, the Deschutes river goes along the edge. By the Deschutes they are irrigating some in the vicinity of Bend, are they not; you understand that from Newspaper reports?

Mr. BREYMAN: Yes, they are.

Mr. COTTON: During all the time you lived at Prineville the old residents regarded that Bend desert country as very cold, didn't they?

Mr. BREYMAN: It was always considered cold, yes, sir; it was cold.

Mr. COTTON: You know that up and around the Sisters that they have right within a few miles of Bend some irrigating plants up there, and the only thing you can get for horses is barley hay.

Mr. BREYMAN: I don't know anything about that; I have never been down there.

Mr. COTTON: Were there ever any farms over on this desert?

Mr. BREYMAN: Which way, on the desert?

Mr. COTTON: Yes.

Mr. BREYMAN: No, sir.

Mr. COTTON: When you were a boy?

Mr. BREYMAN: No, sir.

Mr. COTTON: Do you know whether there are any there now?

Mr. BREYMAN: On the desert?

Mr. COTTON: Yes.

Mr. BREYMAN: No, I do not. In fact when I left there, Mr. Cotton, there were very few farms anywhere; the country was used entirely for grazing purposes.

Mr. COTTON: But the Crooked River country was always pretty well filled up, wasn't it?

833 Mr. BREYMAN: We never raised a great amount of wheat there.

Mr. COTTON: No; raised alfalfa?

Mr. BREYMAN: Raised alfalfa and rye for feeding cattle.

Mr. COTTON: I think that is all.

Mr. SEVERANCE: There was no way to get wheat out, was there, except to team it along there?

Mr. BREYMAN: No; but there was some home consumption there; they raised it for home consumption.

Mr. SEVERANCE: Yes, but that is all. That is all, Mr. Breyman.

Mr. COTTON: Mr. Breyman, has there been any change in the rail rates to and from San Francisco on your commodities recently?

Mr. BREYMAN: On leather, I could not say as to that Mr. Cotton; I have never looked it up.

(Witness excused.)

H. W. GODDARD, called as a witness, being first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Goddard, where do you live?

Mr. GODDARD: Portland.

Mr. SEVERANCE: What is your business?

Mr. GODDARD: Transfer company.

Mr. SEVERANCE: How long have you been in that business?

Mr. GODDARD: About a year.

Mr. SEVERANCE: Prior to that time what was your business?

Mr. GODDARD: Railroad service for a number of years.

Mr. SEVERANCE: How many years did you say you have been in the transfer business?

Mr. GODDARD: About a year.

Mr. SEVERANCE: Prior to that time you had been in the railroad service?

Mr. GODDARD: I had been in the railroad service for a number of years.

834 Mr. SEVERANCE: Up to a year ago?

Mr. GODDARD: Yes, sir.

Mr. SEVERANCE: What company?

Mr. GODDARD: The Oregon Steam Navigation Company and the Oregon Railway Company, Southern Pacific, C. B. & Q.

Mr. SEVERANCE: When were you employed by the Southern Pacific?

Mr. GODDARD: From 1890 to 1896.

Mr. SEVERANCE: What was your business at that time?

Mr. GODDARD: It was in the traffic department.

Mr. SEVERANCE: And were you a solicitor of freight business?

Mr. GODDARD: No. I was not.

Mr. SEVERANCE: Well, in whose office were you?

Mr. GODDARD: In the office of Mr. E. P. Rogers, Assistant General Freight and Passenger Agent.

Mr. SEVERANCE: Now Mr. Goddard in those days—when was it, up to 1896 or 1897?

Mr. GODDARD: 1896.

Mr. SEVERANCE: After that what company were you with?

Mr. GODDARD: The C. B. & Q.

Mr. SEVERANCE: Now, during the time that you were employed by the Southern Pacific and up to 1901, were the Southern Pacific and the Union Pacific with the Oregon Railroad & Navigation Company's extension competitors for its business into Portland from the east?

Mr. GODDARD: Between what times, Mr. Severance?

Mr. SEVERANCE: Well, just state at what times they were competitors for the business?

Mr. GODDARD: Well, I would not have any knowledge of it except during the time I was with it.

Mr. SEVERANCE: Well, were they at that time?

Mr. GODDARD: They were.

Mr. SEVERANCE: Yes; and were the O. R. & N. boats competing with the Southern Pacific rail lines from here to San Francisco?

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Mr. GODDARD: They were.

Mr. SEVERANCE: What class of goods were competitive for those two lines between here and San Francisco, that is the boat line and the all rail line?

Mr. GODDARD: Well, we were after all the business there was.

Mr. COTTON: Excuse me; I didn't understand up to what period you are testifying—1896?

Mr. GODDARD: Yes, 1890 to 1896.

Mr. COTTON: Yes, 1896.

Mr. GODDARD: Each company, I presume was after all the business there was in sight.

Mr. SEVERANCE: Yes. Well, were they dry goods, groceries?

Mr. GODDARD: General merchandise.

Mr. SEVERANCE: Hops; did hops move both ways, or only one way?

Mr. GODDARD: Well, I think very little, if any local movement of hops?

Mr. SEVERANCE: Well, I mean did any of the hops move to the east by water from San Francisco?

Mr. GODDARD: I think not.

Mr. SEVERANCE: Or did they move by rail?

Mr. GODDARD: By rail.

Mr. SEVERANCE: And they moved both ways, didn't they; that is, by the Sunset route and the Sacramento route?

Mr. GODDARD: Sacramento.

Mr. SEVERANCE: Ogden, O. R. & N. and the Northern Pacific, and all lines.

Mr. GODDARD: Sacramento.

Mr. SEVERANCE: What about the boat lines in those days on the Willamette.

Mr. GODDARD: There were two lines, the O. R. & N. Co. and the Oregon City Transportation Company.

Mr. SEVERANCE: Were they competing for through business from the Willamette Valley to the east with the Southern Pacific; that is, bringing commodities into Portland by boat and thence sending it on?

Mr. GODDARD: Well, I don't think they would be called as competing; they worked in connection with them.

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Mr. SEVERANCE: Well, you don't understand my question. The Willamette boats of the O. R. & N. were working in connection with the O. R. & N. railroad, weren't they?

Mr. GODDARD: Hops would be brought into Portland, for in-

stance over the Oregon City Transportation Company and O. R. & N. boats and shipped out Southern Pacific.

Mr. SEVERANCE: Shipped out Southern Pacific or O. R. & N.

Mr. GODDARD: Or O. R. & N.

Mr. SEVERANCE: Either way, yes. Ordinarily if the Southern Pacific were going to send the hops they would load them direct on the cars, wouldn't they, take it at competitive points like Salem, for instance?

Mr. GODDARD: I think I recall cases where hops were brought from Salem by boat and thence shipped Southern Pacific.

Mr. SEVERANCE: That was not east?

Mr. GODDARD: No, it was not east.

Mr. SEVERANCE: They would usually go out by rail from Salem?

Mr. GODDARD: Yes.

Mr. SEVERANCE: But if they were not going over the O. R. & N. they were brought in here by boat ordinarily?

Mr. GODDARD: That would depend where they were originating probably.

Mr. SEVERANCE: Well, say they originated at Salem?

Mr. GODDARD: Probably most of the hops originating at Salem were in the warehouse at Salem, and then in that case they would come by rail direct.

Mr. SEVERANCE: They would come by rail direct.

Mr. GODDARD: Either Southern Pacific or by way of Portland to the other rail lines.

Mr. SEVERANCE: To the other rail lines; and the Southern Pacific would bring them in, but the O. R. & N. kept solicitors up
837 there soliciting that business as against the Southern Pacific?

Mr. GODDARD: I think so.

Mr. SEVERANCE: Now when you were the agent of the C. B. & Q. you worked in connection with all lines, I suppose, didn't you?

Mr. GODDARD: Yes, sir. I was not the General Agent, I was Assistant General Agent.

Mr. SEVERANCE: Well, you were the soliciting agent?

Mr. GODDARD: Assistant General Agent, yes, for the Northwest territory.

Mr. SEVERANCE: And where did you work, here in Portland or in this Northwestern country?

Mr. GODDARD: Well, my headquarters were and with jurisdiction over all the Northwest here.

Mr. SEVERANCE: And did you go out in the country more or less?

Mr. GODDARD: Occasionally.

Mr. SEVERANCE: Looking up business?

Mr. GODDARD: Yes, sir.

Mr. SEVERANCE: When you solicited traffic for the C. B. & Q., to what points, at what point did you endeavor to route it so far as your line was concerned, coming,—westbound traffic, we will say?

Mr. GODDARD: We would endeavor to route it our longest haul which was——

Mr. SEVERANCE: Denver?

Mr. GODDARD: Either Denver or Billings.

Mr. SEVERANCE: Denver or Billings. And from Denver, up to the time the Ogden gateway was closed, that is the Sacramento route, I mean, from Denver west you routed it anyway that you could get it, didn't you?

Mr. LOVETT: If the Commissioner please, I would like to make a point here that we should have made before. I have not understood in this investigation that we had any right to object to the form of questions, but this investigation being conducted by the Commission in its own way that it was for the Commission
838 to determine the form the questions should take. I don't think in my limited practice I have ever heard witness led so——

Mr. SEVERANCE: I beg your pardon, Judge; I will change the form of the question; I am perfectly willing to.

Mr. LOVETT: I want to make a statement now so I won't be misunderstood. In my practice I don't think I ever heard witnesses led quite as much by counsel as they have been in this investigation from the very beginning. As I say, I assumed that was for the Commission to determine as the Commission was making its investigation without formal parties, but if we have any right to object to the form of the question——

Com'r LANE: At any time you desire, Judge. Of course if you consider a witness being misled to say something he does not intend to say, I am very glad to have you make objection.

Mr. SEVERANCE: And I am very glad to have my attention called to it.

Mr. LOVETT: Of course, it is not considered proper in court to lead your own witness. But as I say, this investigation is being conducted by the Commission in its own way, without formal parties, and I have not made objections; but I want to call the attention of the Commissioner to the form of the question; I don't care to obstruct the proceedings by constant objections to the form of the questions, but I would like to call the attention of the Commission to the form in which the questions have been put.

Mr. SEVERANCE: I might say in response to Judge Lovett's suggestion that I am very glad he made it, if he thinks the forms of the questions objectionable. We had subpœnaed here some thirty-five or thirty-six witnesses; we had two days at the outset in which to examine them; I have tried to be very direct with the witnesses because of that fact, and am rushing through as fast as possible; I didn't intend to transgress the ordinary rules in the exami-
839 nation of witnesses, but I will endeavor to adopt my friend's suggestion; it may take a little longer.

Mr. LOVETT: In New York and also in Chicago the same form was followed. I did not object there because at the outset they were officers of our company, and I thought that we would not present any technical objections there; but this same course has been pursued with all witnesses, and I think more frequently than intentionally. Counsel has rather argued his case to the witnesses.

Mr. SEVERANCE: Well, that has been quite unnecessary; at least,

I think the witnesses have sufficiently argued it; but I did not intend to do so, Judge Lovett.

Mr. COTTON: I think in response to some of these questions that really Mr. Goddard has assented to a good many propositions that I don't think he means to state as the facts at all.

Com'r LANE: Well, I have given plenty of opportunity for cross-examination, and I supposed when a witness might be led into anything inadvertently it will be brought out by you.

Mr. SEVERANCE: Well, of course, it is not my intention to have the witness state anything that is not so; you know that, Mr. Cotton, very well.

Mr. COTTON: Yes; but a man very frequently answers yes to a question without thinking of the premises.

Mr. SEVERANCE: Well, in deference to the suggestion I will change the form of my question. You say that you endeavored to secure traffic as far as possible over your own line when you were soliciting for the C. B. & Q., and that would be Denver and Billings; now assuming you were able to route traffic by C. B. & Q. as far as Denver, what way would the commodities come on to Portland from Denver?

Mr. GODDARD: Well, either via the Union Pacific and Oregon Short Line, or via the Rio Grande and Salt Lake.

840 Mr. SEVERANCE: Now, up to the time it was spoken of here by a number of witnesses as the closing of the Sacramento or Ogden gateway, did the traffic move at times via Sacramento?

Mr. GODDARD: Why years ago it did.

Mr. SEVERANCE: Yes, that is what I mean. Latterly, how did it move from Ogden and Salt Lake to Portland?

Mr. GODDARD: Well, we didn't solicit very much business that way; we were after other hauls which were a little more profitable.

Mr. SEVERANCE: Yes, you were after the Billings haul; I understand, but I am asking now about the freight that came by Denver.

Mr. GODDARD: It is a hard matter for me to answer that question, because we never solicited any routing west of Denver; we asked for our own routing up to that point, and it was immaterial to us how it moved west.

Mr. SEVERANCE: And you are unable to state how it moved west?

Mr. GODDARD: At present, yes.

Mr. SEVERANCE: You don't remember?

Mr. GODDARD: No, I don't remember.

Mr. SEVERANCE: That is all.

Mr. COTTON: When was the Billings route opened?

Mr. GODDARD: It was before I went with the Burlington, but I think it was about 1894.

Mr. COTTON: 1894?

Mr. GODDARD: 1894.

Mr. COTTON: And it has been competing for business into this country in connection with the Northern Pacific ever since?

Mr. GODDARD: Yes, sir.

Mr. COTTON: And as the C. B. & Q. agent you preferred to have the freight come by Billings, routed by Salt Lake and Denver, of course, the haul was very much longer?

Mr. GODDARD: Yes, sir.

841 Mr. COTTON: Did you regard that as in restraint of trade?

Mr. SEVERANCE: Oh, I think that is an immaterial question.

Com'r LANE: There is no value to his answer to that.

Mr. COTTON: No, I don't really think so. You did try to work the business by Billings as hard as you could?

Mr. GODDARD: We were after our longest haul always.

Mr. COTTON: Yes, and undertook to obtain it that way from anybody from whom you solicited it, if you could get it?

Mr. GODDARD: Yes.

Mr. COTTON: If you could not get it that way you would of course be glad to have it come by Denver rather than some other way?

Mr. GODDARD: Yes.

Mr. COTTON: Now, when it came out by Denver to Salt Lake when the Sacramento gateway was still open, it might have reached Portland either by the Short Line or by the Southern Pacific?

Mr. GODDARD: Yes.

Mr. COTTON: And you were indifferent which way it came?

Mr. GODDARD: Entirely so.

Mr. COTTON: The merchant was largely indifferent too, or did he prefer the Union Pacific route?

Mr. GODDARD: Well, we never entered into that any more than we had to,—the question of routing west of our line.

Mr. COTTON: How much longer was the Sacramento route in time than the route from Salt Lake here direct?

Mr. GODDARD: Why, I think under normal conditions probably about four days.

Mr. COTTON: About four days more?

Mr. GODDARD: Four or five days.

842 Mr. COTTON: Did any merchant wish to have his freight come over that way at equal rates?

Mr. GODDARD: We never had very many requests to send them that way.

Mr. COTTON: You used to work freight via Omaha also in connection with the Union Pacific.

Mr. GODDARD: Yes, sir.

Mr. COTTON: In other words, if you could not get it via Billings you would take it via Denver, and if you could not get it via Denver you would take it Omaha?

Mr. GODDARD: Omaha, St. Paul,—we competed through all the gateways.

Mr. COTTON: Any gateway, aiming however always to get the longest haul possible for your road?

Mr. GODDARD: Yes.

Mr. COTTON: In fact you had a gateway at Omaha, one at Denver, one at Billings, one at St. Paul——

Mr. GODDARD: And one Kansas City, and one St. Louis.

Mr. COTTON: One at Kansas City and one at St. Louis. Now in 1896 when you were working for the Southern Pacific Company the boat lines,—the O. R. & N. boat lines and the Graham line, did I understand?

Mr. GODDARD: Yes, the Oregon City Transportation Company.

Mr. COTTON: Were working in connection with the Southern Pacific line, were they not, bringing freight to Portland and turning it over to the Southern Pacific?

Mr. GODDARD: Yes, the Southern Pacific received hops and prunes from them at Portland.

Mr. COTTON: Yes, the steamboat lines touch at various points along the river, don't they, of production?

Mr. GODDARD: Yes.

Mr. COTTON: Little low places, farm houses,—any old place?

Mr. GODDARD: Yes, they have a good many landings.

Mr. COTTON: And the roads in the winter time in that section of the country are very muddy?

Mr. GODDARD: Very bad.

843 Mr. COTTON: Yes; the haul to a station is almost impossible at times.

Mr. GODDARD: Yes, I should think so. I never was in the country very much, but I know the general character of it, and the roads were very muddy.

Mr. COTTON: Therefore, the boat lines picked up the stuff which was adjacent to the river and the rail lines picked up the stuff which was adjacent to the rail lines; that was about the situation, wasn't it?

Mr. GODDARD: I think so.

Mr. COTTON: There was not very much hauling from one to the other, that is from the river to the rail or from the rail to the river?

Mr. GODDARD: Well, I don't think there was.

Mr. COTTON: And when the O. R & N. boat lines would pick up a shipment of hops which anybody wanted to have go out over the Southern Pacific they would bring it to Portland and let it go out over the Southern Pacific away back in 1896?

Mr. GODDARD: I don't recall of any case where a shipment routed over the O. R. & N. boat line routed Southern Pacific at Portland was diverted; I don't recall it.

Mr. COTTON: The O. R. & N. boat lines did actually bring in hops from the Willamette Valley to Portland to go out over the Southern Pacific lines?

Mr. GODDARD: Yes.

Mr. COTTON: That was quite frequent, wasn't it?

Mr. GODDARD: No, I could not say it was quite frequent.

Mr. COTTON: Well, it was often done?

Mr. GODDARD: It was the occasional case.

Mr. COTTON: From any landing where anybody wanted to ship that way the boat lines would take it, wouldn't they?

Mr. GODDARD: The greater portion of the hops I think came down over the Oregon City boat line boats.

Mr. COTTON: Well, the Oregon City boat line worked that way, didn't they?

Mr. GODDARD: Yes.

844 Mr. COTTON: And handled quite large quantities of hops?

Mr. GODDARD: Yes, all the that were tributary to the river.

Mr. COTTON: Therefore, if that present arrangement continues at the present time, it is nothing new, is it?

Mr. GODDARD: I don't know what the arrangement is in effect now.

Mr. COTTON: Well, I say if it does continue now, it is no new thing, is it?

Mr. GODDARD: It might be the same as they had done before.

Mr. COTTON: And do you know how long before 1896 the Oregon City Transportation Company did business in that way with the Southern Pacific?

Mr. GODDARD: Well, I think most of the time I was engaged with the Southern Pacific.

Mr. COTTON: How long was that, sir?

Mr. GODDARD: Six years.

Mr. COTTON: Six years that is, from 1890?

Mr. GODDARD: 1890 to 1896.

Mr. COTTON: And they worked in harmony with the Southern Pacific?

Mr. GODDARD: I would not make a positive statement of that but I know it was during the latter portion of the time and possibly during the whole time.

Mr. COTTON: Both lines bringing stuff into the city of Portland, potatoes and truck like that from the river.

Mr. GODDARD: Yes.

Mr. COTTON: Working in competition with each other for that business?

Mr. GODDARD: Doubtless.

Mr. COTTON: That is all, sir.

Mr. SEVERANCE: Mr. Goddard, when the O. R. & N. boats brought in hops as you say they did infrequently, and the hops went out over the Southern Pacific, did the Southern Pacific absorb the boat charge into Portland?

Mr. GODDARD: Yes.

845 Mr. SEVERANCE: And the freight charge was what,—the Portland rate?

Mr. GODDARD: Well, there was a flat rate on hops on the entire territory covered by the river points.

Mr. SEVERANCE: Yes, so that the rate to the east from Portland was the same as from Salem?

Mr. GODDARD: As from Salem, or any river landing.

Mr. SEVERANCE: Or any river landing. That was both lines to the east, wasn't it,—the Southern Pacific and the O. R. & N.?

Mr. GODDARD: By all lines.

Mr. SEVERANCE: Yes. Now in answer to Brother Cotton you said these instances were infrequent, as I understood you, that the hops came in by boat and went out over the Southern Pacific?

Mr. GODDARD: The two boat lines of course were competing for the business tributary to the river. The O. R. & N. Co.'s boats, I presume, solicited for their own line, but if they didn't get the haul clear through they would be willing to take it to Portland and make delivery to the Southern Pacific.

Mr. SEVERANCE: And the Southern Pacific absorbed their charge for the local haul, is that right?

Mr. GODDARD: Yes, sir; the river charges were absorbed.

Mr. SEVERANCE: That is all.

Mr. COTTON: Did the Graham boat line work in harmony with the Northern Pacific too?

Mr. GODDARD: I don't remember about that, I don't recall.

Mr. COTTON: Well, do they now?

Mr. GODDARD: I don't know; I am not familiar with it now at all.

Mr. COTTON: Do you know how far this blanket freight rate on hops extended through the Willamette Valley, how far south it went?

Mr. GODDARD: I think it covered the entire Oregon lines.

Mr. COTTON: The entire lines of the Southern Pacific in Oregon?

846 Mr. GODDARD: Yes.

Mr. COTTON: Say as far down as they raised hops, Eugene, and Roseburg?

Mr. GODDARD: Yes; say as far down as Medford; I think there was some hops originated there.

Mr. COTTON: The same rates from all points to the east on hops?

Mr. GODDARD: I know it did; that covered the intermediate rates in Oregon.

Mr. COTTON: That same system prevails now, doesn't it?

Mr. GODDARD: I don't know.

Mr. COTTON: A common blanket rate from Ashland to Portland on hops to all eastern points?

Mr. GODDARD: I don't know what the present situation is.

Mr. COTTON: Well, but I mean in olden days.

Mr. GODDARD: Yes.

Mr. COTTON: That is all.

(Witness Excused.)

GEORGE H. KELLY: called as a witness, being first duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Kelly, where do you live?

Mr. KELLY: Eugene.

Mr. SEVERANCE: How far is Eugene from Portland?

Mr. KELLY: 123 miles.

Mr. SEVERANCE: What line of railroad are you on, if any?

Mr. KELLY: The Southern Pacific.

Mr. SEVERANCE: What is your business?

Mr. KELLY: I am in the lumber business.

Mr. SEVERANCE: How long have you been in that business?

Mr. KELLY: 21 years.

Mr. SEVERANCE: How long at Eugene?

Mr. KELLY: Well, I have lived right near there and there in the lumber business for the last ten years.

Mr. SEVERANCE: What is the name of your firm?

847 Mr. KELLY: Booth Kelly Lumber Company.

Mr. SEVERANCE: How many mills, sir?

Mr. KELLY: Yes, sir, we operate four mills in Lane County.

Mr. SEVERANCE: Four mills?

Mr. KELLY: Yes, sir.

Mr. SEVERANCE: Where are they?

Mr. KELLY: There is one at Saginaw, one at Coburg, one at Springfield and one at Wendling.

Mr. SEVERANCE: On what line of roads are these mills located?

Mr. KELLY: They are all on the Southern Pacific.

Mr. SEVERANCE: How far is the nearest mill from Portland?

Mr. KELLY: Well, I would say about 120 miles.

Mr. SEVERANCE: How far is the one that is farthest from Portland?

Mr. KELLY: About 145 miles.

Mr. SEVERANCE: Are they on the main line?

Mr. KELLY: One of them is on the main line and the others are on the branches, on the Woodburn and Natron and the Wendling branch.

Mr. SEVERANCE: How far off of the main line are these mills that are on the branches?

Mr. KELLY: Well, the Springfield mill is a mile from the main line; the Wendling mill is 18 miles from the main line, and the Coburg mill is seven miles from the main line.

Mr. SEVERANCE: What is your annual cut at these mills?

Mr. KELLY: Well, when we run full time about a hundred million feet.

Mr. SEVERANCE: To what parts of the United States do you ship?

Mr. KELLY: Well, practically all over the United States except a little part of New England and the south.

Mr. SEVERANCE: Has there been any change in the rates on lumber from your points to any destination within the last two or three years?

848 Mr. KELLY: Well, in some,—there has been some change in rates east of Sacramento, between Sacramento and Ogden, and there has been some change in California rates, and there is another one contemplated now that we just received notice of. We used to have rates to Arizona; they were withdrawn.

Mr. SEVERANCE: I want to ask you about these Arizona rates; what was your rate to Arizona points?

Mr. KELLY: Well, I think it was a mining timber rate, and I think it was about $16 a thousand feet, if I recall; something like that; it was a per thousand foot rate.

Mr. SEVERANCE: When was that rate withdrawn?

Mr. KELLY: Well, eight or nine years ago, I think.

Mr. SEVERANCE: Eight or nine years ago.

Mr. COTTON: Prior to 1901?

Mr. KELLY: Yes.

Mr. SEVERANCE: Now, Mr. Kelly, is there any difference in the rates that you pay on different classes of lumber and timber that you ship?

Mr. KELLY: Not to eastern points but to California points they make a distinction between kiln dried machine lumber and rough green lumber and railroad ties.

Com'r LANE: What is the purpose of his testimony, Mr. Severance?

Mr. SEVERANCE: In the first place I want to show that they make a distinction between rates so as to prevent the shipment of ties for instance down in the territory where other lines of railroad are

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being constructed, and I want to show also the efforts made to reduce shipments to new territory reached by the O. R. & N. and Colorado points, and others, as against shipments to the south.

Com'r LANE: A change in the policy that has been effected recently?

Mr. SEVERANCE: Yes.

Com'r LANE: Well, you may proceed.

Mr. LOVETT: Is there any contention that that situa-
849 tion was effected by the relations of the Union Pacific and the Southern Pacific?

Mr. SEVERANCE: That is my understanding; if it is not correct,—that is my understanding,—undoubtedly he will state the facts. You say there is a difference in rates on ties and other timbers.

Mr. KELLY: Yes, sir.

Mr. SEVERANCE: Now does this difference exist as between ties and other timber of the same character, except as to length?

Mr. KELLY: That is all the difference that there is. For instance a standard railroad tie is seven by eight, eight feet long; that is, that is the generally accepted standard. Now that tie, if it goes to a Bay point, San Francisco or a Bay point, takes a rate of five dollars a thousand, while a piece double that length, seven by eight, sixteen feet long or any other length would go $3.10,—not $5 a thousand but $5 a ton; but the longer lengths would take the rate of $3.10 a ton.

Mr. SEVERANCE: How long has that been the case.

Mr. KELLY: Well, I could not say. The distinction was made in Interstate Commodity tariff No. 7, I don't recall the date of it.

Mr. SEVERANCE: About how long?

Mr. KELLY: It is not an old tariff; I think probably a couple of years, maybe less than that.

Mr. SEVERANCE: Within a couple of years?

Mr. KELLY: Yes.

Mr. SEVERANCE: Now prior to that time had there been any such distinction?

Mr. KELLY: No, sir.

Mr. SEVERANCE: Do you know of any reason, sir, in the nature of any commodity shipped, or the difficulty of handling it, or anything of that sort, to account for this distinction?

Mr. KELLY: No. A tie is about the lowest grade forest product except a mining timber, and it will go in any kind of a car,
850 where a long timber might require a special car; it is easier handled and would be just as easy transported as anything else, if not easier.

Mr. SEVERANCE: Has that new rule, or rather that change of rate putting one at a higher rate than the other, had an effect on your business?

Mr. KELLY: Yes.

Mr. SEVERANCE: What effect?

Mr. KELLY: Well, we can't make deliveries of any ties in San Francisco or stock in territory where the Western Pacific are trying to buy ties.

Com'r LANE: How long since that rate was put in?

Mr. KELLY: Well, I could not just give the date, but I would say within the last two years; it is Interstate Commodity Tariff No. 7. It is a new tariff.

Mr. SEVERANCE: Now, Mr. Kelly, have there been any efforts made by the representatives of the Southern Pacific road to induce you to change the direction of your shipments to points?

Mr. KELLY: Well, previous to 1901 everything that we shipped went south via Sacramento and Ogden, and since that time it all goes north via Portland and Ogden.

Mr. SEVERANCE: Why?

Mr. KELLY: Well, the rates were withdrawn south via Sacramento and Ogden, and the shipments were all diverted this way.

Mr. LOVETT: Shipments to what points?

Mr. SEVERANCE: Shipments to what points, Judge Lovett suggests?

Mr. KELLY: Well, to Colorado or any of that interior mountain country. Previous to 1901 we did not ship anything east of Denver; that is, we used to go down into New Mexico and down through there sometimes in connection with the Santa Fe, but after the amalgamation of the Union Pacific with the Southern Pacific the rates were extended on through to Chicago via Portland, but they never had that rate via Sacramento and Ogden.

Mr. SEVERANCE: Now, what way do you mean the rates were withdrawn into Arizona? Do you mean you can't ship there
851 at all, no rates on what you ship?

Mr. KELLY: Well, there is a rate in there now; I think it is about 67 cents a hundred most of the points to Nogales for instance; that is, the clearing point between Arizona and Old Mexico; the rate is 65 cents a hundred, $13 a ton, from our mill; now we can't ship beyond that.

Mr. SEVERANCE: What was your former rate there?

Mr. KELLY: Well, I think it was about $16 a thousand feet as I recall; it has been a good many years ago since we shipped in there. It was a per thousand foot rate instead of per ton rate.

Mr. SEVERANCE: In case of green timber how much does it weigh?

Mr. KELLY: 3300 pounds to the thousand feet.

Mr. SEVERANCE: Can you give an estimate, Mr. Kelly, of the extent of your traffic that now moves to Colorado points by way of the O. R. & N. that formerly moved by the Southern Pacific via Sacramento?

Mr. KELLY: Well, that varies, owing to market conditions. A man always tries to sell where the market is best. Now a couple of years ago the market was very bad in Colorado on account of the coal strike, and we shipped scarcely anything in there, and I think there is just about ten per cent. of our cut goes into Colorado; about seven million feet, I think, we shipped in there last year, and that all goes via Portland, that formerly went the other way.

Mr. SEVERANCE: Are there any other points outside of Colorado points that are affected by this diversion of shipments around by the O. R. & N. that formerly went by the Southern Pacific?

Mr. KELLY: Yes; everything in Utah south of Ogden.

Mr. SEVERANCE: Can you give an estimate of the extent of that traffic from your mills?

Mr. KELLY: Well, we never have had a very large business in Utah.. It is the Portland mills that had that territory largely,
852 and we never shipped in there much; I suppose maybe we shipped three million feet a year in Utah.

Mr. SEVERANCE: Then you say seven millions to Colorado, three millions in Utah, which would be about ten millions of feet in those two states.

Mr. KELLY: Yes, sir.

Mr. SEVERANCE: Is there any other traffic that is affected by this change aside from that of these two states you have mentioned?

Mr. KELLY: No. You see before the Harriman people got the Union Pacific we shipped everything into Southern Utah, Colorado, California, Arizona and New Mexico.

Mr. SEVERANCE: That was your sole market.

Mr. KELLY: That was our sole market; and after the consolidation of the lines why we began to ship east then and go clear to the seaboard.

Mr. SEVERANCE: And you mean by that you made up what you lose in the California and Arizona markets by creating a new market east?

Mr. KELLY: Yes, very much more in quantity of output. Our output is very much more than it was then, and some years it is a very much better market. We prefer the California market to any other, but still our shipments have increased. In 1903 we shipped about thirty per cent. of our cut east,—in 1904 I should say 30 per cent.; in 1905 forty per cent., and in 1906 fifty per cent. went east via Portland.

Com'r LANE: You have not been embarrassed then by the changes effected in 1901?

Mr. KELLY: No; while we have in a measure lost some territory we have gained more territory.

Com'r LANE: Your field is widened?

Mr. KELLY: The field is widened, but we don't consider the market probably quite so good. The best of lumber going to California is $2 a thousand higher now than lumber going east; so a man would prefer to sell in California.

Mr. SEVERANCE: Explain that. How do you mean, that the best is $2 higher?

853 Mr. KELLY: Well, the market is better down there and the supply is—the California market is better.

Mr. SEVERANCE: You mean by that taking the rate and the market value of lumber both into consideration?

Mr. KELLY: Your lumber brings you $2 a thousand more now under present conditions in California than it does if you ship east.

Com'r LANE: That was not so up to two years ago.

Mr. KELLY: Only in places. San Francisco usually is the lowest lumber market there is on the coast; that is a kind of a dumping ground for everybody; but the last year it has been about one of the best markets, and of course the prices of lumber in interior Cali-

fornia is fixed by the price of lumber at Bay points, and that is made a good market all over the state.

Com'r LANE: So when these changes were effected, conditions were different in California the price was better.

Mr. KELLY: Yes, as regards Bay points.

Mr. SEVERANCE: And what is the difference in regard to your shipments now in California?

Mr. KELLY: Well, practically 40 per cent. last year.

Mr. SEVERANCE: How was it prior to these changes in the rate, the adjustment of the rates?

Mr. KELLY: Well, prior to 1901 I would think probably more than eighty per cent. in California and Arizona.

Mr. SEVERANCE: That is all.

Mr. COTTON: You say in former years eighty per cent. of your output went to California?

Mr. KELLY: To California and Arizona.

Mr. COTTON: Your output then was about how much per year?

Mr. KELLY: Well, it was since 1901 we have increased our output about 35,000,000 feet.

Mr. COTTON: Every year?

Mr. KELLY: No; I say about 35 million is the increase in our annual output since 1901. We probably cut—we ship probably 60 million feet.

854 Mr. COTTON: And of the old 35 million feet, or of the old 25 million feet, about eighty per cent. went to California?

Mr. KELLY: Yes.

Mr. COTTON: And a large part of that was Southern Pacific company material, wasn't it, or a substantial part?

Mr. KELLY: Well, it is yet; a good deal of our material is Southern Pacific material.

Mr. COTTON: And about how much of this eighty per cent. of the 25 million was company material in those days?

Mr. KELLY: Oh, I suppose twenty per cent. of it.

Mr. COTTON: Twenty per cent.?

Mr. KELLY: Yes, sir.

Mr. COTTON: Then there was only about sixty per cent. of 25 million feet that went to California for commercial usage?

Mr. KELLY: Yes, sir.

Mr. COTTON: How much are you shipping now to California, or would you ship on rates if you could get the cars?

Mr. KELLY: That is pretty hard to say, because a man would take on a lot more business if he could get the cars. This week I have 1640 carloads of lumber sold in California outside of company material.

Mr. COTTON: Then the rates have not prevented you now from getting to California; there is nothing in the rate adjustment which prevented you from getting there now?

Mr. KELLY: Not until this new rate goes into effect that they have given us notice of.

Mr. COTTON: Your old rate was $3, wasn't it?

Mr. KELLY: $3.10 a ton to Bay points.

Mr. COTTON: $3.10 a ton for how many miles?

Mr. KELLY: Oh, I think something about seven hundred.

Mr. COTTON: 700 miles; that is considerably less than half a cent a ton a mile, and over the Siskiyou mountains?

855 Mr. KELLY: Yes, it all goes over the Siskiyou.

Mr. COTTON: And they have brought empty cars north to take away the business?

Mr. KELLY: Well, at times they do, and at times they don't; there haven't been any empties coming north lately?

Mr. COTTON: There haven't been any empties moving any place; isn't that right Mr. Kelly?

Mr. KELLY: Well, we have had a great many empties from the other way. We have had good car service except in 1903 and this year.

Mr. COTTON: Now this year, Mr. Kelly, what would have been the effect on your business as you have observed it if a car pool had not existed between the O. R. & N. and Southern Pacific Company, and you had not been able to get cars over the O. R. & N.?

Mr. KELLY: Well, that depends; we always haul in the direction we think we are going to get cars. Now we always figure we are going to get a car shortage in the fall of the year, and when we used to sell lumber — we used to sell Mr. Schwerin lumber we always took that into consideration, and so did he, that he would furnish cars, *and so did he, that he could furnish cars* in the fall of the year; and our business now is best with railroads, because they will hustle to get you the equipment.

Com'r LANE: Do you find a difference in getting cars between orders you have for railroads and orders you have for other shipments?

Mr. KELLY: Yes, you can't get a car for anything now only for railroad business; you can't get a car for commercial business north or south.

Com'r LANE: The railroads always furnish you with plenty cars to move their material, do they?

Mr. KELLY: No, not plenty, but then you stand a lots better chance. For instance, the Harriman people are building something like six thousand refrigerator cars. We took on that business, because we thought during the scarce time of cars we would get the cars.

Com'r LANE: Where are they building them?

856 Mr. KELLY: At McKeesport, Pennsylvania, and Chicago; they are scattered all around. Pierce Steel Company and the American Car Company.

Com'r LANE: So that in the end these extra facilities they furnish you with cars would tend to relieve them?

Mr. KELLY: Well, refrigerators won't do any good. They let you ship laths.

Com'r LANE: You can ship shingles in the refrigerators in the northwest, can't you?

Mr. KELLY: We don't manufacture shingles.

Mr. COTTON: How far are your mills south of Portland?

Mr. KELLY: From 120 to 140 miles.

Mr. COTTON: They make a common rate from these points east, do they not, the same as the Portland rate?

Mr. KELLY: Well, to most territory; I don't know anything about the Portland rates over the Northern roads in the territory, but into the territory of the Harriman lines we have the same rates.

Mr. COTTON: The same rates as Portland?

Mr. KELLY: Yes.

Mr. COTTON: And that condition of things has prevailed for how long?

Mr. KELLY: Oh, I think five years, something like that.

Mr. COTTON: What?

Mr KELLY: Five years.

Mr. COTTON: About five years?

Mr. KELLY: I would think about five years.

Mr. COTTON: Formerly your rates on the Northern Pacific extended to a limited western territory, didn't they?

Mr. KELLY: Yes, sir; we very seldom get anything east of Denver; if we did it was something we had to absorb a differential on.

Mr. COTTON: Since 1901, since what has been termed the amalgamation you can ship to any states in the east?

857 Mr. KELLY: Yes, sir.

Mr. COTTON: What is your rate, $5 to Missouri River?

Mr. KELLY: Fifty cents a hundred.

Mr. COTTON: Fifty cents; I mean ten dollars a ton.

Mr. KELLY: Ten dollars a ton.

Mr. COTTON: What is your rate to Chicago?

Mr. KELLY: Fifty cents plus a switching charge of $2.00.

Mr. SEVERANCE: Just the same as Chicago to the Missouri River?

Mr. COTTON: The same as to the Missouri River.

Mr. KELLY: Yes, just the same.

Mr. COTTON: And you pay no more than the Portland mills do?

Mr. KELLY: Just the same rate.

Mr. COTTON: Just the same rate; and you are largely shipping in Union Pacific and O. R. & N. cars east, aren't you?

Mr. KELLY: Well, we catch any kind of cars; we get a lot of foreign cars.

Mr. COTTON: Well, they are cars that come to you from the north?

Mr. KELLY: Nearly all the car supplies come from the north now.

Mr. COTTON: And that has been the case practically all this year?

Mr. KELLY: Yes; we get no cars from the south except prior to the first of July we got a good many cars from the south, and along in December of 1906 we got a good many cars from the south; since then we have had no cars from the south.

Mr. COTTON: If you had been working on the cars from the south say since about the first of July, you would have had to shut down long ago, wouldn't you?

Mr. KELLY: We would have been out of business long ago.

Mr. COTTON: You also sell company material to other railroads besides the Harriman lines, don't you?

Mr. KELLY: Yes, and nearly—well, all the great systems
858 in the north nearly, the St. Paul, Northwestern, Rock Island, Illinois Central.

Mr. COTTON: You get their cars down there, do you, for their material, or what kind of cars do you get for them?

Mr. KELLY: Well, most any kind of a car that will go home that way. Now take the C. & N. W. material, we ship a great deal of that; we have had their contract for a great many years and take most any kind of a car that will go east over the Union Pacific.

Mr. COTTON: Your shipments now, amount to about how many million feet per year; that is, say east of this old territory, east of Colorado?

Mr. KELLY: Well, I presume about forty million feet.

Mr. COTTON: About forty million feet?

Mr. KELLY: Yes, sir.

Mr. COTTON: That is more than your former total business?

Mr. KELLY: Well, it was more than our business when we first went into business.

Mr. COTTON: Well, more than your business in 1901.

Mr. KELLY: No.

Mr. COTTON: What was your business in 1901?

Mr. KELLY: Well, about sixty million,—sixty to sixty-five millions.

Mr. COTTON: About sixty millions?

Mr. KELLY: Yes.

Mr. COTTON: Now, forty million feet of that goes into entirely new territory that was opened up as a result of the rates given by the O. R. & N. and Southern Pacific north?

Mr. KELLY: Yes.

Mr. COTTON: Your Colorado shipments were about seven million feet per year?

Mr. KELLY: I think that is about what we shipped in there last year; yes.

Mr. COTTON: And in former years what did you used to ship, that is prior to 1901?

Mr. KELLY: Into Colorado?

859 Mr. COTTON: Yes.

Mr. KELLY: Well, that is hard to say; but not so much though as we have shipped this year, because we didn't have the output, but about the same percentage of our cut, I think went in there.

Mr. COTTON: There has been no adjustment in the rates to keep you out of business in any way, has there, at all? That is, the rate adjustments rather have been to increase your business than decrease it?

Mr. KELLY: Yes; as I say the only places where we have lost territory has been the territory across between Sacramento and Ogden and in Arizona; that is the only place where we have lost territory.

Mr. COTTON: And that was on ties, wasn't it?

Mr. KELLY: No; we ship all kinds of material in there across Nevada. It is nearly all a low grade of building material.

Mr. COTTON: Why did you lose territory in between Sacramento and in the Ogden territory?

Mr. KELLY: Well, those rates all across Nevada were increased.

Mr. COTTON: When?

Mr. KELLY: Oh, I don't know; it has been several years ago. It is an $8 rate from the state line all the way across to Ogden now.

Mr. COTTON: And how long ago was that increased?

Mr. KELLY: Oh, I could not say.

Mr. COTTON: And your rates into Arizona, how are they?

Mr. KELLY: Well, they are so high that we don't ship anything into Arizona except an occasional car of flooring we ship to Nogales, but we ship through there on south.

Mr. COTTON: That raise took place about eight years ago, or thereabouts?

Mr. KELLY: I think so; yes, it was a good many years ago, I know.

Mr. SEVERANCE: Prior to 1901 when you routed your stuff to Colorado, for instance, by the Southern Pacific around by Sac-
860 ramento, how did it move from Ogden and over what line?

Mr. KELLY: Omaha D. & R. G., and occasionally a car by the Midland.

Mr. SEVERANCE: How does it move now?

Mr. KELLY: North Northern Pacific Denver business. Of course we have some local business at local points on the Rio Grande line.

Mr. SEVERANCE: Do you sell business to the Denver & Rio Grande and Western Pacific?

Mr. KELLY: In former years we sold a great deal of material to the Denver & Rio Grande, but lately we have not. We always try to give roads traffic and get some of their purchasing agents' business in that way, but we have sold the Rio Grande in the last two years a few small orders, but not much; we don't have the business that we used to have.

Mr. SEVERANCE: Why is that?

Mr. KELLY: Well, we don't give them any traffic.

Mr. SEVERANCE: You spoke in response to something asked you by Mr. Cotton about some new rates; what are the new rates?

Mr. KELLY: To California points?

Mr. SEVERANCE: Yes.

Mr. KELLY: The tariff has not been published yet, but the notice was to the effect that the five dollar rate would be the minimum to any California point.

Mr. SEVERANCE: When did you get that notice?

Mr. KELLY: Oh, I think it was Wednesday.

Mr. SEVERANCE: Wednesday?

Mr. KELLY: Yes.

Mr. COTTON: From whom?

Mr. KELLY: From R. B. Miller, the General Freight Agent.

Mr. SEVERANCE: And is that on the same class that now pays $3.10?

Mr. KELLY: The same thing, yes, sir. It is an advance from $3.10 to $5 as the basis.

Mr. SEVERANCE: When is that to become effective?

Mr. KELLY: The circular states the 15th of March, but the
861 traffic officials state that it will not go into effect so soon as that.

Mr. SEVERANCE: What traffic officials?

Mr. KELLY: Mr. Miller and Mr. Coman.

Mr. SEVERANCE: That is, Mr. Miller personally does not agree with Mr. Miller's circular?

Mr. KELLY: Well, they found out that the time was too short to give shippers a chance to clean up business that was sold under the old rate. It would put a man out of business if they forced him to it.

Mr. SEVERANCE: I see; so you don't know the exact date that that will go into effect?

Mr. KELLY: I do not.

Mr. SEVERANCE: Now when you ship material to those other roads in the east that you have mentioned as customers of yours, are you restricted in any way as to the kind of cars that you shall load for shipments?

Mr. KELLY: No, only this way, that they want a car to go home the way it came out; for instance, if a car came out over the St. Paul they would want it to go back that way.

Mr. SEVERANCE: You say you sell a good deal to the Chicago & Northwestern?

Mr. KELLY: Yes.

Mr. SEVERANCE: What kind of cars do you load?

Mr. KELLY: Well, a car that came out over the St. Paul they would not want it to go back over the C. & N. W.

Mr. SEVERANCE: Do you ever ship to the Northwestern and the Chicago Northern & St. Paul in Union Pacific and Southern Pacific cars?

Mr. KELLY: Yes, frequently.

Mr. SEVERANCE: How long since you quit selling to the Denver & Rio Grande?

Mr. KELLY: Well, we sold them a little last year and a little the year before, just a little business at Denver; we have an office in Denver and our Denver people pick it up; it don't amount to much.

Mr. SEVERANCE: What kind of cars do you ship their material in?

862 Mr. KELLY: Well, we catch any kind of a car that comes west over the D. & R. G.

Mr. SEVERANCE: Mr. Cotton asked you whether you had lost any business by reason of the rate adjustments; do you know of any that you have lost other than the traffic in ties to the Gould people aside from your California and Arizona business and Sacramento points east.

Mr. KELLY: No, only this Rio Grande business; we used to have lots of that; we had both for the Rio Grande Western and the Denver & Rio Grande; but of late years we haven't had that.

Com'r LANE: As I understand, they cut off the entire sales to the Western Pacific by the rate down there?

Mr. SEVERANCE: Yes; that is what I understood, that the rates were prohibitive from here to San Francisco Bay.

Mr. COTTON: Oh, no.

Com'r LANE: Well, that is a discrimination in the tariff.

Mr. COTTON: Not San Francisco Bay.

Mr. SEVERANCE: Bay points, I understood; let's have that understood; that is what I understood him to say; what did you say about it?

Mr. KELLY: The tariff to Bay points reads rough green common lumber $3.10 a ton; then the tariff on railroad ties puts them in with cross-arms and material of that kind; cross-arms, ties and so on, $5.00.

Mr. SEVERANCE: Well now, you said something on your direct examination with reference to the effect that had on you making sales to the Western Pacific?

Mr. KELLY: Yes. They are wanting to buy ties delivered at Stockton, which is practically a Bay point, and it takes a $3.50 rate, but they can't get in there.

Com'r LANE: Now is that the general classification of ties?

Mr. KELLY: No; a tie should be classed under rough common green lumber. There is nothing any rougher or any more common than that.

863 Mr. SEVERANCE: Well what is greener?

Mr. KELLY: And nothing greener.

Com'r LANE: Is that a general classification that obtains over all the roads?

Mr. KELLY: That is the only tariff I have ever seen that classification in. The tie is just as cheap a commodity as goes, and usually moves just the same as other lumber; and other roads shipping out on eastern shipments don't make any distinction between plain lumber and rough lumber; it goes so much a ton anyhow.

Com'r LANE: Is that same distinction made in shipping from Portland east over the Short Line?

Mr. KELLY: No, sir.

Com'r LANE: It is only from here down to California.

Mr. KELLY: From here to Bay points in California.

Com'r LANE: From here to Bay point in California; what is the reason for that?

Mr. KELLY: Well, they don't give any.

Mr. SEVERANCE: Have you inquired?

Mr. KELLY: Yes.

Mr. SEVERANCE: From whom?

Mr. KELLY: Why from different ones of the traffic officials. The way we came to get on to the thing, in the first place we sold the Western Pacific a big lot of ties supposing that a tie was rough green common lumber and shipped a great many thousand of them and got stuck for $2,200 on them.

Mr. SEVERANCE: You discovered your definition was wrong, did you?

Mr. KELLY: My definition was wrong, yes.

Mr. SEVERANCE: When applied to Bay points?

Mr. KELLY: Yes.

Mr. SEVERANCE: And you went out of the Western Pacific traffic then on ties?

Mr. KELLY: No; we have got to deliver them a lot more yet, but then we are trying to make them make a delivery to some
864 other point; we are going to wait until they build their road to Marysville, and then deliver them there.

Mr. SEVERANCE: Well, you are not making any further new contracts with the Western Pacific?

Mr. KELLY: Not with the Western Pacific, no.

Mr. SEVERANCE: That is all.

Mr. COTTON: Do you know what they charge from Puget Sound to San Francisco Bay points on ties, what the freight rate is?

Mr. KELLY: No, sir.

Mr. COTTON: By water?

Mr. KELLY: I don't know a thing about Puget Sound rates.

Mr. COTTON: Don't you know that it is much higher than $5

Mr. KELLY: No, I don't know anything about charter rates from Puget Sound.

Mr. COTTON: You know there are steam schooners that are operating in connection with mills from Coos Bay?

Mr. KELLY: No, I don't know that.

Mr. COTTON: Tillamook?

Mr. KELLY: No.

Mr. COTTON: The mouth of the Columbia River?

Mr. KELLY: Yes, I know that.

Mr. COTTON: Grays Harbor?

Mr. KELLY: Yes.

Mr. COTTON: South Bend?

Mr. KELLY: Yes.

Mr. COTTON: And Puget Sound?

Mr. KELLY: Well, I am not familiar with conditions on the Sound.

Mr. COTTON: And they all go to San Francisco Bay points, don't they?

Mr. KELLY: Why, there are steam schooners, I presume, operating out of these ports.

Mr. COTTON: Yes; and there is a tie supply at all these places?

Mr. KELLY: Naturally, yes; wherever they make lumber they make ties.

865 Mr. COTTON: And you don't know what the rates are, whether they are higher or lower that the $5 rate,—the rate these steam schooners make on common rough green lumber from Portland at the present time?

Mr. KELLY: About nine dollars and a half.

Mr. COTTON: $9.50 a ton?

Mr. KELLY: A thousand feet.

Mr. COTTON: A thousand feet?

Mr. KELLY: Yes.

Mr. COTTON: How much is that a ton?

Mr. KELLY: A thousand feet of lumber would weigh 3300 pounds and that would be about——

Mr. SEVERANCE: About $5.00.

Mr. COTTON: About $5.70, wouldn't it?

Mr. KELLY: $5.70, yes.

Mr. COTTON: Now that is on the common green lumber on which you pay $3.10?

Mr. KELLY: Yes, sir.

Mr. COTTON: They charge $5.70 from Portland by the steam schooner?

Mr. KELLY: Yes.

Mr. COTTON: And presumably the same or more on ties, or do you know?

Mr. KELLY: It is the same rate on all classes of lumber.

Mr. COTTON: And how long has this $5.70 rate by steam schooner prevailed?

Mr. KELLY: Just very recently charter-rates have gone up. Most of the time the water rate is lower than the rail rate; it has been down as low as $4 a thousand feet when the rail rate was unchanged.

Mr. COTTON: The rail rate from Portland for a long time past has been how much?

Mr. KELLY: $3.10 a ton.

Mr. COTTON: From Portland?

Mr. KELLY: Oh, from Portland?

Mr. COTTON: Yes.

Mr. KELLY: Oh, $5.00.

Mr. COTTON: $5.00; and how long has the $5 rate on
866 green lumber and ties and everything from Portland prevailed?

Mr. KELLY: I don't know.

Mr. COTTON: About how many years.

Mr. KELLY: I don't know anything about that.

Mr. COTTON: Well, it has been a long time past, hasn't it?

Mr. KELLY: Yes, it has been a great many years.

Mr. COTTON: And the Portland mills, therefore, on common green lumber have had to pay $5 and you pay $3.10?

Mr. KELLY: Yes.

Mr. COTTON: But you get your lumber transported to the east and all points east for the same rate that the Portland mills pay?

Mr. KELLY: Yes.

Mr. COTTON: And then you have had the advantage, therefore, of the difference between $5 and $3.10 on your common green stuff?

Mr. KELLY: Yes.

Mr. COTTON: To California Bay points?

Mr. KELLY: To California Bay points; that is, the Portland mills for years had a lower water rate than they have now; the water rate was less than half as much as it is now.

Mr. COTTON: Yes, I know that.

Mr. KELLY: But this condition now where the Valley mills have an advantage over the Portland mills has only been of very recent date?

Mr. COTTON: But you have an advantage even on this $5 rate now of 70 cents, haven't you; that is, when they raise their rate in March?

Mr. KELLY: Yes, but charters will all go down in the summer time, and when they go down in the summer time then we won't have any advantage.

Mr. COTTON: Yes, but we may have to put ours down.

Mr. KELLY: Well, they are easier to put up than down, I have found.

867 Mr. COTTON: Well, we have found it harder to get them up than to put them down.

Mr. KELLY: I don't know; they just send out a notice that they are going to raise them.

Mr. COTTON: We have given you a pretty good long time notice.

Mr. KELLY: Mr. Lounsberry came up the other day and said "We are going to raise the rates," and wanted to talk it over; I asked if he had made his mind up to change; he said yes; I said then there was nothing to talk about.

Mr. COTTON: He told you they were going into effect?

Mr. KELLY: The other day we got a notice, and we got another notice we would not be permitted to ship anything south of Ashland, so the cleaning up process would take a long time under those conditions.

Mr. COTTON: And does that condition exist now about shipping below Ashland?

Mr. KELLY: It was still in yesterday.

Mr. COTTON: How long ago was this, how many days?

Mr. KELLY: Several days ago, the first of the week.

Mr. COTTON: It hadn't been all the time—on and off during the car congestion in California?

Mr. KELLY: It was mostly off.

Mr. COTTON: If you had been doing business and depending on shipments to Colorado, Idaho, Arizona and elsewhere, you would have turned your toes up pretty long ago, wouldn't you?

Mr. KELLY: Well, we pretty nearly did. We got Mr. Stubbs out here and he restored the $3.10 rate and we got a new lease on life.

Mr. COTTON: I mean this last year, you would have had no cars at all practically?

Mr. KELLY: Not since July.

Mr. COTTON: That is, from the south.

868 Mr. KELLY: We have had practically no cars from the south since July.

Mr. COTTON: You could not get any at all?

Mr. KELLY: Practically none.

Mr. COTTON: The empties were not coming back at all from San Francisco, were they?

Mr. KELLY: No; you could not even get them for company material.

Mr. COTTON: You could not even get them for company material to the south?

Com'r LANE: This embargo south of Ashland was due to the fact you could not get any cars?

Mr. KELLY: No; it was the congestion of lines down there.

Com'r LANE: Yes; they could not handle the business?

Mr. KELLY: Could not handle the business.

Mr. COTTON: Cars could not be unloaded, you understood?

Mr. KELLY: The cars could not be unloaded and every side-track was full.

Mr. COTTON: And they have been compelled to do that at various intervals from time to time during the summer in order to get a chance to clean up?

Mr. KELLY: Yes. This last embargo was on account of fuel.

Mr. COTTON: But you have had an advantage and have for some months past, of the $3.10 rate on common green stuff which you ship south as against a higher rate from Portland?

Mr. KELLY: Except ties.

Mr. COTTON: Except ties, and on ties you pay the same as the Portland rate.

Mr. KELLY: The same as the Portland rate.

Mr. COTTON: And the proposal now is to make it all $5?

Mr. KELLY: That would be the minimum, as I understand it.

Mr. COTTON: And that does not go into effect, they have
869 just simply given you a preliminary notice that it may go into effect March 15th?

Mr. KELLY: Well, the notice does not read that way.

Mr. COTTON: Well, but it tells you that it will—that is not a tariff; they haven't sent you a tariff yet, have they?

Mr. KELLY: No.

Mr. COTTON: It is just a typewritten notice or printed notice?

Mr. KELLY: A typewritten notice.

Mr. COTTON: A typewritten notice to give you warning that there may be a raise of these rates, so you may clean up your business accordingly; isn't that it?

Mr. KELLY: Well, it says there will be a raise.

Mr. COTTON: Yes; that is all.

Mr. SEVERANCE: One other question. Mr. Cotton was interrogated with reference to water rates from Portland to San Francisco; do those rates vary frequently.

Mr. KELLY: Oh yes; water rates are up and down all the time; they are not fixed. They are higher now than I have ever known them since I have paid any attention to them, and they have been down as low as four dollars on the Columbia River, four dollars a thousand feet. At the time the $3.10 rate was put in by Mr. Markham, the water rate then was about—the charterers varied; steam schooners were getting, I think, about $5.50 and sailers about $5.

Mr. SEVERANCE: You mean $5.50 a ton or thousand feet?

Mr. KELLY: No, thousand feet. Everything that goes by water goes by the thousand feet, and everything that goes by rail except mining timbers goes by the ton, and this $3.10 rate was just a compromise so as to cover the water rate at that time.

Mr. SEVERANCE: That is all.

Mr. COTTON: When was that $3.10 rate put in and why was it made?

Mr. KELLY: It was put in to let the Valley mills ship in to Bay points.

870 Mr. COTTON: When?

Mr. KELLY: Well, it was when Markham was General Freight Agent here, I don't know just what year it was.

Mr. COTTON: That was about 1901, or prior?

Mr. KELLY: Well, I think it was prior to 1901, but I would not say positively.

Mr. COTTON: And has been in ever since, hasn't it?

Mr. KELLY: No, sir.

Mr. COTTON: It was taken out for a short period; how many months was that?

Mr. KELLY: Well, I think it was about six months, something like that.

Mr. COTTON: About six months, and raised to $5?

Mr. KELLY: Yes.

Mr. COTTON: And then restored again?

Mr. KELLY: Yes.

Mr. COTTON: Supposed to have been made in competition with the water movement from Portland, wasn't it?

Mr. KELLY: That was the basis of the rate; when it was put in it was supposed to just equal the water rate at that time?

(Witness excused.)

Com'r LANE: We will take an adjournment at this time until quarter past two.

PORTLAND, *January* 25, 1907—2 o'clock p. m.

J. F. MEYER, called as a witness, and having been duly sworn, testified:

Mr. SEVERANCE: Mr. Meyer, where do you live?

Mr. MEYER: Portland.

Mr. SEVERANCE: What is your business?

Mr. MEYER: Car service agent for the O. R. & N. Company and the Southern Pacific Oregon line.

Mr. SEVERANCE: How far South do the lines you speak of as the Oregon lines of the Southern Pacific run?

871 Mr. MEYER: To Ashland.

Mr. SEVERANCE: Just a little ways this side of the boundary, is it not?

Mr. MEYER: Yes.

Mr. SEVERANCE: Will you state in a general way what your duties are, Mr. Meyer?

Mr. MEYER: General handling of equipments and movement of it.

Mr. SEVERANCE: By handling of equipments you do not mean of course that you are the superintendent. You have not charge of trains, have you?

Mr. MEYER: No sir.

Mr. SEVERANCE: But have you charge of the distribution of cars?

Mr. MEYER: In a general way.

Mr. SEVERANCE: Well, just what do you mean by a general way?

Mr. MEYER: Well, we have chief dispatchers that distribute cars

on their respective districts, and when they have not got equipments they call on me.

Mr. SEVERANCE: How long have you occupied that position, Mr. Meyer?

Mr. MEYER: On both lines?

Mr. SEVERANCE: Yes.

Mr. MEYER: Since July 1st, 1904.

Mr. SEVERANCE: Prior to July 1, 1904, what was your position?

Mr. MEYER: Car service agent of the O. R. & N. line.

Mr. SEVERANCE: For how long a period had you occupied the position?

Mr. MEYER: Ten years.

Mr. SEVERANCE: Who was the car service agent of the Southern Pacific then?

Mr. MEYER: I think it was Mr. Richards in San Francisco; I presume so.

Mr. SEVERANCE: Why do you presume that; don't you know?

Mr. MEYER: Well, that is right. He was there; superintendent of transportation, was his title.

872 Mr. SEVERANCE: He had charge then separately of handling the cars on the Southern Pacific as far north as Portland?

Mr. MEYER: At that time, yes, sir.

Mr. SEVERANCE: You assumed that additional duty on the 1st of July, 1904?

Mr. MEYER: Yes, sir.

Mr. SEVERANCE: What kind of an organization have you in your office; that is, how do you handle the business, in a general way?

Mr. MEYER: I don't quite understand.

Mr. SEVERANCE: What kind of records do you keep and what track do you keep of cars and what methods have you of distributing cars, and on whose requisition are they distributed?

Mr. MEYER: We call on our connections for equipments. The records of the cars themselves are kept in the auditor's office. The movement of individual cars, etc., is kept in the auditor's office. In the general supply of equipment we call on our connections for them.

Mr. SEVERANCE: What do you mean by connections?

Mr. MEYER: Well, our connections like the Short Line, for instance.

Mr. SEVERANCE: What other connection?

Mr. MEYER: Well, our immediate connection; that would be the extent of it; the Northern Pacific or the Great Northern.

Mr. SEVERANCE: You call on them for cars for what purpose?

Mr. MEYER: For return loading to their line.

Mr. SEVERANCE: Don't you send any of your equipments over other lines?

Mr. MEYER: We do, yes sir.

Mr. SEVERANCE: Well, take a concrete example, take the mill of Mr. Kelly, who was on the stand just before lunch. He stated that

he shipped a large amount of lumber to Southern California,
873 Colorado and Utah points. What method or rule, if any, have you with reference to furnishing equipments to Mr. Kelly?

Mr. MEYER: Conditions have a good deal to do with that.

Mr. SEVERENCE: Well explain; I want to get at the facts. You know better what to say than I do what to ask you.

Mr. MEYER: Well, take it at that time we endeavored to fill orders of that kind, where they go East, with foreign equipments. At this time when we are short of cars for our own business, we undertake to take care of that business with foreign cars and use our own cars for our own business.

Mr. SEVERANCE: In doing that do you make any discrimination by reason of the lines that the traffic is routed over?

Mr. MEYER: We say to shippers that a Milwaukee car, if the load is East of Council Bluffs, should go over the Milwaukee.

Com'r LANE: You say that whether the car comes in empty or loaded to you, do you?

Mr. MEYER: That is the general rule. That is the rule. I believe that is common in railroad law, and has been in effect all the time.

Com'r LANE: Is not that general rule that the car should go back by the gateway that it came only when it comes to you empty?

Mr. MEYER: In other words you mean to say that we can take a Milwaukee car that comes to us loaded and deliver it to the Great Northern?

Com'r LANE: Yes.

Mr. MEYER: That is right.

Com'r LANE: If it comes to you empty, you are to send it back by the same gateway that it came?

Mr. MEYER: That is the idea, yes sir.

Com'r LANE: Do you know whether you were the first to enforce that rule out here?

Mr. MEYER: Which, returning the empty in that way?

874 Com'r LANE: Yes, the rule that the car shall return by its own gateway?

Mr. MEYER: No, I cannot say for that.

Com'r LANE: What effect have you found in the management of this bureau that the pooling of your cars has had so far as the supply of your own line with equipment is concerned?

Mr. MEYER: I think it has had a very decided effect to the advantage of the business. It makes freer movement of cars.

Com'r LANE: How far does your jurisdiction extend?

Mr. MEYER: It goes to Ashland, Oregon on the South, on the Oregon line and goes to Huntington on the East on the Navigation line.

Com'r LANE: Who is your superior?

Mr. MEYER: Mr. Buckley, General Superintendent.

Com'r LANE: Does he have general charge of all the equipments of all the associated lines?

Mr. MEYER: He is general superintendent, I report to him on the same territory.

Com'r LANE: Suppose that you have—I do not know that this is

entirely within the scope of this inquiry, but I want to understand this system that you have here, because it has not been in effect elsewhere to the extent, nor is it perfected, I believe as it has been on your system.—When you find that you are in need of cars within your territory this side of Ashland, and that you have no cars yourself that you can draw in that territory, do you telegraph Mr. Buckley and he then draws cars directs cars to be moved from some other part of the system to you?

Mr. MEYER: No sir.

Com'r LANE: You do not follow that rule?

Mr. MEYER: No sir, I call on the immediate connection myself for cars.

Com'r LANE: That is to say you would call upon the Union Pacific for instance?

Mr. MEYER: No, I would call on the Oregon Short Line; that is our immediate connection.

875 Com'r LANE: And supposing they have none, would they pass that word along to the Union Pacific?

Mr. MEYER: I presume so.

Com'r LANE: You do not have any superior officer directing the car service, who, as it were, keeps his eye on the equipment of the whole system to whom you can report and through whom you can obtain diversion of cars from the Southern Pacific to California or from Omaha to Oregon, if it is necessary?

Mr. MEYER: Not myself.

Com'r LANE: You just simply make your demand upon your immediate connection?

Mr. MEYER: Yes sir.

Mr. COTTON: But you do tell Mr. O'Brien, do you not, from time to time—the General Manager—that you are not getting cars?

Mr. MEYER: Yes sir.

Mr. COTTON: And then Mr. O'Brien corresponds with whom?

Mr. MEYER: Mr. O'Brien will correspond with either Mr. Bancroft or the Short Line, or Chicago?

Mr. COTTON: Who is at Chicago?

Mr. MEYER: Mr. Kruchschmitt.

Mr. COTTON: And Mr. Kruchschmitt has jurisdiction over all the Harriman lines?

Mr. MEYER: Yes sir.

Mr. COTTON: Only he communicates generally, that is, when it is a general readjustment of the matter other than the connections, he does that through Mr. O'Brien?

Mr. MEYER: Yes sir.

Com'r LANE: Well now, to whom do you report the number of cars that you have upon your system? Supposing you have a surplus of empties in your division.

Mr. MEYER: I generally confer with the General Superintendent or the General Manager on it.

Mr. SEVERANCE: Of what line?

Mr. MEYER: Of our own line, right here, Mr. O'Brien or Mr. Buckley.

876 Mr. SEVERANCE: You do not get any cars from the Northern Pacific at Silver Bow?

Mr. MEYER: No sir.

Mr. SEVERANCE: Do you send any other — their line that way, Northern Pacific cars?

Mr. MEYER: No.

Mr. SEVERANCE: Is there any embargo placed against the Northern Pacific at that point?

Mr. MEYER: So far as we are concerned?

Mr. SEVERANCE: Yes.

Mr. MEYER: To go by Silver Bow?

Mr. SEVERANCE: Yes.

Mr. MEYER: We have never furnished any equipments to go that way. We have never furnished cars to go by Silver Bow.

Mr. SEVERANCE: You never have?

Mr. MEYER: No, sir.

Mr. SEVERANCE: That is within the last two years?

Mr. MEYER: At any time.

Mr. SEVERANCE: There is not free interchange of cars between the Northern Pacific, the Great Northern and yourselves for through business, is there?

Mr. MEYER: In what way?

Mr. SEVERANCE: I mean this: that you do not permit your cars freely to go on Northern Pacific lines, nor their cars to come freely onto your lines?

Mr. MEYER: We let our cars go to the Northern Pacific when we are in shape to, and have supplied for equipments.

Mr. COTTON: How many cars does the Northern Pacific owe you at Portland to-day?

Mr. MEYER: I could not say how many there is to-day. The last checks we had it was something like 800 to 1,000 cars.

Mr. COTTON: That you have furnished the Northern Pacific at Portland 800 to 1000 cars more than they have returned to you?

Mr. MEYER: Yes.

877 Com'r LANE: Yes, the Northern Pacific has a surplus of foreign cars. Have you any demand for cars from Puget Sound to Portland?

Mr. MEYER: We have some demand for cars between here and Tacoma.

Com'r LANE: That is all, Mr. Severance.

Mr. SEVERANCE: Do you furnish your own equipments for through routing to the East over the Northern Pacific?

Mr. MEYER: You mean O. R. & N. Cars?

Mr. SEVERANCE: Yes, or Southern Pacific. Suppose commodities originating in the Willamette Valley, say a hop shipment that the shipper desires to route to the East over the Northern Pacific to Portland. Do you furnish your own equipments in case the Northern Pacific is unable to send any car?

Mr. MEYER: Not generally speaking, we do not.

Mr. SEVERANCE: Do you furnish your own equipments when the car is routed East over the O. R. & N. and Union Pacific?

Mr. MEYER: Yes sir, we furnish our cars for that.

Mr. SEVERANCE: Do you furnish your own equipments if the car is routed by way of the Gulf and Sunset Route?

Mr. MEYER: All of these associated line cars you know move almost in any direction.

Mr. SEVERANCE: That is, by the associated lines, you mean the Southern Pacific, the O. R. & N., the Short Line and the Union Pacific?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: Do you treat all of the equipments belonging to any one of those lines as though it belonged to a single system?

Mr. MEYER: They are at home on any part of the associated lines; a Union Pacific car is at home on the O. R. & N.

Mr. SEVERANCE: And they are at home on the Southern Pacific and on the Short Line?

Mr. MEYER: I believe so, yes sir.

878 Mr. SEVERANCE: Do you place any restrictions upon the use of your equipment or movement over the Denver and Rio Grande from Ogden?

Mr. MEYER: No sir, not excepting as business demands. That is, in other words, if we have a congestion or are short of equipments or cars we naturally load them for our own trade.

Mr. SEVERANCE: What do you mean by your own trade?

Mr. MEYER: In other words we try to equalize the delivery and interchange of cars at the different junction points.

Com'r LANE: Is not that an extremely dangerous line of policy for the originating road to follow out? The road upon which a great volume of traffic originates? You do not figure upon there being a perfect equipoise between Eastern and Western business?

Mr. MEYER: No, we cannot get it down to an exact interchange but we hold it pretty close. We tried to direct the car shortage, when the shortage of cars is on.

Com'r LANE: There is more business that originates on these lines than Eastern business comes in, is there not?

Mr. MEYER: Yes sir, our preponderance of tonnage is East bound.

Com'r LANE: Suppose that you followed out that rule of policy and deny a man a car, which goes off your line, unless you can get a car from a foreign line. Are you not hampering his business?

Mr. MEYER: If they get the other car to take its place it is an even proposition.

Com'r LANE: Then you get a perfect equality?

Mr. MEYER: Yes sir.

Com'r LANE: But supposing you do not get a car?

Mr. MEYER: We would soon run out of equipments over here to take care of our business.

Com'r LANE: How can you get the car then, if you do not haul empties?

Mr. MEYER: We always do haul empties.

879 Com'r LANE: Then how many empties, or what is the proportion of empties that you would haul to the West for your East bound business?

Mr. MEYER: Our proportion of empties that we haul is pretty close on to twenty or thirty per cent.

Com'r LANE: Are those largely foreign cars?

Mr. MEYER: Well, they are largely foreign cars, yes sir; a good many foreign cars.

Com'r LANE: They must be nearly all foreign cars I suppose if they are destined for East bound business beyond your own line?

Mr. MEYER: Not necessarily. As I say, we use a good many associated line cars in East bound through business.

Com'r LANE: You let them go off your line freely excepting in times of congestion?

Mr. MEYER: That is the idea, yes sir.

Com'r LANE: That is all.

Mr. SEVERANCE: Now, Mr. Meyer, do you permit the movement of cars from the Willamette Valley to the East over the Rio Grande from Ogden as freely as you do over the Union Pacific from Ogden?

Mr. MEYER: Will you repeat that, please.

Mr. SEVERANCE: I asked you if you permitted the use of cars from the Willamette Valley region East on the Southern Pacific as freely when the shipper desires to route over the Rio Grande from Ogden as you do when he desires to route over the Union Pacific?

Mr. MEYER: From the car standpoint, I do; that is, to the extent of cars that we get, you understand.

Mr. SEVERANCE: I am not speaking of the cars you get. You have some cars of your own?

Mr. MEYER: We have some few.

Mr. SEVERANCE: The Southern Pacific has cars?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: And those cars are supposed to be used in the transportation of traffic, are they not?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: Do you use those cars in transporting traffic over the Union Pacific, and the Southern Pacific, the Short Line and the Union Pacific?

880 Mr. MEYER: Yes sir.

Mr. SEVERANCE: Do you use them as freely if the traffic is routed by the Rio Grande from Ogden?

Mr. MEYER: We use them for Rio Grande business, yes sir.

Mr. SEVERANCE: Do you use them as freely as you do for Union Pacific business or do you try to get the Rio Grande to send in cars?

Mr. MEYER: We try to get the Rio Grande to send in cars.

Mr. SEVERANCE: So you do discriminate as between the Rio Grande and the Union Pacific in the use of Southern Pacific cars going East?

Mr. MEYER: No, I would not say that.

Mr. SEVERANCE: What do you mean by your answer?

Mr. MEYER: I say that when we have a good supply of cars there are no restrictions on any associated line cars moving East over the Rio Grande.

Mr. SEVERANCE: Suppose there is some shortage of cars; then do you impose a restriction on the Rio Grande when you do not on the Union Pacific?

Mr. MEYER: I cannot say that we do.

Mr. SEVERANCE: Have you never done it?

Mr. MEYER: No, I do not recall that we have ever done that.

Com'r LANE: Your policy is to keep your cars at home on your own line and not let them get abroad?

Mr. MEYER: Yes, that is the idea.

Com'r LANE: And you treat the Union Pacific as your own line?

Mr. MEYER: Yes, sir.

Com'r LANE: And you treat the Denver and Rio Grande as a foreigner?

Mr. MEYER: Yes, sir.

Mr. COTTON: But, if the Union Pacific——

Mr. SEVERANCE: Mr. Cotton, can not we proceed a little more orderly, without the interruption?

Mr. COTTON: Yes, I think we can.

881 **Mr. SEVERANCE**: Now, Mr. Meyer, I show you Meyer Exhibit 1. Did you issue that circular?

Mr. MEYER: Yes, sir.

Mr. SEVERANCE: I offer that Meyer Exhibit 1 in evidence, which I will read into the record. This is headed:

"Oregon Railroad and Navigation Company. Southern Pacific Lines in Oregon. Car Service Department. O. R. & N. Circular No. 287, S. T. Company Circular No. 86.

PORTLAND, OREGON, *August* 6, 1906.

To Dispatchers, Agents, Conductors:

Effective at once and until further notice, you will not permit any cars to load with D. & R. G., R. G. W. and Western Pacific Railway Company material shipments, also commercial lading, excepting cars that belong to those lines, or that route that way. We have taken up with them the necessity of furnishing cars for this business. This action becomes necessary because our own company material shipments, that is O. R. & N., O. S. L., U. P. and S. P., have not been billed promptly. It is desired that you explain this fully to all concerned in such a way that they cannot take exceptions. Also that we will not accept cars which are loaded for the above lines, excepting as indicated. If you are not certain as to the routing take it up with this office, although a rate card should be on all foreign cars. Acknowledge receipt on enclosed card.

J. F. MEYER,
Car Service Agent."

Mr. Meyer, do you think, having your recollection refreshed by that circular, that you made no distinction or discrimination, or have not made any at any time, between D. & R. G. and Union Pacific?

Mr. MEYER: I will say that when that circular was issued, it was issued through a misunderstanding.

Mr. SEVERANCE: Who had the misunderstanding?

Mr. MEYER: That was a misunderstanding.

882 Mr. SEVERANCE: Between whom was the misunderstanding?

Mr. MEYER: Well, in a general way, when I get out instructions

of that kind, I confer with our general superintendent, and other heads of departments, and issue these circulars. When this circular was issued, I found it was not the right thing, that it was a misunderstanding on my part in issuing it, the way I did issue it.

Mr. SEVERANCE: With whom was the misunderstanding?

Mr. MEYER: And I think that circular was recalled, the portion of it anyway, within a very few days after it was issued.

Mr. SEVERANCE: Well, you said it was the result of a misunderstanding. A misunderstanding between you and whom?

Mr. MEYER: With the General Manager and General Superintendent.

Mr. SEVERANCE: What did you think the General Manager had said to you, which it turned out he had not said to you? What did you understand he said to you to make you issue this circular?

Mr. MEYER: The discussion generally came up on that proposition as it is in the circular, and I understand it that way; I understood that was the kind of circular I should issue, but it seems, after I did issue, it, that it was wrong.

Mr. SEVERANCE: That is, you understood Mr. O'Brien, did you, that that was the kind of circular you should issue?

Mr. MEYER: Yes, or from Mr. Buckley, whoever it was that mentioned it. We were in conference together, and having some discussion on the subject.

Mr. SEVERANCE: And this circular was issued, was it, immediately after this conference?

Mr. MEYER: Yes sir, or soon after; I don't know whether it was issued immediately after.

Mr. SEVERANCE: Is it usual or unusual for you to misunderstand your instructions, Mr. Meyer?

883 Mr. MEYER: Well, that is a very unusual thing that I misunderstand anything of that kind.

Mr. SEVERANCE: Is it not a fact that circular was withdrawn because of the protest of the Rio Grande people, and not because you had had a misunderstanding as to your instructions?

Mr. MEYER: Not to my recollection.

Mr. SEVERANCE: Are you sure of that?

Mr. MEYER: Quite sure of it.

Mr. COTTON: You have all four on the circulars there, have you not?

Mr. SEVERANCE: Yes sir, the originals of two, and copies of the other two.

Mr. COTTON: Let me look at the copies. (Examine- the copies.) They are all right.

Mr. SEVERANCE: I will show you exhibit- Meyer 2, Meyer 3 and Meyer 4, and ask you to state whether those are the supplements and the order canceling the first circular?

Mr. MEYER: I think they are right.

Mr. SEVERANCE: These being identified, I will read them in evidence in their order. Exhibit 2 is headed the same as the other, Oregon Railroad and Navigation Company, Southern Pacific Lines in Oregon. Car Service Department. O. R. & M. Circular No. 287, S. P. Company Circular No. 86.

PORTLAND, OREGON, *August* 9, 1906.

To Dispatchers, Agents, Conductors:

Referring to the above circular, that portion prohibiting cars to load with commercial business via Rio Grande is hereby cancelled. Commercial shipments may be taken care of the same as heretofore. Acknowledge receipt on enclosed card.

(Signed) J. F. MEYER,
Car Service Agent.

884 Exhibit 3 is headed the same as the other is and is dated

PORTLAND, OREGON, *August* 15, 1906.

To Dispatchers, Agents, Conductors:

Instructions contained in above circular are hereby modified to the extent that only O. R. & N., O. S. L., U. P. and S. P. and other cars belonging to the Harriman line apply on shipments of R. G. W. and R. G. and Western Pacific Railway Company material shipments. Acknowledge receipt on enclosed card.

(Signed) J. F. MEYER,
Car Service Agent.

The last one, Meyer Exhibit 4 is dated the 29th of August and is headed the same as the others. It is addressed

To Dispatchers, Agents, Conductors:

Effective at once circular changes. O. R. & N. No. 287, S. P. No. 86, Supplement- No. 1 and No. 2, hereby cancelled. The matter of furnishing cars to load with R. G. W., D. & R. G. and Western Pacific Railway Company material should be handled the same as prior to issue of above circular. Acknowledge receipt on enclosed card.

(Signed) J. F. MEYER,
Car Service Agent.

Mr. SEVERANCE: From whom did you receive instructions to make the first modification of that order of yours?

Mr. MEYER: I think I got that from the general manager.

Mr. SEVERANCE: Mr. O'Brien.

Mr. MEYER: Yes.

Mr. SEVERANCE: From whom did you get instructions——

Mr. MEYER: I want to add to that answer. I want to supplement it a little bit; that is my recollection. It may be that after the circular was issued—well, that is about the way of it as near as

885 I can remember, that I got the instructions from the General Manager or the General Superintendent, I don't remember which one.

Mr. SEVERANCE: From whom did you receive instructions pursuant to which you issued the second supplement?

Mr. MEYER: I think the same source and the further fact that we were a little bit easier on some equipments.

Mr. SEVERANCE: From whom did you receive your instructions

which resulted in cancelling this circular, which you did under date of August 29?

Mr. MEYER: Well, I cannot say positively, but the supply of cars was getting a little bit easier about that time.

Mr. SEVERANCE: Now Mr. Meyer, you said a little while ago that you issued that original circular under a misunderstanding. Was that misunderstanding removed by the General Manager between the dates of the issue of the circular and the date of the first supplement?

Mr. MEYER: I cannot say off hand.

Mr. SEVERANCE: Can you state now what that misunderstanding consisted in? What did you include in your first order that was put in there under a misunderstanding?

Mr. MEYER: Commercial shipments.

Mr. SEVERANCE: Commercial shipments?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: It was not necessary however, to prohibit the loading of shipments of material to be used by the D. & R. G., R. G. W. and Western Pacific in any cars except the cars belonging to those lines, was it?

Mr. MEYER: That was about the idea, but from the fact that we had taken up with the Rio Grande the necessity of furnishing cars for their company material shipments, we thought that so long as they wanted their material, it would be only right for them to furnish their equipment for it. We had a very heavy com-

886 pany material shipment of our own to take care of.

Mr. SEVERANCE: Well, do you know anything about the Western Pacific, whether that is under construction or not?

Mr. MEYER: I understand so.

Mr. SEVERANCE: You speak of it here in your circular; what was the nature of the material shipments that were to go down there that you desired to regulate by this order?

Mr. MEYER: I suppose it was everything in the line of material required in the construction of a railroad in the way of ties and lumber.

Mr. SEVERANCE: Do you know anything about the Denver and Rio Grande people coming up here and being here at the time and protesting against this discrimination?

Mr. MEYER: No sir.

Mr. SEVERANCE: You never heard of that?

Mr. MEYER: Only as hearsay.

Mr. SEVERANCE: Well, I asked you if you knew anything about it. Did you hear of that from Mr. O'Brien?

Mr. MEYER: I heard of Mr. Schlacks being out here.

Mr. SEVERANCE: What is his position in the Rio Grande?

Mr. MEYER: I believe he is general manager.

Mr. SEVERANCE: He was here about this time, was he not?

Mr. MEYER: I don't know whether it was at that time or later.

Mr. SEVERANCE: Is it not a fact sir that because of the representations of Mr. Schlacks made here, either at the time or shortly after you issued that circular that you withdrew?

Mr. MEYER: No, I cannot say as to that.

Mr. SEVERANCE: From what portion of the country here, were

material shipments moving forward for use on the Rio Grande and and the Rio Grande Western and the Western Pacific?

887 Mr. MEYER: I guess pretty much all those mills in this territory have orders in there. I cannot remember what mills it was moving from.

Mr. SEVERANCE: Did you notify those mills that were selling material to the Rio Grande or the Western Pacific, before you issued this circular?

Mr. MEYER: Before I issued the circular?

Mr. SEVERANCE: Yes.

Mr. MEYER: No sir.

Mr. SEVERANCE: Did you have any consultation with them to ascertain whether or not it would interfere wich their business?

Mr. MEYER: No sir, I do not as a rule deal with the mills direct myself at all.

Mr. SEVERANCE: Did anybody else at your instance have any consultation with those mills to find out whether they would be incommoded by this rule before it was issued?

Mr. MEYER: Not that I remember.

Mr. SEVERANCE: Did you give a preference in furnishing cars to material shipments for the four Harriman lines as against commercial shipments?

Mr. MEYER: No sir, not excepting in cases where it is required—well, we do not; ordinarily speaking we do not.

Mr. SEVERANCE: Did you hear the testimony of Mr. Kelly this morning in that regard?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: And it is your impression that Mr. Kelly is mistaken about that, is it?

Mr. MEYER: No sir, that part of it that he testified to, as to the car material shipments going to Chicago, we do give that preference; that is a little out of the ordinary of railroad material.

Mr. SEVERANCE: But he testified as to other railroad material. You desire to say, do you, that commercial loading from these mills here has the same privileges and the same rates and the same service as you give to material that is going from the same mills for use by the Harriman lines, in their own construction?

888 Mr. MEYER: Yes sir, ordinarily we do.

Mr. SEVERANCE: Is that always so?

Mr. MEYER: Ordinarily, we do.

Mr. SEVERANCE: That is not my question, what you ordinarily do, I asked you if it is always true?

Mr. MEYER: Always, yes sir.

Mr. SEVERANCE: Your jurisdiction is over the Southern Pacific in Oregon. How do you distribute cars as between commercial loading on the Southern Pacific lines in Oregon and materials desired by the O. R. & N. or the Union Pacific; which gets the preference?

Mr. MEYER: There is no preference, generally speaking.

Mr. SEVERANCE: There are a good many times, are there not, when you are unable to furnisb all the cars that are demanded?

Mr. MEYER: Yes sir, but they are supposed to take their turn, generally speaking; commercial orders take turns with railroad orders.

Mr. SEVERANCE: Who puts in the railroad order?

Mr. MEYER: It is all put in with the agent.

Mr. SEVERANCE: Where?

Mr. MEYER: The order for cars is placed with the agents.

Mr. SEVERANCE: Suppose the Union Pacific has bought some materials to use in construction, out here at a mill in the Willamette Valley. With whom does the Union Pacific communicate with reference to cars?

Mr. MEYER: Sometimes communicates with our office, but most of the time it is placed with the agent.

Mr. SEVERANCE: You mean the local agent?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: You mean that the Union Pacific people in Omaha telegraph direct to the agent at such and such a place to get cars?

Mr. MEYER: As a rule they have an inspector in this territory, and he places the order with the agent.

Mr. SEVERANCE: And it is your understanding that in no
889 case does the Union Pacific get any preference in the order in which they receive cars over any other customer of the mill?

Mr. MEYER: Not now, no sir, and it has not for some time.

Mr. SEVERANCE: Well, how long ago?

Mr. MEYER: Well, the general rules is that we do not do that, generally speaking.

Mr. SEVERANCE: Do you know of instances where you have done it?

Mr. MEYER: I cannot recall any right now.

Mr. SEVERANCE: Do you know, as a matter of fact, that you have at times given a preference to the railroad, and that they have received cars out of their order? Don't you know that is so, Mr. Meyer?

Mr. MEYER: Only as it was on some rush shipments, some important shipment.

Mr. SEVERANCE: Who decides whether the shipment is important? The mill owner or the railroad company?

Mr. MEYER: We generally get that from the railroad company.

Mr. SEVERANCE: Suppose the purchaser of commercial loading is putting up a big building somewhere; he might think that his shipment was important, might he not?

Mr. MEYER: I presume so.

Mr. SEVERANCE: But if in the judgment of the Union Pacific railroad its shipment was important it would take precedence would it not?

Mr. MEYER: Well, I think we give the commercial men as much benefit as we do the railroad company.

Mr. SEVERANCE: I am not asking you about benefits. I am asking you whether as a matter of fact, if the railroad company announces that it has a shipment that is "important" as you put it, it

does not get the cars in preference to the commercial loading as it was practically testified to this morning by Mr. Kelly?

Mr. MEYER: We try to take care of the orders in their turn.

890 Com'r LANE: You have no system of car apportionment here?

Mr. MEYER: No, sir, only as the business demands it.

Com'r LANE: How do you distribute your cars? According to the demands put in by shippers?

Mr. MEYER: Yes, sir.

Com'r LANE: You do not divide up your mills and manufacturing establishments, and give each one its proportion in turn?

Mr. MEYER: We try to take care of the loads ordered in the order in which it is supposed they are received. Of course individual orders are not placed with me; the individual orders are placed with the agent.

Com'r LANE: But you have no way in which you appraise the capacity of the mill by a certain number of cars each week?

Mr. MEYER: No, sir.

Mr. SEVERANCE: Who places the orders ordinarily with the agent for the shipment out of the mills; that is the commercial shipments?

Mr. MEYER: Who places it with the agent?

Mr. SEVERANCE: Yes.

Mr. MEYER: I suppose the mill does.

Mr. SEVERANCE: You have had a good deal of trouble this year with car shortage, have you not?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: But irrespective of that trouble you do not remember any case now excepting in the case of material for refrigerator cars, where the railroad company has been given any preference over commercial shipments?

Mr. MEYER: No sir.

Mr. SEVERANCE: You do not remember any of them?

Mr. MEYER: I do not remember any.

Mr. SEVERANCE: Now, in this circular, Meyer Exhibit 1, you say the action becomes necessary because our own company material shipments—that is, the O. R. & N., O. S. L., U. P. and S. P. have not been filled promptly. Do I understand that you have no

891 central authority over the distribution of these cars, except Mr. Kruppschmitt?

Mr. MEYER: We take care of the local business out here. When it comes to a matter of not knowing what to do it is referred to the general superintendent or general manager and he in turn, I presume refers it to Mr. Kruppschmitt.

Mr. SEVERANCE: You have frequent conferences with the General Superintendent, Mr. O'Brien here about the matter of distribution, of course?

Mr. MEYER: Yes.

Mr. SEVERANCE: You have a set of printed rules applicable to the Harriman system cars, the handling of cars among the lines of the Harriman System?

Mr. MEYER: Will you please repeat that?

Mr. SEVERANCE: You know there are in existence among all the roads a regular set of car service rules; you are familiar with them?

Mr. MEYER: Yes sir general car service rules.

Mr. SEVERANCE: Now, have the officials of the various Harriman lines a set of rules governing the handling of the equipment of those lines?

Mr. MEYER: Do you mean all the associated lines?

Mr. SEVERANCE: What do you mean by the associated lines?

Mr. MEYER: The Union Pacific, the Southern Pacific, O. R. & N., Oregon Short Line, and Sunset Lines.

Mr. SEVERANCE: Have they printed rules?

Mr. MEYER: No printed rules, no sir.

Mr. SEVERANCE: Have you no rules?

Mr. MEYER: Not with this associated line equipment.

Mr. SEVERANCE: But have you not any kind of organization, any printed or written or typewritten instructions that are general instructions, applicable to the handling of business?

Mr. MEYER: No sir.

Mr. SEVERANCE: Then by associated lines you mean this, do you not, Mr. Meyer—if I am not right, correct me—that you as
892 an official of the Southern Pacific and of the Oregon Railroad and Navigation Company, are instructed to treat all the cars of the Harriman System—that is, the Union Pacific, Oregon Short Line, Oregon Railroad and Navigation Company and Southern Pacific System—as though the whole of them together constituted one system; you treat them all as your own cars?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: As distinguished from the cars of outside lines?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: And you make no distinction in the handling of that equipment by reason of the fact that it may belong to one line or the other?

Mr. MEYER: No sir.

Mr. SEVERANCE: That is all.

Mr. COTTON: Mr. Meyer, an associated line car is at home no matter what its initials may be, wherever it is on an associated line; is that it?

Mr. MEYER: Yes sir.

Mr. COTTON: Before that arrangement took place an O. R. & N. car was at home on the O. R. & N.?

Mr. MEYER: Yes sir.

Mr. COTTON: A Southern Pacific car on the Southern Pacific?

Mr. MEYER: Yes sir.

Mr. COTTON: A Short Line car on the Short Line, and a Union Pacific car on the Union Pacific?

Mr. MEYER: Yes sir.

Mr. COTTON: And the car service rules govern and regulate the movement of all these cars between the several associated lines?

Mr. MEYER: Yes sir.

Mr. COTTON: If you turned over an O. R. & N. car to the Southern Pacific before this arrangement took place, the Southern Pacific

could not load that car for California, could it, they would have to return it to you at Portland?

Mr. MEYER: Treat it as a foreign car, yes sir,

Mr. COTTON: If you received a car from the Oregon Short
893 Line at Huntington you could not turn it over—you could not use it on your own line except as a foreign car?

Mr. MEYER: No sir.

Mr. COTTON: And you could not turn it over to the Northern Pacific at Wallula, or the Great Northern at Spokane?

Mr. MEYER: No sir.

Mr. COTTON: Or to the Southern Pacific at Portland?

Mr. MEYER: No sir.

Mr. COTTON: But you can now.

Mr. MEYER: Yes sir.

Mr. COTTON: And the same of course is true of Union Pacific?

Mr. MEYER: Yes sir.

Mr. COTTON: Whenever you find an associated line car bearing any initial you treat it just exactly as they treat an O. R. & N. Car?

Mr. MEYER: Yes sir.

Mr. COTTON: And you draw no distinction between the O. R. & N. and Southern Pacific lines in Oregon?

Mr. MEYER: No sir.

Mr. COTTON: Referring to these circulars, the first one is dated August 6th. At that time do you know what rate the company was making, the O. R. & N. and Oregon Short Line, on D. & R. G. and Denver Pacific Company material?

Mr. MEYER: No sir.

Mr. COTTON: You don't know what rate of charge they made?

Mr. MEYER: You mean freight rate?

Mr. COTTON: Yes.

Mr. MEYER: No sir.

Mr. COTTON: Was that company material regarded and treated as commercial lading?

Mr. MEYER: I think so.

Mr. COTTON: You refer here to D. & R. G. Company material, and also to commercial lading in your circular. August 6th
894 you say "Effective at once and until further notice you will not permit any cars to load with D. & R. G., R. G. W. and Western Pacific Company material shipments," and also commercial lading, excepting in certain cases. Did the agent know the difference between commercial lading and D. & R. G. material?

Mr. MEYER: Excepting as it would be classified or billed perhaps or something of that kind.

Mr. COTTON: You do not know what freight rate was made on D. & R. G. Company material at that time, do you?

Mr. MEYER: No sir.

Com'r LANE: Is that 1906?

Mr. COTTON: Yes.

Com'r LANE: Have you a classification now for company material, D. & R. G. material?

Mr. COTTON: It was taken out on the 29th of August.

Com'r LANE: You do not have any particular rate on Company material as distinguished from any other material on a foreign line?

Mr. COTTON: We did have up to the 29th of August half a cent a ton a mile, was it not, Mr. Miller?

Mr. MILLER: Yes.

Com'r LANE: You have not had it since?

Mr. COTTON: No, sir, and we have not got it now. Now, on August 9th, Mr. Meyer, your attention was called to the fact that your circular of August 6th was too broad and included commercial lading as well as D. & R. G. Company material?

Mr. MEYER: Yes sir.

Mr. COTTON: From some source, you have forgotten where, and you then issued that circular three days later?

Mr. MEYER: Yes sir.

Mr. COTTON: On the 15th of August, four days after, you issued this circular, and I will read it and ask you to tell me what it means:

"Instructions contained in the above circular are hereby
895 modified to the extent that only O. R. & N., O. S. L., U. P. and S. P. and other cars belonging to the Harriman lines must not apply on shipments of R. G. W., D. & R. G. and Western Pacific Railway Company material shipments."

What did you mean by that? That you could use other foreign cars?

Mr. MEYER: That we would use other foreign cars on the return movement home.

Mr. COTTON: By that you meant that if you had a foreign car on your line, any foreign car, which loaded back to the D. & R. G., they could load it with D. & R. G. Company material?

Mr. MEYER: Yes sir.

Mr. COTTON: And it did not relate solely to D. & R. G. cars themselves?

Mr. MEYER: No sir.

Mr. COTTON: Now on the 29th of August you issued this circular:

"Effective at once, Circular O. R. & N. No. 287, Southern Pacific No. 86, Supplements 1 and 2 is hereby cancelled. The matter of furnishing cars to load with R. G. W., D. & R. G. and Western Pacific Company material should be handled the same as prior to the issuing of the above circular."

Do you know what freight rates that D. & R. G. W. commenced paying on that day?

Mr. MEYER: No sir.

Mr. COTTON: You don't know anything about that?

Mr. MEYER: No sir.

Mr. COTTON: On the 29th of August you allowed D. & R. G. Company and D. & R. G. Western and Denver Pacific material to move in any kind of a car exactly the same as commercial shipments?

Mr. MEYER: Yes sir.

Mr. COTTON: Without any distinction of any kind, character or description?

Mr. MEYER: Yes sir.

Com'r LANE: Was there a new tariff in effect that day respecting that material?

Mr. MEYER: I do not know.

896 Mr. COTTON: Prior to the issuance of any of these circulars you had applied to D. & R. G. Company to send you empty cars to load with their company material?

Mr. MEYER: Yes sir.

Mr. COTTON: But they had not been able to furnish you the cars?

Mr. MEYER: They could not furnish them.

Mr. COTTON: And you had furnished them at Ogden more cars than you had received from them?

Mr. MEYER: Yes sir.

Mr. COTTON: And they owed you cars?

Mr. MEYER: Yes sir. Our deliveries there were in excess of receipts.

Mr. COTTON: And these cars, which you had delivered to them had been largely loaded with their company material?

Mr. MEYER: Yes sir.

Mr. COTTON: And you thought it was about time for them to hustle up a few cars of their own?

Mr. MEYER: Yes sir.

Mr. COTTON: And for the purpose of bringing about that result you issued these circulars?

Mr. MEYER: That is it.

Mr. COTTON: You keep an account. If you should load cars here and not get any empties from the East about how long would this road operate taking the ordinary quota of cars, which it is necessary to do its general business?

Mr. MEYER: Well, we would operate about thirty days, probably.

Mr. COTTON: And at the end of that time you would not have a car on the road?

Mr. MEYER: We would not have a car left on the Navigation line.

Mr. COTTON: Therefore, it is necessary for you to receive at all times empty cars?

Mr. MEYER: Yes sir.

Mr. COTTON: And you keep track at Huntington, do you not, of the number of empties, which you receive from the Short

897 Line, and the number of loads you deliver?

Mr. MEYER: Yes sir.

Mr. COTTON: And whenever they begin to owe you too many cars you call on them for cars, do you not?

Mr. MEYER: That is right.

Mr. COTTON: You owe them quite a bunch of cars now, don't you?

Mr. MEYER: Yes sir.

Mr. COTTON: Of course this applies both ways; you keep track both of empties and loads?

Mr. MEYER: Yes sir.

Mr. COTTON: How many cars do you owe the Short Line at Huntington now?

Mr. MEYER: Approximately perhaps 300 or 400.

Mr. COTTON: Do you keep track with the Northern Pacific?

Mr. MEYER: Yes sir.

Mr. COTTON: You deliver cars to the Northern Pacific at Portland?

Mr. MEYER: Yes sir.

Mr. COTTON: How many cars does the Northern Pacific owe you at Portland at the present time?

Mr. MEYER: Approximately about 800.

Mr. COTTON: In other words they have received 800 more cars from you than they have given back?

Mr. MEYER: Yes sir.

Mr. COTTON: How long a time is that for?

Mr. MEYER: That is beginning about last March, February or March, and up to—I have not checked it up very lately, but up to the 15th of November, along in there.

Mr. COTTON: From February or March up to the present time they have gradually fallen behind in returning cars to you until they now owe you about 800?

Mr. MEYER: Yes sir.

Mr. SEVERANCE: Do you mean now, or the 15th of November?

898 Mr. MEYER: The last checks I made was about that time.

Mr. SEVERANCE: So you do not know just what it is now?

Mr. COTTON: Do you know about what it is now?

Mr. MEYER: I think it must stand pretty close to the same figure yet.

Mr. COTTON: They have not equalized very much?

Mr. MEYER: No sir.

Mr. COTTON: Do you deliver cars loaded to the Great Northern at Spokane?

Mr. MEYER: We do.

Mr. COTTON: For delivery to Seattle?

Mr. MEYER: In their own equipment at the present time.

Mr. COTTON: Do you receive cars from the Great Northern at Spokane connecting from the East?

Mr. MEYER: Do we receive cars from the Great Northern?

Mr. COTTON: Yes.

Mr. MEYER: We receive some cars.

Mr. COTTON: Loaded and empties both?

Mr. MEYER: Only loaded.

Mr. COTTON: But you load back cars that way?

Mr. MEYER: Yes sir.

Com'r LANE: Only their equipment?

Mr. MEYER: Foreign cars that route that way also.

Com'r LANE: Not your own?

Mr. MEYER: Sometimes we let our own cars go to the Great Northern when we have a supply of them.

Mr. COTTON: You equalize there and keep track of course?

Mr. MEYER: We aid to equalize at Spokane.

Mr. COTTON: In other words there is a free interchange of cars except where somebody begins to get very much in your debt?

Mr. MEYER: Yes sir.

Mr. COTTON: Or when you get in debt to somebody else?

Mr. MEYER: Yes sir.

899 Mr. COTTON: And then, as gentlemen say, you try to square up a bit?

Mr. MEYER: Yes sir.

Mr. COTTON: That is what you mean by this occasional stopping of free interchange?

Mr. MEYER: Yes sir.

Com'r LANE: That has been going on for some months, has it?

Mr. MEYER: Yes sir.

Com'r LANE: You have not given them any number of Union Pacific or associated line cars for a long time, have you?

Mr. MEYER: We have tried for a long time to equalize the interchange of cars; more particularly at this time when we are so short. In other words we cannot send too many of the cars off the line, because we would not have any left for our own business.

Com'r LANE: Do you know whether there is any rule by which you can compel the Northern Pacific or the Great Northern or any other line with which you connect to return cars to you. As a practical railroad man, what would be your suggestion on that point?

Mr. MEYER: Well, I don't think that is hardly practicable. I believe in the pooling of equipments.

Com'r LANE: You think it would be a good idea to extend the system that you have over all of the associated Southern Pacific lines, to the Great Northern and the Northern Pacific and all other lines?

Mr. MEYER: I believe in the general pooling of all equipments; I believe that is the proper thing to do. In fact, there is an association started in Chicago now among some of the lines.

Com'r LANE: Is there any method you have to suggest by which, except by the increase of per diem, that you could get these cars returned to you?

Mr. MEYER: No, I do not know of any plan that would work it out.

Com'r LANE: That is all.

Mr. COTTON: Some question was asked you about Silver Bow. Is that in your jurisdiction?

900 Mr. MEYER: No.

Mr. COTTON: Do you know what interchange of equipment takes place between the Oregon Short Line and the Northern Pacific at Silver Bow?

Mr. MEYER: I do not.

Mr. COTTON: But you interchange freely between Northern Pacific here do you not?

Mr. MEYER: Yes sir.

Mr. COTTON: That is all.

Mr. SEVERANCE: You were asked about the reason for the issuance of these circulars and you stated it was because you were hard up for cars. During your administration have you been compelled to issue any similar circular as referring to other railroads; that is material shipments of other lines than the D. & R. G. and allied lines?

Mr. MEYER: We have instructions out now, not to load any of our cars to the Great Northern or the Northern Pacific.

Mr. SEVERANCE: I am asking you if you had at any time prior to the issuance of this circular of the 6th of August ever issued such a circular with reference to the material shipments to any other railroad?

Mr. MEYER: I cannot recall any now, but no doubt we have issued them from time to time.

Mr. SEVERANCE: Have you any recollection of any such thing?

Mr. MEYER: No, I cannot recall it now.

Mr. SEVERANCE: Had you ever, prior to that time, or have you since, issued any circulars directing that commercial loadings should not be made where a car was routed over a certain line, unless it was made in the cars of that line?

Mr. MEYER: Will you please repeat that?

Mr. SEVERANCE: Have you ever issued any other circular like this one of August 6th prohibiting commercial loading where the cars were to route a certain way, otherwise than in cars of that line? For instance, here you won't allow commercial loadings over
901 D. & R. G. unless they furnish D. & R. G. cars. Did you ever apply that rule to any other railroad?

Mr. MEYER: We had a rule in effect of that kind here some number of years ago.

Mr. SEVERANCE: Applying to what road?

Mr. MEYER: With the Oregon Short Line, practically the same thing. A carload that came west over the Union Pacific could not go over the D. & R. G. and *vice versa*. We were confined to equipment routed D. & R. G. for D. & R. G. loading.

Mr. SEVERANCE: But that is not what this circular says. How long ago did you have that regulation?

Mr. MEYER: That has been several years ago.

Mr. SEVERANCE: Well, how long ago?

Mr. MEYER: Oh, off-hand, perhaps five or six years ago.

Mr. SEVERANCE: Wasn't it longer ago than that?

Mr. COTTON: Have you the circular in your office now, Mr. Meyer?

Mr. MEYER: I don't know; I think perhaps I could find it, yes.

Mr. SEVERANCE: Have you at any time, since 1900 or 1901, five or six years ago, or six or seven years ago, ever had any such rule in force?

Mr. MEYER: Similar to that one?

Mr. SEVERANCE: Yes, as applied to Union Pacific. You say you had one that applied to Union Pacific, have you had such a one in the last six or seven years?

Mr. MEYER: Excepting as I said a minute ago.

Mr. SEVERANCE: But, Mr. Meyer you testified a moment ago that five or six years ago you issued similar instructions so that you would not furnish cars for Union Pacific shipments unless they were U. P. Cars or that routed that way, and the same as to the Rio Grande. Now are you sure about that sir; have you done that within five or six years?

Mr. MEYER: Well, it might be longer than that.

Mr. SEVERANCE: Don't you know it was before the Union Pacific bought the Short Line that that was done?

902 Mr. MEYER: That might be; I could not say off hand.
Mr. SEVERANCE: That is all.
Mr. COTTON: Mr. Meyer, will you look and see if you can find that circular?
Mr. MEYER: Yes.
Mr. COTTON: Prior to this pooling arrangement where every car was at home on the associated lines, did you ever issue wires or circulars or directions against the Short Line similar to this D. & R. G. circular?
Mr. MEYER: I cannot recall it positively.
Mr. COTTON: Will you look and see?
Mr. MEYER: Yes.
Mr. COTTON: That is all.
Mr. SEVERANCE: That is all.

Witness excused.

R. H. JENKINS, called as a witness, having been duly sworn, testified:

Mr. SEVERANCE: Where do you live?
Mr. JENKINS: Portland.
Mr. SEVERANCE: What is your business?
Mr. JENKINS: Chief Clerk in the Freight office of the Northern Pacific.
Mr. SEVERANCE: How long have you occupied that position?
Mr. JENKINS: Since the 1st of September of last year, last September.
Mr. SEVERANCE: Prior to that what was your business?
Mr. JENKINS: I was a year with the Northwestern Improvement Company.
Mr. SEVERANCE: And prior to that?
Mr. JENKINS: Prior to that I was with the Harriman lines, the O. R. & N.
Mr. SEVERANCE: What position did you fill with the Harriman lines?
903 Mr. JENKINS: Various positions. I was at one time freight solicitor for the Harriman lines, on the Street and I was again Chief Clerk in the General Agent's office.
Mr. SEVERANCE: When were you freight solicitor on the street?
Mr. JENKINS: From about 1898, up to about two years and a half ago, I think.
Mr. SEVERANCE: Up to two years and a half ago, did the Southern Pacific and the O. R. & N. have separate solicitors out?
Mr. JENKINS: Yes, sir.
Mr. SEVERANCE: Have they since that time?
Mr. JENKINS: No, sir, I think not.
Mr. SEVERANCE: Which company did you work for when you were freight solicitor?
Mr. JENKINS: The O. R. & N. Co.
Mr. SEVERANCE: What were the instructions or directions after 1901, as to the soliciting of traffic on the Atlantic seaboard and from

the country West of the Atlantic seaboard, given to the agents of the O. R. & N. and the Southern Pacific?

Mr. JENKINS: As to what route they should move over, do you mean?

Mr. SEVERANCE: Yes.

Mr. JENKINS: Well, the impression we gave was that is was desirable that Atlantic seaboard business should move by Sunset Route if possible. If not, handle it by Union Pacific.

Mr. SEVERANCE: And as to shipments originating West of the Atlantic seaboard?

Mr. JENKINS: Those were to move by Union Pacific if we could get them that way.

Mr. SEVERANCE: What change was made in the personnel of the soliciting agent at the time you say they ceased to have separate solicitors?

Mr. JENKINS: I came off the street and went into the office as chief clerk for Mr. Morse. Mr. McCusker went on the street when I went into the office.

Mr. SEVERANCE: He went on the street for both lines do you mean?

904 Mr. JENKINS: Yes, sir.

Mr. SEVERANCE: When was it you went into the office, and McCusker commenced to solicit for both lines?

Mr. JENKINS: About two years last November. I think it was in the fall of the year about November. I was in the office about a year before I quit the O. R. & N. Company.

Mr. SEVERANCE: Mr. Jenkins, it appears, by some of the testimony here that the Ogden gate-way was closed as to shipments by way of Sacramento. When was that?

Mr. JENKINS: I do not remember just the time. I should say along in 1902 somewhere.

Mr. SEVERANCE: It was while you were still with the Southern Pacific or the O. R. & N. Company?

Mr. JENKINS: While I was still with the O. R. & N. Company, yes, sir.

Mr. SEVERANCE: That is all.

Mr. COTTON: That is all.

Witness excused.

W. C. McBRIDE, called as a witness, having been duly sworn, testified as follows:—

Mr. SEVERANCE: Where do you live?

Mr. McBRIDE: Portland.

Mr. SEVERANCE: What is your business?

Mr. McBRIDE: General Agent for the D. & R. G.

Mr. SEVERANCE: How long have you been employed by the D. & R. G.?

Mr. McBRIDE: About ten or twelve years.

Mr. SEVERANCE: What kind of business do you transact for your Company at Portland?

Mr. McBRIDE: The duties incidental to a general agent's business; the securing of freight and passenger traffic, etc.

Mr. SEVERANCE: What kind of traffic do you work for here?

905 Mr. MCBRIDE: All classes of traffic, freight and passenger.

Mr. SEVERANCE: Moving both ways?

Mr. MCBRIDE: Both ways.

Mr. SEVERANCE: Can you give me an idea how the business of the D. & R. G. compares now with what it was prior to 1901 out of Portland and the Willamette Valley?

Mr. MCBRIDE: I could not give any per cents. I might illustrate it in other ways. Have you reference to figures?

Mr. SEVERANCE: Yes, if you have any figures; if not give us percentages.

Mr. MCBRIDE: I can only from memory, illustrating it by taking two years.

Mr. SEVERANCE: Go ahead.

Mr. MCBRIDE: In the year 1900 from the Willamette Valley we secured in round numbers 27,000 bales of hops, or the equivalent of 320 carloads, of which about 280 cars went by Sacramento and Ogden and about 40 cars came by Portland and the O. R. & N. and Short Line. In the year 1902, or one year after the so-called consolidation we secured less than 30 carloads of hops from the same territory.

Mr. SEVERANCE: How did they move?

Mr. MCBRIDE: By the O. R. & N. and Oregon Short Line.

Mr. SEVERANCE: How is your business now from the Willamette Valley?

Mr. MCBRIDE: Nothing to be compared with what it was in 1901 and prior.

Mr. SEVERANCE: Is there any difference in the extent of the soliciting you did for business in 1900 and in 1902; that is, do you still solicit that territory?

Mr. MCBRIDE: Oh, certainly, yes sir.

Mr. SEVERANCE: Any less actively than you did before?

Mr. MCBRIDE: No sir, more so; or at least as much.

Mr. SEVERANCE: It appears by your statement that the

906 bulk of the traffic in hops that you secured at that time was routed over the Southern Pacific by Sacramento. Does any traffic go that way now from the Willamette Valley?

Mr. MCBRIDE: Not Sacramento and Ogden; no sir; not to my knowledge.

Mr. SEVERANCE: Where is the division line, if you know, on the Southern Pacific as to the traffic moving to the East, if there is any division?

Mr. MCBRIDE: Ashland, if I understand.

Mr. SEVERANCE: That is, from Ashland this way?

Mr. MCBRIDE: From Ashland North it moves via Portland.

Mr. SEVERANCE: What is the distance from Ashland to Portland?

Mr. MCBRIDE: I think it is about 340 miles; but I am not positive.

Mr. SEVERANCE: Do you know the distance from Portland by the Southern Pacific route to Ogden?

Mr. MCBRIDE: I should think it was in round numbers about 1350 miles; in that neighborhood.

Mr. SEVERANCE: Do you know the distance by O. R. & N. and Short Line?

Mr. MCBRIDE: About 890 miles, or something in that neighborhood.

Mr. SEVERANCE: You say that all traffic that originates North of Ashland goes by Portland?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: In what part of the Willamette Valley are the bulk of the hops raised, taking Salem as an example?

Mr. MCBRIDE: In the vicinity of Salem.

Mr. SEVERANCE: And Salem is 90 miles from here?

Mr. MCBRIDE: Salem is 53 miles from Portland.

Mr. SEVERANCE: And so that it appears the Southern Pacific Company secures 53 miles to Ogden instead of 1300 miles to Ogden, as formerly?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: Do you remember when the Ogden gateway was closed, and have you a circular about it?

907 Mr. MCBRIDE: To all intents and purposes it was closed in the early summer, if I recollect right, of 1902. It was closed permanently, however, locked, on September 1, 1902.

Mr. SEVERANCE: Have you a circular with you?

Mr. MCBRIDE: I have a circular.

Mr. SEVERANCE: Will you let me have it? Was this circular which you have handed me, issued at that time?

Mr. MCBRIDE: I presume so, yes.

Mr. SEVERANCE: That is the original of it?

Mr. MCBRIDE: Yes sir, I took that from my file.

Mr. SEVERANCE: From the files in your office?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: I will read this into the record. It is headed:

Southern Pacific Company

(Oregon Lines).

TRAFFIC DEPARTMENT,
PORTLAND, ORE., *Sept.* 1, 1902.

Circular No. F-48.

Closing of Sacramento-Ogden Route on Oregon Lines Business.

To agents and others interested:

An understanding has been reached with Rio Grande lines to handle all business to and from points on the Oregon lines of this Company interchanged with Rio Grande Western Railway at Ogden via Portland and Huntington, and effective today, the Sacramento-Ogden route is closed for such business.

Joint tariffs of these Companies issued, Nos. 33-U and 35-U, also Transcontinental Freight Bureau Tariff will be so amended, and on

and after this date agents will not accept for shipment via Sacramento any business when routed via Ogden East in connection with the Union Pacific or Rio Grande Railways.

W. E. COMAN,
General Freight Agent.

908 Mr. SEVERANCE: How is business of the Rio Grande affected otherwise than the hop business since 1901; I mean the business out of Portland?

Mr. MCBRIDE: In about the same ratio, East bound business.

Mr. SEVERANCE: Prior to 1901 did Rio Grande business solicited by your people here move over both the O. R. & N. and the Southern Pacific via Sacramento?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: Was there, or was there not, any competition between the Southern Pacific and the O. R. & N. to secure the business prior to 1901?

Mr. MCBRIDE: I was not here, Mr. Severance, prior to 1901, and I cannot speak as to that.

Mr. SEVERANCE: You were not personally in charge?

Mr. MCBRIDE: I was not.

Mr. SEVERANCE: When did you come here?

Mr. MCBRIDE: In August, 1902.

Mr. SEVERANCE: Was your personal knowledge of those figures obtained from the records in your office?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: You keep a set of records in your office, do you?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: Of which you are the custodian; they are in your charge, are they?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: Do you solicit lumber shipments in the Willamette Valley?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: How is your lumber traffic now?

Mr. MCBRIDE: Very light from that territory.

Mr. SEVERANCE: What makes your difficulty in getting traffic there now?

Mr. MCBRIDE: Adverse influence of the Harriman lines.

Mr. SEVERANCE: Adverse influence, how exerted and by whom, representing the Harriman lines?

Mr. MCBRIDE: Agents; through local favors.

909 Mr. SEVERANCE: What about the furnishing of cars to move traffic over your line, Mr. McBride?

Mr. MCBRIDE: At certain times they are restricted, but not often.

Mr. SEVERANCE: Do you remember of the issuance of this circular on the 6th of August which I called Mr. Meyer's attention to?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: How soon after that was issued did you hear of it?

Mr. MCBRIDE: I heard of it right away, probably the same day or the day after; immediately.

Mr. SEVERANCE: Was there any representative among the general officers of the D. & R. G. here at the time?

Mr. MCBRIDE: Not at the time the circular was issued.

Mr. SEVERANCE: How soon afterwards?

Mr. MCBRIDE: The circular was issued on the 6th of August and our Vice-President came here some time during the latter part of the month; I can't recall the date.

Mr. SEVERANCE: Do you know of your own knowledge of any representations made by him to the O. R. & N. or Southern Pacific people with reference to that circular?

Mr. MCBRIDE: I have heard that the——

Mr. SEVERANCE: Were you present at any interview?

Mr. MCBRIDE: No sir.

Mr. SEVERANCE: You keep track of the destination of traffic from its origin. Is that part of your business?

Mr. MCBRIDE: Such as moves to our line, yes.

Mr. SEVERANCE: Have you a pretty fair knowledge of the movement of all traffic, the way it goes?

Mr. MCBRIDE: Oh, generally speaking.

Mr. SEVERANCE: How are hops usually moved to the Atlantic seaboard?

Mr. MCBRIDE: Under normal conditions the bulk from the Valley I would say would go by Sunset.

Mr. SEVERANCE: During what years have they moved by Sunset since you have been in Portland?

910 Mr. MCBRIDE: More or less every year; less this year than prior.

Mr. SEVERANCE: This year how have they generally moved?

Mr. MCBRIDE: I believe the bulk, probably a large percentage of them, will go through Portland, and East by O. R. & N.

Mr. SEVERANCE: Do you secure any traffic at Portland that comes in by boat from the Willamette Valley?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: What class of traffic?

Mr. MCBRIDE: Hops.

Mr. SEVERANCE: What percentage of hops that you move come in here by boat?

Mr. MCBRIDE: Thus far this season the largest per cent.; I should say 75% as an estimate.

Mr. SEVERANCE: To what point are those hops destined that you have shipped, or are now shipping, over that line? That is, I mean what territory?

Mr. MCBRIDE: Various points through the East. Recent shipments have been consigned to New York, and some to London.

Mr. SEVERANCE: How do they, as a rule, move East after leaving your lines at Denver or Colorado Springs?

Mr. MCBRIDE: By the Rock Island; the application of rates over the Southern Pacific lines South of Portland apply East of Colorado common points via Union Pacific and Rock Island only.

Mr. SEVERANCE: I think that is all.

Mr. COTTON: Mr. Schlacks was here about the first of September?

Mr. McBRIDE: He was here the latter part of August, to the best of my recollection.

Mr. COTTON: By the latter part of August you mean about what day in the month?

Mr. McBRIDE: Well I could not say. Probably somewhere from the 18th to the 28th or 25th, in that neighborhood. I am
911 not prepared to give the exact date he was here. He was here several days.

Mr. COTTON: You do not know exactly, but your impression is that it was after the 18th?

Mr. McBRIDE: I would not say positively.

Mr. COTTON: It was certainly after the 9th?

Mr. McBRIDE: It was while the circular was in effect on company material.

Mr. COTTON: But long after it had been taken out on commercial lading?

Mr. McBRIDE: Yes sir.

Mr. COTTON: There was no difficulty about getting it out on commercial lading, was there?

Mr. McBRIDE: No sir.

Mr. COTTON: That you understood?

Mr. McBRIDE: I understood that with Mr. Meyer.

Mr. COTTON: That was a pure mistake?

Mr. McBRIDE: I didn't understand that that was a mistake.

Mr. COTTON: You didn't so understand?

Mr. McBRIDE: I didn't understand that it was issued through an error, no sir.

Mr. COTTON: Did you talk to anybody about it?

Mr. McBRIDE: I talked to Mr. Meyer about it.

Mr. COTTON: You didn't talk to Mr. O'Brien?

Mr. McBRIDE: No sir.

Mr. COTTON: It was in for three days and then taken out?

Mr. McBRIDE: Yes.

Mr. COTTON: But you were about the only person you knew of that talked about it?

Mr. McBRIDE: I don't know of anyone else excepting our purchasing agent; our special timber agent was here at the time looking after our company shipments.

Mr. COTTON: But he didn't get his end of it out, did he?

Mr. McBRIDE: No sir; it affected him more than the commercial end.

Mr. COTTON: You could get out the part that really af-
912 fected you, the commercial loading, without any apparent difficulty, except bringing it to the attention of Mr. Meyer?

Mr. McBRIDE: Of Mr. Meyer.

Com'r LANE: Did they haul any empties for the D. & R. G. to take East bound business?

Mr. McBRIDE: Yes sir; at certain times, when it was necessary. We have done it.

Mr. COTTON: Now in that connection, Mr. McBride, yau have a record of the movement of stuff you have delivered to the Short

Line at Ogden in the last year, have you not? That is, destined for this country?

Mr. McBRIDE: Yes sir.

Mr. COTTON: And, as a matter of fact, the D. & R. G. lines have delivered to the O. R. & N. during the last year 9,000 tons of freight?

Mr. McBRIDE: I know the D. & R. G. does not deliver freight to the O. R. & N.

Mr. COTTON: But I mean freight that originated on, and was delivered by, the D. & R. G. to the Short Line?

Mr. McBRIDE: Yes.

Mr. COTTON: And afterwards delivered by the Short Line to the O. R. & N. Of such freight there has been about 9,000 tons delivered to the O. R. & N.?

Mr. McBRIDE: I can't recall the number of tons.

Mr. COTTON: That is about it, isn't it?

Mr. McBRIDE: I don't reduce it to tons in my figures.

Mr. COTTON: Pounds, carloads, anyway?

Mr. McBRIDE: I could not say as to the amount. Your figures might not coincide with mine. I don't figure the tonnage.

Mr. COTTON: How do you figure?

Mr. McBRIDE: I figure in carloads.

Mr. COTTON: Well how many carloads; what deliveries in carloads have been made of that kind at Huntington to the O. R. & N.?

Mr. McBRIDE: For what length of time?

Mr. COTTON: During the year 1905?

Mr. McBRIDE: I could not say, sir, off-hand.

913 Mr. COTTON: Approximately.

Mr. McBRIDE: I could not even approximate.

Mr. COTTON: Would you say that Mr. Miller's figures of 9,000 tons delivered to us by you, and 110,000 tons delivered by us to you were out of the way or not?

Mr. McBRIDE: If they are taken from Mr. Miller's records I would say they were correct.

Mr. COTTON: I mean from your knowledge of the business.

Mr. McBRIDE: The East bound movement certainly is very much heavier than West bound.

Mr. COTTON: From your knowledge of the business you would think about 10,000 tons one way and 110,000 tons the other way would be about the relationship, would you not?

Mr. McBRIDE: I would not want to say until I checked it up; I could not.

Mr. COTTON: From your general knowledge of the business you would think it was about that, would you not?

Mr. McBRIDE: I would say so.

Mr. COTTON: Did you furnish empties to us to equalize that shipment?

Mr. McBRIDE: No sir, our deliveries were to the Short Line. We furnished the Oregon Short Line a great many thousand tons.

Mr. COTTON: Yes, but those cars didn't come out here, did they?

Mr. McBRIDE: They came to the Oregon Short Line.

Mr. COTTON: And the Short Line had to haul them out here empty in order to get your traffic, didn't they?

Mr. McBRIDE: I don't know what the Short Line does with them. We turned them over a large number.

Mr. COTTON: Do you know what the interchange between your road and the Short Line is, as to the relative relationship of each?

Mr. McBRIDE: I don't know in tons, no sir.

Mr. COTTON: In carloads, for 1905?

914 Mr. McBRIDE: No, I do not. I don't keep track of the amount of tonnage moved into the Oregon Short Line's territory, but I know it is quite heavy on account of the coke in Montana.

Mr. COTTON: That coke moves in what class of cars?

Mr. McBRIDE: As a rule in box-cars.

Mr. COTTON: And that goes up to Butte, Montana, doesn't it?

Mr. McBRIDE: To Anaconda and Butte.

Mr. COTTON: It doesn't go out on the Short Line west of Pocatello?

Mr. McBRIDE: No sir, but the cars are on the Short Line.

Mr. COTTON: About how far is it from Butte to Huntington?

Mr. McBRIDE: 264 plus 326 miles.

Mr. COTTON: But you know, as a matter of fact, don't you, that under the car service rules the Short Line could not deliver these cars to us at Huntington, but must return them to you at the point at which they received them?

Mr. McBRIDE: I am not positive as to that. As to the relations between the Short Line and the D. & R. G. on that thing.

Mr. COTTON: You have a gate-way open at the present time, have you not, via Huntington and Ogden?

Mr. McBRIDE: Yes sir.

Mr. COTTON: And that route is how much shorter than the route around by the way of Sacramento from Portland or the Willamette Valley?

Mr. McBRIDE: Oh, it is probably 450 miles, roughly speaking.

Mr. COTTON: Is the train service on the Southern Pacific faster than that on the O. R. & N. and the Short Line?

Mr. McBRIDE: No sir, I would not think so. Do you refer to the freight service or passenger?

Mr. COTTON: Freight service.

Mr. McBRIDE: You mean as between here and Ogden via the different roads?

915 Mr. COTTON: Yes.

Mr. McBRIDE: I should think the O. R. & N. would be the shorter route and the service better.

Mr. COTTON: About how many days shorter would you think?

Mr. McBRIDE: Probably two days under ordinary conditions, probably three.

Mr. COTTON: Are there any grades down there in the Siskiyou Mountains and over the Sierra Nevada Mountains on the Ogden route?

Mr. McBRIDE: Yes sir.

Mr. COTTON: And the other way it is practically a water level, with the exception of the Blue Mountains, isn't it?

Mr. McBRIDE: Yes sir.

Mr. COTTON: The rates are the same, are they not, as they are by the Sacramento gate-way?

Mr. MCBRIDE: Yes sir, to my knowledge.

Mr. COTTON: You still have joint rates?

Mr. MCBRIDE: Yes sir.

Mr. COTTON: Through bills of lading and through loading?

Mr. MCBRIDE: Yes sir.

Mr. COTTON: From Portland and points in the Willamette Valley?

Mr. MCBRIDE: Yes sir.

Mr. COTTON: Would you say that this route via Ogden and Huntington is a better or worse route than the route via Sacramento?

Mr. MCBRIDE: I would say it was a better route.

Mr. COTTON: And it has been open to you during all this period of time?

Mr. MCBRIDE: Yes sir.

Mr. COTTON: And freely?

Mr. MCBRIDE: Yes sir.

Mr. COTTON: For any business you could get out over it?

Mr. MCBRIDE: Yes sir.

Com'r LANE: You have not been embarrassed in getting
916 business here by the difficulties of the Sacramento gate-way?

Mr. MCBRIDE: Not particularly by the closing of the Sacramento gate-way; no sir.

Mr. COTTON: Have you been at all by the closing of the Sacramento gate-way?

Mr. MCBRIDE: I would not say that we have been embarrassed by the closing of the Sacramento gate-way, no sir.

Mr. COTTON: Wherein, if at all, has your embarrassment existed in the movement of freight from Portland?

Mr. MCBRIDE: As I said, the attitude of the Southern Pacific.

Mr. COTTON: From Portland. I am taking it from Portland alone now.

Mr. MCBRIDE: I will say it was the influence of the O. R. & N.

Mr. COTTON: That is among the merchants and shippers here?

Mr. MCBRIDE: I am speaking of East-bound. You say the movement of freight from Portland.

Mr. COTTON: Well the movement of freight from Portland. The influence of the O. R. & N. on mill men and people of that kind, you think?

Mr. MCBRIDE: Yes, sir.

Mr. COTTON: And that is the same reason which you think prevails in the Willamette Valley?

Mr. MCBRIDE: Yes, sir.

Mr. COTTON: But other than this adverse influence of rival agents, the transportation facilities which have been given you whenever you got the business have not been impaired or hampered in any way whatsoever?

Mr. MCBRIDE: No sir, after we have secured it, and it is in transit it moves freely.

Mr. COTTON: That is all, sir.

Mr. SEVERANCE: Mr. McBride, the traffic originating in the Willamette Valley; the only one of the Harriman lines which
917 comes in immediate touch with it is the Southern Pacific at the point of origin. That is right, is it?

Mr. MCBRIDE: Yes, sir.

Mr. SEVERANCE: Do you have the assistance of the agents in the Willamette Valley to secure the routing of traffic over the Rio Grande East of Ogden?

Mr. MCBRIDE: The assistance?

Mr. SEVERANCE: Yes.

Mr. MCBRIDE: No sir.

Mr. SEVERANCE: What is the attitude of the agents at the initial points in the Willamette Valley in that regard?

Mr. MCBRIDE: They look upon us as a competitor.

Mr. SEVERANCE: To whom do the shippers in the Willamette Valley have to apply for their cars?

Mr. MCBRIDE: To the local station agent.

Mr. SEVERANCE: Are those the same agents that look upon you as a competitor?

Mr. MCBRIDE: Yes sir.

Mr. SEVERANCE: Before the Southern Pacific and O. R. & N. were working together were the Southern Pacific agents in the Willamette Valley——

Mr. COTTON: Mr. McBride was not here then, Mr. Severance.

Mr. SEVERANCE: Oh, you were not here then—what was your talk with Mr. Meyer about this circular of August 6th? Mr. Cotton brought out the fact that you talked with him.

Mr. MCBRIDE: Why, if my recollection is right, I spoke to Mr. Meyer about it, and he said that in a day or two that would be withdrawn. So I was very glad of that, and that is about the extent of our conversation. He stated that they would withdraw it so far as commercial business was concerned right away, and he did; it was only in effect three days I believe.

Mr. SEVERANCE: Was there anything said to you by him as to its having been put in through some misunderstanding?

Mr. MCBRIDE: No sir.

Mr. SEVERANCE: That is all.

Witness excused.

918 R. D. MILLER, Called as a witness, having been duly sworn, testified:

Mr. SEVERANCE: Where do you live?

Mr. MILLER: Portland.

Mr. SEVERANCE: What is your business?

Mr. MILLER: Railroading.

Mr. SEVERANCE: With what corporations are you affiliated?

Mr. MILLER: Oregon Railroad and Navigation Company and Southern Pacific Company.

Mr. SEVERANCE: And in what capacity?

Mr. MILLER: As general freight agent.

Mr. SEVERANCE: Of both roads?

Mr. MILLER: General Freight Agent of the Navigation Company and General Freight Agent of the Southern Pacific lines in Oregon.

Mr. SEVERANCE: What are the duties of a general freight agent?

Mr. MILLER: On the lines of the Navigation Company the duties of General Freight Agent are to look after freight traffic.

Mr. SEVERANCE: In what way look after it; solicit it, or have it solicited under him?

Mr. MILLER: The business is solicited under his instruction. He makes the rate and is generally responsible for the freight traffic conditions.

Mr. SEVERANCE: That is, generally the duties of General Freight Agent on any line of road?

Mr. MILLER: Yes sir, I think so.

Mr. SEVERANCE: That answer of yours is a general one?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: And it is the duty of a General Freight Agent is it not, to secure all the business he can and get all the revenue he can for his road, so long as it is done in a proper manner?

Mr. MILLER: I think so.

Mr. SEVERANCE: You occupy that position on the O. R. & N.?

Mr. MILLER: Yes sir.

919 Mr. SEVERANCE: And also on the Southern Pacific?

Mr. MILLER: The Southern Pacific lines in Oregon.

Mr. SEVERANCE: So that you owe to the O. R. & N. the duty of securing all the business and traffic you can for it, and to the Southern Pacific the duty of securing all the business and traffic you can for it.

Mr. MILLER: Yes sir.

Mr. SEVERANCE: The long haul; is a long haul as a rule more profitable or less profitable to a railroad company than a short haul?

Mr. MILLER: It would all depend upon the condition.

Mr. SEVERANCE: What would you say, taking a shipment from here to Chicago; would it be more profitable to the Southern Pacific Railroad Company to share in that haul to the extent of 1300 miles or to the extent of 50 miles?

Mr. MILLER: That would depend altogether on what it earned for the respective hauls.

Mr. SEVERANCE: Well, come down to a concrete fact. Take a shipment from Salem, which I am told is 50 miles from Portland. What does the Southern Pacific get, what percentage of the through rate for bringing in a shipment from Salem destined for Chicago?

Mr. MILLER: What kind of freight?

Mr. SEVERANCE: Hops.

Mr. MILLER: Carloads or less.

Mr. SEVERANCE: Carloads.

Mr. MILLER: The Southern Pacific would earn from Salem to Portland——

Mr. SEVERANCE: What does it actually get; what is credited up to it by that kind of shipment?

Mr. MILLER: It would earn its local rates.

Mr. SEVERANCE: How large is that, how much?

Mr. MILLER: About 20 cents per 100 pounds.

Mr. SEVERANCE: What is the through rate from Salem to Chicago?

Mr. MILLER: $1.50 for carloads.

Mr. SEVERANCE: In carload lots?

Mr. MILLER: Yes sir.

920 Mr. SEVERANCE: So that the Southern Pacific Company secures on a shipment of hops to Chicago 20 cents out of $1.50?

Mr. MILLER: Approximately 20 cents.

Mr. SEVERANCE: What is the through rate on hops to New York City?

Mr. MILLER: $1.50.

Mr. SEVERANCE: Just the same as to Chicago?

Mr. MILLER: Yes, sir.

Mr. SEVERANCE: So that whether the shipment goes to Chicago or New York, if it comes by the Southern Pacific to Portland from Salem and then on to Chicago or New York the Southern Pacific's revenue consists of 20 cents per hundred, and the revenue of the lines East of Portland consists of $1.30.

Mr. MILLER: Yes, sir.

Mr. SEVERANCE: When those hops moved to Chicago by way of Sacramento route to Ogden, what proportion of the through rate did the Southern Pacific get?

Mr. MILLER: Well, applying the $1.50 cent rate via Sacramento from Ogden to Chicago, when that route was open for the traffic in question, the Southern Pacific would earn from Salem to Ogden approximately 60 cents per hundred.

Mr. SEVERANCE: If the hops originated at Portland and were moved through to Chicago or New York by the Southern Pacific, what would the Southern Pacific Company get out of the through rate if they went by way of Sacramento and Ogden?

Mr. MILLER: About 60 cents a hundred.

Mr. SEVERANCE: A large amount of hops are shipped from Portland, assembled here and shipped out of Portland, are they not?

Mr. MILLER: Yes, sir.

Mr. SEVERENCE: Under whose instructions was the Sacramento route closed? I see the circular is signed by Mr. Coman, but who gave the orders to close it?

Mr. MILLER: The circular was issued by Mr. Coman. I do not know who issued instructions to him to close it.

921 Mr. SEVERANCE: What was your position at that time?

Mr. MILLER: General Freight Agent of the O. R. & N. Co.

Mr. SEVERANCE: Were you not a party to the negotiations that led to the closing of that route?

Mr. MILLER: Yes, sir, I was.

Mr. SEVERANCE: Between whom were the negotiations conducted?

Mr. MILLER: As with Mr. Coman, I do not know.

Mr. SEVERANCE: Well, with yourself?

Mr. MILLER: The discussion in regard to the matter was participated in by myself—I am wrong about that. I don't know that I

had any discussion with anyone pertaining to closing the Sacramento route.

Mr. SEVERANCE: You were at that time only an officer of the O. R. & N., were you?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: You must have hailed that order with delight which gave you all the business. Now don't you know from whence the order proceeded?

Mr. MILLER: I do not.

Mr. SEVERANCE: You don't know whether that order was issued under the instructions of Mr. Stubbs?

Mr. MILLER: I do not.

Mr. SEVERANCE: You know nothing about it?

Mr. MILLER: No sir.

Mr. SEVERANCE: And have never been told who directed that order?

Mr. MILLER: I don't think I was ever told.

Mr. SEVERANCE: Never have had any information on the subject?

Mr. MILLER: Not as to who issued the order cancelling the route.

Mr. SEVERANCE: You have no information—never have been told anything about it, except that Mr. Coman signed the order. Is that so, Mr. Miller?

Mr. MILLER: I think probably that is true.

Mr. SEVERANCE: You do?

922 Mr. MILLER: I do not recollect who issued the instructions to close that route.

Mr. SEVERANCE: Had you done anything toward getting it issued?

Mr. MILLER: Had I done anything towards what?

Mr. SEVERANCE: Had you aided in the movement to eliminate the Sacramento route in any way, and have all the traffic move by the O. R. & N.?

Mr. MILLER: No, I was not responsible for it.

Mr. SEVERANCE: That is not what I asked you. Did you do anything to secure the issuance of the order?

Mr. MILLER: I did not.

Mr. SEVERANCE: You had no conversation with any person in authority on the subject?

Mr. MILLER: I don't recall any conversation that I had on that subject.

Mr. SEVERANCE: Did you have any correspondence with any person on the subject?

Mr. MILLER: I think not.

Mr. SEVERANCE: Then so far as that particular matter was concerned, you had nothing to do with it, and knew nothing about it until it came out. Is that so?

Mr. MILLER: As to that I don't recollect.

Mr. SEVERANCE: That is one of the things you can't remember, is it, whether you knew anything about that before it was issued?

Mr. MILLER: Yes sir, I don't recall the circumstances connected with that.

Mr. SEVERANCE: You think the chances are, that that came as a beautiful surprise to you, don't you Mr. Miller, that increase in your business?

Mr. MILLER: Well, prior to that time, prior to the issuance of that order, the traffic was influenced to move by the Portland route.

Mr. SEVERANCE: By whom?

Mr. MILLER: It was solicited by the representatives of the Union Pacific and the representatives of the Southern Pacific influenced so far as they could the movement of that business via Portland.

923 Mr. SEVERANCE: Was it more profitable to the Southern Pacific to have the hop business go by the O. R. & N. rather than by Sacramento?

Mr. MILLER: I think so.

Mr. SEVERANCE: Take hops that originate in Portland, from which point you state a good many hops were shipped; is it more profitable to the Southern Pacific as a railroad company to have the O. R. & N. and its connections get all the revenue, or to have the Southern Pacific get 60c. of the revenue for taking the stuff from Portland to Ogden?

Mr. MILLER: The hops taken from Portland originate on Southern Pacific territory in Oregon, and are brought in there largely by the Southern Pacific Company.

Mr. SEVERANCE: They are brought in also by boat?

Mr. MILLER: To some extent.

Mr. SEVERANCE: To quite a considerable extent, are they not?

Mr. MILLER: No, I don't think so.

Mr. SEVERANCE: Now consider yourself for a moment, Mr. Miller, not as an officer of the O. R. & N., but as an officer of the Southern Pacific; just step over to the other end of the State. In that case, as an officer solely of the Southern Pacific, do you say it is better for you to get no revenue out of hops that originate at Portland, or to get 60c. out of the $1.50 rate to Chicago—speaking solely as a Southern Pacific man?

Mr. MILLER: A very large part of the hops shipped from Portland had previously paid tribute to the Southern Pacific Company. Hops that might move from Willamette points to Portland that would not pay tribute to the Southern Pacific Company, it would, of course, be of advantage to the Southern Pacific Company to secure the hops to Portland that were brought to Portland by river, by boat.

Mr. SEVERANCE: That is better for you than to get no revenue, of course?

Mr. MILLER: Yes.

924 Mr. SEVERANCE: Well now, move over to the other side of the State, and take your position as general freight agent of the O. R. & N. It is much to the interest of the O. R. & N. to have those hops move that way rather than by the Sacramento route, isn't it?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: Because otherwise it would get no revenue.

Mr. MILLER: Except as they received it on the river.

Mr. SEVERANCE: Now which would you say was the better—the river rate is the same as the railroad rate into Portland, isn't it—the local rate?

Mr. MILLER: Substantially the same, yes sir.

Mr. SEVERANCE: Now is it better for the O. R. & N. Co., do you think to get the 60c for the through rate or the local rate for bringing the hops into Portland and having them sent thence over the Southern Pacific?

Mr. MILLER: I think you will have to re-state that question.

Mr. SEVERANCE: Which is the more profitable for the O. R. & N.; to get its proportion of the through rate of taking the hops from Portland on to Ogden or to take its local on the boat into Portland and let them go forward over the Southern Pacific; which would be more profitable?

Mr. MILLER: I think it would be about a stand-off, as between the earnings on the river to Portland and the earnings of the Navigation Company from Portland to Huntington.

Mr. SEVERANCE: That is, you don't think there would be any additional profit to either line in taking the hops forward, over the above the local into Portland. That is right, is it?

Mr. MILLER: Well no, I don't quite follow your question.

Mr. SEVERANCE: I tried to make it clear. In either case you have a local into Portland. If they come in by O. R. & N. boat, we will say, the O. R. & N. gets that local. If they come
925 in by rail the Southern Pacific gets the local. Now, whichever line ships them through to Ogden gets 60c., and the local rate in is 20c. Now, you say that that 20c. includes in itself all the profits that there is in the 60c. haul, so that it is just as well for either one of these roads to get the small local rate into Portland, and not participate in the through haul?

Mr. MILLER: I don't think that question is put in a way that I can answer it.

Mr. SEVERANCE: Oh, I think it is. I will put it again though, if you can't understand it.

Mr. MILLER: No, I don't understand it.

Mr. SEVERANCE: Well, take the situation as it existed here when the O. R. & N. ran boats up the river to Salem. They got 20c. then for bringing hops down Portland.

Mr. MILLER: Approximately 20c.

Mr. SEVERANCE: Well, whatever it was, and at Portland hops become competitive as between the O. R. & N. and the Southern Pacific. Now, if the Southern Pacific takes them they have to absorb that local, which leaves them 40c. to haul them to Ogden. The O. R. & N. has to absorb it, or pay it, if they haul them, and they get 40c. more. Now, if they come in over the Southern Pacific there is the expense of that local, leaving 40c. more for moving them to Ogden. Now, do I understand you to say that that 20c. includes, over and above the expense of handling, all the profits there is in the 60c. haul, and that there is no profit in the 60c. for the balance of the haul?

Mr. MILLER: Oh, there is probably a profit in the balance of the haul for either line.

Mr. SEVERANCE: Now we have that established. There is a profit then for either line hauling from Portland to Ogden after having absorbed this local of 20 cents. That being the case, how is it possible, Mr. Miller, for you as a general freight agent whose duties are to secure for his line all the business possible and all the revenue, to act at the same time for both the O. R. & N., who want to
926 get this revenue, and for the Southern Pacific who wants to get it or who ought to want to get it? Can you explain that?

Mr. MILLER: Well let us take this shipment you refer to from Salem to Chicago. I assume that the proportion received by the Southern Pacific Company from Salem to Portland for its haul of 53 miles is just as compensatory under the conditions as would be its proportion of the through rate for the haul from Portland to Ogden via Sacramento.

Mr. SEVERANCE: Now let us take the other side of it. Suppose the Southern Pacific brings it in here and the O. R. & — Co. takes it forward.

Mr. MILLER: That is the case I just referred to.

Mr. SEVERANCE: Well, suppose the boats bring it into Portland, the boats of the O. R. & N., and the Southern Pacific takes it the same rule applies?

Mr. MILLER: In that case the O. R. & N. would earn this proportion of the through rate, which would be the local rate and the Southern Pacific would earn the remainder.

Mr. SEVERANCE: So that you think each are making something?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: But it is the duty of an officer of a railroad company, is it not, to make all the money he can for his company, irrespective of what other companies may do? Now can you explain to the Commissioner how it is possible for you, having a duty to the Southern Pacific to earn all the money you can for that Company, and admitting that there is a profit in the through haul to Ogden, to perform at the same time a like service for the O. R. & N., which is competing for the same business? And that is not only applicable to you but to all officials who are joint officials of the two lines. Can you explain that?

Mr. MILLER: Well, as I answered your question a few moments ago, I assume that the proportion of those through rates which are earned by the Southern Pacific Company to Portland for the shorter haul are just as remunerative, under all the circumstances
927 and conditions, as would be its proportion of the same through rate from Portland to Ogden via Sacramento.

Mr. SEVERANCE: Do you mean by that, Mr. Miller, that as much net revenue will result to the Southern Pacific from the haul that it would have in here and getting the local 20 cents, as it would receive if it had the same shipment from Salem and brought it on to Ogden and earned the 60 cents.

Mr. MILLER: That is what I am assuming, yes sir.

Mr. SEVERANCE: Well, is it so, do you believe that.

Mr. MILLER: I am not in a position to state the fact.

Mr. SEVERANCE: Do you believe that to be true?

Mr. MILLER: I think so.

Com'r LANE: Is that generally proved of all.

Mr. MILLER: Taking the run from Portland to Ashland, I think that is true.

Mr. SEVERANCE: Is that usual in railroading, that all the money is made out of the short haul and no money made out of the long haul?

Mr. MILLER: No that is not true in all cases.

Mr. SEVERANCE: That is only a rule that applies to the Southern Pacific.

Mr. MILLER: I don't think so at all.

Mr. SEVERANCE: Is it not a fact that the traffic man knows everywhere that the profit in the business consists in the long haul, so that you get revenue and only have the same terminal expenses as you have on the short haul.

Mr. MILLER: It all depends on the conditions under which the freight is transported.

Com'r LANE: Perhaps you have peculiarly remunerative rates in Oregon.

Mr. MILLER: Possibly that is so.

Com'r LANE: That short haul might be a better rate for you than the long haul, if you had a very large rate for your short haul.

Mr. MILLER: Yes sir.

Mr. SEVERANCE: And the same rule works both ways; so that you think it would be better for the O. R. & N. to have the South-
928 ern Pacific take its profit on the long haul to Ogden, that is, you think the O. R. & N. could make more money if it could turn over the traffic at Portland and have it taken around by Ogden, by receiving its revenue on its little dinkey boat line from Salem to Portland.

Mr. MILLER: The O. R. & N. Co. would lose whatever what might be its profit for the haul from Portland to Huntington.

Mr. SEVERANCE: Well there is no profit in that, is there? The profit is all exhausted when it gets the boat haul into Portland, the same as in the case of the Southern Pacific.

Mr. MILLER: No, the O. R. & N. is competing on the Willamette River with other companies who would carry it from Salem to the Southern Pacific if the O. R. & N. Co. did not; and it is better for the O. R. & N. Co. to secure the River haul to Portland for delivery to the Southern Pacific than to receive nothing at all.

Mr. SEVERANCE: That is very interesting but it has nothing to do with the question. Are not you bound from your argument to take the position that the profit has all been earned by this little haul into Portland.

Mr. MILLER: No sir.

Mr. SEVERANCE: That is the position you take as to the Southern Pacific. You say there is no additional advantage to the Southern Pacific in getting that long haul to Ogden, don't you? Don't you claim that, answer yes or not, answer.

—. I cannot answer yes or no without explaining.

Mr. SEVERANCE: Say yes or no and then explain.

Judge LOVETT: Answer the question in your own way Mr. Miller.

Mr. MILLER: I would say yes sir, but in referring to hops from Salem to Portland, which is a short haul, I would add that hops originate a good deal farther south where the revenue to Portland is several times as great as it is from Salem to Portland. The rates from Salem to Portland are relatively low because of water
929 competition. From points south of Salem they are higher according to the distance. Now in answering your question as to the relative advantages in the movement via Portland and via Sacramento, to the Southern Pacific, we must take into consideration the higher rates which the Southern Pacific Company earns from points south of Salem, from the Rogue River and other points in comparison with the rates from points nearer Portland where the rates are low.

Mr. SEVERANCE: Take hops brought in here by this Independent River Line so that neither the Southern Pacific nor the Oregon Short Line (O. R. & N.) gets any revenue until the hops land in Portland. It is a fact is it not that the Graham Line brings in hops?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: Can you see any particular advantage to the Southern Pacific, taking yourself as an officer of the Southern Pacific alone, can you see any advantage to the Southern Pacific road in being excluded from that traffic and having it all forced over the O. R. & N.

Mr. MILLER: It is not all forced over the O. R. & N.

Mr. SEVERANCE: As between the two it is all forced over the O. R. & N.

Mr. MILLER: No sir it is not.

Mr. SEVERANCE: I am talking about shipments that go by Ogden to the East. I will put this question so definitely that you will not misunderstand it. Take the case of Hops that are brought into Portland by this River line, not controlled by either one of the Railroads; can you see any advantage to the Southern Pacific Railroad to have those Hops move by rail east of Chicago over the O. R. & N. rather than the Southern Pacific.

Mr. MILLER: The Southern Pacific would lose the earnings on the business.

Mr. SEVERANCE: Is that any advantage to them? Are the earnings any advantage?

Mr. MILLER: I think that is made up in other directions.

930 Mr. SEVERANCE: But I ask you, would that be of any advantage.

Mr. MILLER: I would answer that question in this way, that while the Southern Pacific Company might lose revenue on a very small or limited volume of business moving to Portland by boat, it would more than make up that loss in other directions as a result of the business moving from its rail points via Portland.

Mr. SEVERANCE: That is a matter of opinion isn't it?

Mr. MILLER: That is a matter of what?

Mr. SEVERANCE: Of opinion.

Mr. MILLER: Very largely a matter of opinion.

Mr. SEVERANCE: But that is an opinion you would not hold if you

did not occupy this dual position, is it not? You would try to get all the business you could of every kind for the Southern Pacific, wouldn't you.

Mr. MILLER: I think I would hold the same position if I was other than a joint officer.

Mr. SEVERANCE: You think that would not make any difference; when it comes to a matter of opinion your opinion would be just the same.

Mr. MILLER: I think it would be just the same.

Mr. SEVERANCE: But your actions would not be the same; you would try to get that business wouldn't you? If you were competing against the O. R. & N. and the business was going to move by way of Ogden and you were representing the Southern Pacific line you would go after that business and get it if you could would you not.

Mr. MILLER: Not necessarily.

Mr. SEVERANCE: You would not.

Mr. MILLER: No sir.

Mr. SEVERANCE: If you were interested only in getting traffic for the Southern Pacific, would you.

Mr. MILLER: I would, provided there were no other conditions to consider.

Mr. SEVERANCE: For a good many years, Mr. Miller, traffic did move that way when they were separate lines and separate officers with the Southern Pacific and the O. R. & N., didn't it?

931 Mr. MILLER: Yes sir.

Mr. SEVERANCE: And at that time there were not any special conditions that you know of that prevented the Southern Pacific from wanting to get all the business it could, were there?

Mr. MILLER: No I think not.

Mr. SEVERANCE: And in those days if you had been an officer of the Southern Pacific you would have been pretty hot after that business?

Mr. MILLER: Yes, sir, provided——

Mr. SEVERANCE: Yes, provided you were not also an officer of the O. R. & N.

Mr. MILLER: No sir, provided the arrangement for the interchange of traffic with the Navigation Company at Portland was different from what it is today.

Mr. SEVERANCE: Well it is pretty easy——

Com'r LANE: What does that mean, sir? What is the arrangement?

Mr. MILLER: The arrangement between the Southern Pacific Company and the Navigation Company, and the Short Line and Union Pacific Companies on traffic moving via Portland is that the Southern Pacific shall receive for its haul to Portland, or from Portland on traffic other than lumber when destined to Eastern points, 40% of the west of the Missouri proportion of the through rate subject to its local rate as its maximum.

Mr. SEVERANCE: Who made that arrangement?

Mr. MILLER: I think that arrangement was made by Mr. Sproule

who is the freight traffic manager of the Southern Pacific at San Francisco.

Mr. SEVERANCE: Who was acting for the O. R. & N. in making that arrangement?

Mr. MILLER: Mr. Campbell was Traffic Manager at that time.

Mr. SEVERANCE: And they were both of them acting under the orders of Mr. Stubbs?

Mr. MILLER: Yes sir I think they both reported to Mr. Stubbs at that time.

Mr. SEVERANCE: Then as a matter of fact, Mr. Stubbs held
932 one railroad in one hand and the other in the other, his hands being represented by Mr. Campbell in the one case and by Mr. Sproule in the other, and Mr. Stubbs agreed with Mr. Stubbs on that division; is that true.

Mr. MILLER: You will have to ask Mr. Stubbs about that.

Mr. SEVERANCE: And I have no doubt Mr. Stubbs, who is a very charming and able gentleman, thought he was doing the best thing he could for both companies.

Mr. MILLER: I am satisfied that Mr. Stubbs——

Mr. SEVERANCE: Forgetting that they had been at times two railroads.

Mr. MILLER: I am satisfied Mr. Stubbs felt that way, if he had anything to do with it.

Mr. SEVERANCE: Have there been any other negotiations carried on in that same way between the O. R. & N. and the Southern Pacific with reference to divisions.

Mr. MILLER: The statement I made covers everything I made except lumber and its province.

Mr. SEVERANCE: One other thing I forgot to ask you. Were there not some other people concerned in that negotiation other than Campbell on one hand and Sproule on the other? Didn't the poor Union Pacific and the Oregon Short Line have any representatives?

Mr. MILLER: I don't know whether the Short Line and the Union Pacific were represented at any conference between Mr. Campbell and Mr. Sproule when those divisions were fixed or not.

Mr. SEVERANCE: You say this was a division of the through rate to the Missouri River. The Union Pacific and the Oregon Short Line make up a part of that through line don't they.

Mr. MILLER: Yes sir.

Mr. SEVERANCE: But Mr. Campbell was only an officer of the Oregon Railroad & Navigation Co. was he?

Mr. MILLER: That is correct.

Mr. SEVERANCE: And Mr. Sproule of the Southern Pacific.

Mr. MILLER: That is true.

933 Mr. SEVERANCE: Did these gentlemen assume to divide up that through rate without any representation of the Union Pacific, which has a thousand miles to Ogden, and the Short Line which has several hundred miles to Huntington.

Mr. MILLER: I do not know what they assumed; I had nothing to do with fixing the divisions.

Mr. SEVERANCE: As a matter of fact, that division was made by Mr. Stubbs, was it not?

Mr. MILLER: I do not know whom it was made by, other than I assume it was made by Mr. Campbell and Mr. Sproule.

Mr. SEVERANCE: You assumed that the Union Pacific and the Short Line have nothing to say about it.

Mr. MILLER: I do not assume anything about it at all.

Mr. SEVERANCE: Who represented those roads then?

Mr. MILLER: I do not know.

Mr. SEVERANCE: You never heard of anybody except Campbell and Sproule figuring on it?

Mr. MILLER: I never heard them figuring about it.

Mr. SEVERANCE: How did you find out that they made the division.

Mr. MILLER: Mr. Campbell informed me of the divisions.

Mr. SEVERANCE: Did Mr. Campbell tell you that he and Sproule made it.

Mr. MILLER: No, I do not think he did although he may have done so. I was Assistant General Freight Agent of the O. R. & N. Co., at that time, and issued the Division Sheets in accordance with the instructions which I received from Mr. Campbell.

Mr. SEVERANCE: What are the divisions on lumber and its products.

Mr. MILLER: As I recollect, on lumber the Southern Pacific received south of Portland 25% of the west of the Missouri River proportion of the through rate subject to its local rates as a maximum on traffic.

Mr. SEVERANCE: Would not get as big a per cent. on that?

934 Mr. MILLER: No, because it is a lower grade of business.

Mr. SEVERANCE: Who made that deal?

Mr. MILLER: That was made at the same time as the arrangement on the other traffic.

Mr. SEVERANCE: The Union Pacific and Short Line did not figure in those negotiations so far as you know?

Mr. MILLER: I do not know whether they did or not.

Mr. SEVERANCE: That includes all the traffic does it? These two percentages cover all the traffic originating on the Southern Pacific and moved to the East over the Union Pacific, Short Line and Navigation Company lines.

Mr. MILLER: I think so; that is, to the Missouri River and beyond.

Mr. SEVERANCE: It is a division on the rate to the River.

Mr. MILLER: Yes.

Mr. SEVERANCE: When were those deals entered into? When was that division made?

Mr. MILLER: I think that was in 1902, possibly the latter part of 1901.

Mr. SEVERANCE: It appears by the testimony, Mr. Miller, that a good many Hops have been shipped to the sea board by the Sunset Route.

Mr. MILLER: Yes sir.

Mr. SEVERANCE: Do you have a pretty hard struggle between that route and the Oregon Railroad & Navigation Company and its Eastern connections for that business.

Mr. MILLER: That business for the Atlantic seaboard is divided about equally, as between the Sunset Gulf Route and the routes via Portland.

Mr. SEVERANCE: Who makes that division.

Mr. MILLER: The shippers.

Mr. SEVERANCE: The shippers?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: That is, half the shippers want to route one way and half the other way.

935 Mr. MILLER: Yes sir.

Mr. SEVERANCE: Did you hear some of those shippers testify that you had refused at times to take it one way or the other?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: Is that so?

Mr. MILLER: Yes sir depending upon the car supply and when we could furnish equivalent.

Mr. SEVERANCE: Is it not a matter of fact that you move that stuff forward about as you please, and you decide which way to move it, when you say which way you can do it most comfortably and easily on account of the car supply.

Mr. MILLER: No I do not think that statement is altogether correct.

Mr. SEVERANCE: Is not that a fairly accurate statement?

Mr. MILLER: No, I do not think it is.

Mr. SEVERANCE: How far off is it?

Mr. MILLER: Well the Hop business for the Atlantic seaboard and for Europe is solicited for the Sunset Gulf Route. Failing in our efforts to secure that business for the Sunset Gulf Route, then we undertake to secure it for the Union Pacific Route via Portland. Out of the business that moves to and via the Atlantic seaboard about 50% is secured for the Sunset Gulf Route and about 50% moves via Portland.

Mr. SEVERANCE: You say it is solicited. You mean that you have men out soliciting the business, do you?

Mr. MILLER: We have men out and our Local Agents solicit the business.

Mr. SEVERANCE: But they endeavor to send it via the Sunset Gulf Route.

Mr. MILLER: For the Atlantic seaboard.

Mr. SEVERANCE: And as an officer of the O. R. & N., leaving out your position now as General Freight Agent of the Southern Pacific, you regard that as a very good thing for the O. R. & N., to have the Sunset Route get the business, don't you? You prefer to have it go that way, as an O. R. & N. man?

936 Mr. MILLER: The seaboard business via the Sunset Route, and all the other business—business for all other territories—moves via Portland; yes I think it is a good thing for the O. R. & N. Co.

Mr. SEVERANCE: You think that is a good thing for the O. R. & N. Co.?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: That is you prefer to have the O. R. & N. excluded from any share of the business through to the seaboard. You think as an O. R. & N. traffic man that that is a good thing for them to get no revenue out of the business to the seaboard?

Mr. MILLER: Provided all the other business for the other territory moved via Portland.

Mr. SEVERANCE: And so you gentlemen have parcelled out the business of the country, have you, in that way; instead of competing for the business, you decide to have all the seaboard business if possible go by Sunset, and the other way by Union Pacific?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: Is that right?

Mr. MILLER: We solicit and endeavor to influence the movement of seaboard business via Sunset, and business for other territories via Portland.

Mr. SEVERANCE: Then there is no very hot competition here between Sunset Route or Southern Pacific on the one hand and the O. R. & N. on the other as to the routing of competitive traffic, is there?

Mr. MILLER: The conditions are highly competitive.

Mr. SEVERANCE: I mean as between those two companies. Do you mean that they are highly competitive when you are acting for both of them?

Mr. MILLER: No, there are other competitors in the field.

Mr. SEVERANCE: I understand there are, and we are very thankful for that; but as between these two roads for both of which you are acting there is no competition, is there, Mr. Miller? You try to throw the business to one section one way, and to the other section the other way?

937 Mr. MILLER: There is competition in this sense, that all that business can move by either route, and it remains with the shipper as to whether he shall consign it by one line or the other.

Mr. SEVERANCE: But as you said awhile ago, your agents and solicitors try to get it to go one way or the other.

Mr. MILLER: But we are not always successful in having it move the way we want it to.

Mr. SEVERANCE: You control it to the best of your ability.

Mr. MILLER: We endeavor to control.

Mr. SEVERANCE: So that on business to the seaboard there is absolutely no competition between the Oregon Railroad & Navigation Company on the one hand and the Southern Pacific on the other.

Mr. MILLER: Except in the sense I spoke of.

Mr. SEVERANCE: Well that is not competition is it? The Oregon Railroad & Navigation Company stands back and lets the Southern Pacific get it if it can, and if it cannot get it, then it tries to get it away from the other line.

Mr. MILLER: I think that statement is true.

Mr. SEVERANCE: And the reverse is the case as to all interior businesss.

Mr. MILLER: Yes sir.

Mr. SEVERANCE: That is all Mr. Miller.

Mr. COTTON: In years gone by which way did the Hops move to the Atlantic seaboard; via Sunset or Union Pacific?

Mr. MILLER: They moved both ways.

Mr. COTTON: Largely by what route?

Mr. MILLER: By the Sunset Route.

Mr. COTTON: That route is controlled by the Southern Pacific all the way to the Atlantic seaboard is it not?

Mr. MILLER: Yes sir.

Mr. COTTON: Any revenue accruing as the result of those shipments all goes to the Southern Pacific.

Mr. MILLER: Yes sir 100% of it as I understand it.

938 Mr. COTTON: Does it take a greater or less percentage now of the business than it did before?

Mr. MILLER: I think there must be very little difference between what the Sunset Route is handling now and what it did prior to this year?

Mr. COTTON: And that is true with the adverse car conditions on the Sunset?

Mr. MILLER: The adverse car conditions have had something to do with it. Much of the business that would have moved via Sunset has moved via Portland because of the car situation.

Mr. COTTON: But prior to this year, and the car shortage conditions existing this year how did the business go; via Sunset or Union Pacific?

Mr. MILLER: A great deal of it went via Sunset; some of it went via Portland and the Union Pacific; and in fact other lines via Portland.

Mr. COTTON: The proportion of movement, has been changed materially from what it was prior to 1901, or has it remained about the same.

Mr. MILLER: I think perhaps the movement via Portland—the percentage to the seaboard via Portland has been somewhat in excess of previous years, but due to those causes, the car conditions.

Mr. COTTON: I am excluding this year and the car shortage cutting out this year, and then I am going back and taking the years of 1895, 1894, 1893 (1905-1904-1903?) and comparing them with years prior to that.

Mr. MILLER: Substantially the same.

Mr. COTTON: Are both routes free to shippers?

Mr. MILLER: Yes sir.

Mr. COTTON: What efforts do you put forth to retard the movement either way?

Mr. MILLER: We do not retard it either way.

Mr. COTTON: Don't you try to force the shipper by failing to give him cars, or hampering his facilities and to divert that business

from the route which you do not favor to the one which you do favor?

Mr. MILLER: We do not.

939 Mr. COTTON: And if a shipper should express a desire to one way or the other, would you accommodate him or not.

Mr. MILLER: We would.

Mr. COTTON: You have some connections at Denver?

Mr. MILLER: Yes sir.

Mr. COTTON: And you have some connections at the Missouri River.

Mr. MILLER: Yes, sir.

Mr. COTTON: Are they represented in this territory by traveling men?

Mr. MILLER: They are.

Mr. COTTON: And they are trying to pull the freight over what route?

Mr. MILLER: By the Portland route.

Mr. COTTON: And the Great Northern tries to take it by what gateway?

Mr. MILLER: Via Portland.

Mr. COTTON: And what gateway to the north.

Mr. MILLER: Spokane.

Mr. COTTON: And the other roads.

Mr. MILLER: Via Portland.

Mr. COTTON: And what other gateway towards the East.

Mr. MILLER: Via the Northern Pacific and the Rio Grande lines.

Mr. COTTON: The Northern Pacific goes out by what gateway? Wallula?

Mr. MILLER: It goes out by Tacoma.

Mr. COTTON: You have no through rates via Wallula with the Northern?

Mr. MILLER: I think so.

Mr. COTTON: You have with the Great Northern via Spokane.

Mr. MILLER: No through rates at the present time to points north and south from Portland, but some traffic moves to Portland on the application of local rates.

Mr. COTTON: There are how many agents in this country soliciting business by way of the Huntington gateway and repre-

940 senting what roads? That is, over whom you have no control af any kind, character or description.

Mr. MILLER: The Rio Grande lines, the Chicago, Rock Island & Pacific, the Burlington, the Northwestern, the Milwaukee, the Illinois Central, the Chicago-Great Western.

Mr. COTTON: Are they all represented here in towns?

Mr. MILLER: Yes sir.

Mr. COTTON: Residing here in Portland.

Mr. MILLER: Yes sir.

Mr. COTTON: Having offices here?

Mr. MILLER: Yes sir.

Mr. COTTON: Trying to attract as much attention to themselves and their roads as they can?

Mr. MILLER: Yes.

Mr. COTTON: Working the Willamette Valley?
Mr. MILLER: Yes sir.
Mr. COTTON: As far south as where?
Mr. MILLER: Ashland.
Mr. COTTON: For all classes of business?
Mr. MILLER: Yes sir.
Mr. COTTON: All connections of yours?
Mr. MILLER: Yes sir.
Mr. COTTON: All contributing business to the Union Pacific Line at Omaha?
Mr. MILLER: Yes sir.
Mr. COTTON: Are you anxious to please or displease those gentlemen by giving them the best facilities you can for their business?
Mr. MILLER: We are very anxious to please those gentlemen.
Mr. COTTON: If they secure any business in the Willamette Valley which way does it go out?
Mr. MILLER: It goes out over their line.
Mr. COTTON: And by what gateway?
Mr. MILLER: Via Portland.
Mr. COTTON: And Huntington in the case of these other roads?
Mr. MILLER: Yes, sir.
Mr. COTTON: Do you interfere with their getting the business or attempt to retard their efforts in that direction to any extent whatsoever?
941
Mr. MILLER: We do not.
Mr. COTTON: When merchandise and shipments going in the direction of Chicago were undertaken to be pulled south by the way of Sacramento or the Sunset Route and over the D. & R. G. and the Rio Grande Western, then these agents were not so active in soliciting it, were they? And it went over the Sunset Route?
Mr. MILLER: That is true.
Mr. COTTON: They are really rivals to the Sunset Route are they not?
Mr. MILLER: They are competitors of the Sunset Route.
Mr. COTTON: And they are trying to get the business to move via Huntington?
Mr. MILLER: Yes, sir.
Mr. COTTON: And this year most of it has moved that way has it not?
Mr. MILLER: Well, I don't know; I think probably the most of it has moved via Portland this year.
Mr. COTTON: You spoke about this division of 40% with the local as a maximum to the Southern Pacific. That applied to what classes of commodity?
Mr. MILLER: That applies to everything except lumber and its products.
Mr. COTTON: Both east and west?
Mr. MILLER: Yes, sir.
Mr. COTTON: What are the locals down here in the Willamette to Ashland on first class?

Mr. MILLER: Our first class rate from here to Ashland is about $1.40 or $1.50 or $1.60 per hundred.

Mr. COTTON: What are the other class rates; can you mention them?

Mr. MILLER: If the first class rate was $1.50 and that is approximately correct from here to Ashland, the second class would be about $1.35; third class would be about $1.10; fourth class about ninety cents; and fifth class about 70 or 75 cents.

942 Mr. COTTON: What are the rates to Albany?

Mr. MILLER: First class rates from Portland to Albany I think are 40 or 50 cents a hundred.

Mr. COTTON: Do you know what the divisions were prior to this 40% division?

Mr. MILLER: Yes.

Mr. COTTON: What was the division?

Mr. MILLER: The division at that time on merchandise traffic other than lumber was 30% of west of Missouri River proportion.

Mr. COTTON: With the local as a maximum.

Mr. MILLER: With the local as a maximum.

Mr. COTTON: You have stated I believe that on all of this business, taking it up one side and down the other, 40% would be better than the proportion of the rate which the Southern Pacific would receive if the stuff went to Ogden via Sacramento. What are the conditions which enter into your estimate in that regard?

Mr. MILLER: The movement via Sacramento Route entails the lifting of the freight over the Siskiyou Mountains, and over the Sierra Nevada Range. It necessitates hauling all empties north to a greater or less extent. It involves a more costly service and a longer route.

Mr. COTTON: How much longer is the route via Sacramento than it is via Huntington?

Mr. MILLER: From Portland to Oregon it is about six or seven hundred miles farther by Sacramento.

Mr. COTTON: How far is it from here to Sacramento?

Mr. MILLER: It is 682 miles.

Mr. COTTON: How far is it from Sacramento to Ogden?

Mr. MILLER: About 800 miles.

Mr. STUBBS: Call it 700 miles.

Mr. COTTON: That makes how many miles that way?

Mr. MILLER: That is 682 plus 700 would be 1382 miles. The difference from Portland to Ogden via Huntington is 885 miles.

943 Mr. COTTON: It is about 500 miles farther the other way.

Mr. MILLER: Yes sir.

Mr. COTTON: What is the character of the pull down here in the Valley; that is pretty hilly isn't it, up and down and over the mountains.

Mr. MILLER: No that is a very good route; it is down grade to Portland.

Mr. COTTON: A cheap haul isn't it?

Mr. MILLER: Yes sir.

Mr. COTTON: You have an increase of 10%; that is, the Southern Pacific did as allowing the freight to come this way?

Mr. MILLER: Yes.

Mr. COTTON: That is, over the old rates. Now, these old rates had prevailed how many years—that old Division?

Mr. MILLER: Oh, a great many years. I think those were the percentages when the through rates via Portland were originally established?

Mr. COTTON: It would look very much as if Mr. Stubbs had made a very good trade for the Southern Pacific, wouldn't it?

Mr. MILLER: I think he made a very good trade for the Southern Pacific.

Mr. COTTON: That is, assuming that Mr. Sproule did not really represent the Southern Pacific and that Mr. Campbell did not really represent the Union Pacific.

Mr. MILLER: Yes sir.

Mr. COTTON: Did the O. R. & N. receive some benefits as the results of this?

Mr. MILLER: It did, very material benefits.

Mr. COTTON: What were the benefits.

Mr. MILLER: Additional traffic.

Mr. COTTON: The O. R. & N. got additional business by way of the Huntington gateway.

Mr. MILLER: Yes.

944 Mr. COTTON: Did they receive any additional benefit as the result of having all of these east of Omaha agents routing for the Line?

Mr. MILLER: They did.

Mr. COTTON: Did you have other competitors there in the way of Northern Pacific and Great Northern, who have now practically ceased in engaging in that business?

Mr. MILLER: We did; the Northern Pacific have not ceased engaging in the business however.

Mr. COTTON: I mean are they getting much out of it?

Mr. MILLER: No, they are not getting a great deal of it.

Mr. COTTON: Do you know about what percentage of business the Sacramento Route ever took from the Willamette Valley and Portland, or do you know?

Mr. MILLER: I do not know, but it was a very small proportion.

Mr. COTTON: You are still engaged in business with the D. & R. G.; that gateway is open via Huntington is it not?

Mr. MILLER: Yes.

Mr. COTTON: But during the last year about how much business have you received over the D. & R. G. Lines? I mean during the year 1905?

Mr. MILLER: During the year 1905 we received via Rio Grande Western lines about 9,000 tons.

Mr. COTTON: How much did you deliver to them?

Mr. MILLER: We delivered to the Rio Grande lines 110,000 tons.

Mr. COTTON: What is the distance from New York to Portland via the Sunset Gulf Route?

Mr. MILLER: Approximately 5000 miles.

Mr. COTTON: What is the distance from New York to Portland via the Missouri River route?

Mr. MILLER: About 3200 miles.

Mr. COTTON: What is the distance from Chicago to New Orleans via Southern Pacific and then the Illinois Central north or by any other road that may run north?

945 Mr. MILLER: You mean Chicago to San Francisco?

Mr. COTTON: No I mean from Chicago to Portland via New Orleans.

Mr. MILLER: From Chicago to Portland via New Orleans is substantially 4,300 miles.

Mr. COTTON: What is it via Texas points?

Mr. MILLER: What Texas points?

Mr. COTTON: El Paso.

Mr. MILLER: I do not know what that distance is.

Mr. COTTON: What is the distance from Chicago to Portland via Missouri River lines?

Mr. MILLER: It is 2300 miles.

Mr. COTTON: After the stuff got to Ogden via the Sacramento line, were there any other or different lines to interchange business with at Ogden than there is if the stuff reaches Ogden via the Huntington lines?

Mr. MILLER: No sir.

Mr. COTTON: Identically the same roads to interchange with.

Mr. MILLER: Yes sir.

Mr. COTTON: And identically the same conditions present.

Mr. MILLER: Yes sir.

Mr COTTON: So that the closing up of the Sacramento route simply involved a choice as to how the stuff would move from Portland to Ogden.

Mr. MILLER: That is correct.

Mr. COTTON: Over the Southern Pacific in the one case, or the Oregon Short Line in the other.

Mr. MILLER: Yes sir.

Mr. COTTON: And now it is just as free to move from Ogden over any route as it ever was?

Mr. MILLER: Yes sir.

Mr. COTTON: I mean from Ogden east.

Mr. MILLER: Yes sir.

Mr. SEVERANCE: But not from Ogden west.

Mr. COTTON: From Ogden west you have no tariff via Sacramento, nor have you any tariff from here via Sacramento?

Mr. MILLER: That is correct.

946 Mr. COTTON: But it is just as free to reach your line via Ogden from the east by any route and thence to come via Huntington as it ever was to reach Ogden and then come out via Sacramento, is it not?

Mr. MILLER: Yes.

Mr. COTTON: Mr. Miller, all of the distributive business in the Willamette Valley is taken from what point; that is what jobbing point?

Mr. MILLER: Almost entirely from Portland.

Mr. COTTON: The rate adjustment is such that Portland even sells San Francisco products and California products in the Willamette Valley to the exclusion of San Francisco jobbers?

Mr. MILLER: Yes.

Mr. COTTON: Then practically for all of this Willamette Valley country Portland has been for years the distributing center.

Mr. MILLER: Yes sir.

Mr. COTTON: For example, I believe that you have a rate on Sugar into Portland of 15 cents a hundred.

Mr. MILLER: I think so. I think that is the rate by rail.

Mr. COTTON: And the rate by rail from here—the rate by rail from San Francisco to Ashland is what?

Mr. MILLER: About 65 or 70 cents a hundred; but it is more than that. The rate from Portland is about 60 or 70 cents a hundred. The rate from San Francisco must be 80 cents a hundred. The rate from San Francisco to Ashland would be the rate from San Francisco to Portland plus the rate from Portland to Ashland.

Com'r LANE: These rates to Portland are fixed by water competition?

Mr. MILLER: Yes sir.

Com'r LANE: How effective is that now?

Mr. MILLER: How effective is the water competition?

Com'r LANE: Yes.

Mr. MILLER: Well there has always been more or less competition by steamer between San Francisco and Portland and there is today.

947 Com'r LANE: How many boats run regularly between San Francisco and Portland?

Mr. MILLER: There is the San Francisco and Portland Steamship Company and there are other steamers engaged on the route; the steamer Roanoke, and I think the steamer Elder is now on there, and there are one or two others whose names I don't now recall.

Com'r LANE: How far up the Willamette do these boats run from Portland?

Mr. MILLER: The boats navigate as far as Corvallis when the water will permit.

Com'r LANE: Do you get your terminal rate from San Francisco to Portland; that is, from places that are further up the Willamette?

Mr. MILLER: No sir.

Com'r LANE: This is the only center at which you recognize water competition?

Mr. MILLER: Yes sir.

Mr. COTTON: You spoke about the "Elder." Is that the "Elder" that was formerly operated by the O. R. & N.

Mr. MILLER: Yes sir.

Mr. COTTON: One of the boats which we lost?

Mr. MILLER: Yes sir.

Mr. COTTON: Mr. Miller, you know of no limitation other than shipping by the Sunset Route upon the movement of traffic, do you?

Mr. MILLER: That is all.

Mr. COTTON: I mean the Sacramento-Ogden route?

Mr. MILLER: The Sacramento route is all.

Mr. COTTON: But you don't retard the movement of it in any way whatsoever so far as the shipper is concerned?

Mr. MILLER: No sir.

Mr. COTTON: In regard to this D. & R. G. movement of company material, prior to the 29th of August what rate did you have in effect for the Rio Grande Western and the Denver & Rio Grande and the Western Pacific on company material?

Mr. MILLER: We made a rate of one-half cent a ton per
948 mile in carloads, from Portland and our Columbia River points to Huntington on company material for the Rio Grande lines.

Mr. COTTON: That rate was published, was it not?

Mr. MILLER: Yes sir.

Mr. COTTON: And filed with the Commission?

Mr. MILLER: Yes sir.

Mr. COTTON: And withdrawn on what date?

Mr. MILLER: It was withdrawn on the 28th or 29th of August last, the date the Interstate Commerce Law went into effect.

Mr. COTTON: That was under the instructions which you had as to the meaning of the word "difference"?

Mr. MILLER: No, it was not.

Mr. COTTON: Was that done supposedly by legal advice?

Mr. MILLER: Yes, sir, that was upon the advice of counsel.

Mr. COTTON: And since that the D. & R. G., and Rio Grande Western and the Western Pacific are made commercial rates?

Mr. MILLER: Yes sir.

Mr. COTTON: That is all.

Mr. SEVERANCE: Mr. Miller, you have detailed in answer to Mr. Cotton the various considerations moving to and fro, certain in favor of the O. R. & N. and certain in favor of the Southern Pacific, in connection with the closing of the Sacramento route. Now you think, taking it by — and large, what the Southern Pacific gains in one way and the Oregon Railroad and Navigation Company gains in another way, that it is a pretty fair trade, do you?

Mr. MILLER: Yes, I do.

Mr. SEVERANCE: You think Mr. Stubbs made a fair trade for his company?

Mr. MILLER: I don't know that Mr. Stubbs made it.

Mr. SEVERANCE: Well assuming that he did.

Mr. MILLER: Assuming that he did, it was a good trade.

Mr. SEVERANCE: But you think, don't you, that it would
949 be a very good thing if all the railroads could trade off business in that way in consideration of traffic they were to get in another direction?

Mr. MILLER: I can't answer that question.

Mr. SEVERANCE: Well as a general rule that is a pretty good way to do business, isn't it?

Mr. MILLER: It depends altogether on the trade and the conditions of the trade.

Mr. SEVERANCE: That trade involves practically the same conditions as pooling the business, and giving up one thing and taking another?

Mr. MILLER: No, I don't think it does.

Mr. SEVERANCE: That is to say, you give the O. R. & N. some traffic and the O. R. & N. gives you a little additional division on the part of the traffic?

Mr. MILLER: Yes, but the O. R. & N. does not get all the business.

Mr. SEVERANCE: No, that is unfortunate. You stated in answer to Mr. Cotton that there were a lot of very active energetic men here soliciting business for the lines East of Omaha. I have forgotten what adjectives Mr. Cotton applied to them, but they were very active men, and you were asked if you were not anxious to please those gentlemen who were soliciting business in the Willamette Valley, and you said you were, and that is true, isn't it?

Mr. MILLER: Yes.

Mr. SEVERANCE: But that business that they got goes East over the O. R. & N., doesn't it?

Mr. MILLER: Not necessarily

Mr. SEVERANCE: What way does it go? How can they get business East of Omaha unless it goes over the O. R. & N.?

Mr. MILLER: Handle it in connection with the Northern Pacific.

Mr. SEVERANCE: It would be rather a round-about way to take the business by the Northern Pacific to St. Paul and switch it to another road and carry it back down to Omaha?

950 Mr. MILLER: It would not necessarily have to go via St. Paul; it might go via Billings.

Mr. SEVERANCE: But Mr. Cotton was asking you about lines centering in Omaha, connecting with the Union Pacific in Omaha?

Mr. MILLER: Yes sir, that is right.

Mr. SEVERANCE: You say you are anxious to please these gentlemen and glad to see them get business?

Mr. MILLER: Yes sir, indeed.

Mr. SEVERANCE: And carry it East over the O. R. & N.?

Mr. MILLER: Yes.

Mr. SEVERANCE: You stated further in your examination, in answer to Mr. Cotton, that those gentlemen were in effect rivals of the Sunset Route?

Mr. MILLER: Yes sir.

Mr. SEVERANCE: You are an officer of the Sunset Route, are you not?

Mr. MILLER: Yes.

Mr. SEVERANCE: How is it then that you, as an officer of the Sunset Route, can enjoy this success of the gentlemen in getting the business as rivals of the Sunset? Can you explain that?

Mr. MILLER: Well these gentlemen represent lines which are also represented by gentlemen of probably equal ability in the East. They are soliciting business for other lines as against the Sunset Route

Mr. SEVERANCE: And you look on them with complacency and pleasure too? Rather glad to have their friendship; anybody who hates the Sunset Route is your friend; is that right?

Mr. MILLER: Yes, I would be very glad to have him with me on my staff if he would only continue to talk it.

Mr. SEVERANCE: And that is so in spite of the fact that you are general freight agent of the Sunset Route, and have defined the duties of a general freight agent as securing business and revenue for his road? That is so, is it, Mr. Miller?

Mr. MILLER: Well you must not refer to me as general
951 freight agent of the Sunset Route, because I only represent a very small part of it.

Mr. SEVERANCE: It runs clear down to California?

Mr. MILLER: Well, I only have jurisdiction over 341 miles of it.

Mr. SEVERANCE: Well sir, I think you ought to have more.

Mr. MILLER: Thank you.

Mr. SEVERANCE: And I hope you will get it.

Mr. MILLER: I hope you can arrange it so that I will.

Mr. SEVERANCE: I will use my influence with Mr. Stubbs. That is all.

Mr. COTTON: Mr. Miller, you have no jurisdiction and do not represent the Sunset Route any further South than Ashland?

Mr. MILLER: That is all; that is as far as my jurisdiction goes.

Mr. COTTON: And you don't represent the Sunset Route at all, so-called, because that commences South of San Francisco.

Mr. MILLER: I only represent it as being a part of the Southern Pacific Company.

Mr. COTTON: You work your business in your own jurisdiction as best you can, don't you?

Mr. MILLER: Yes sir.

Mr. COTTON: And as far as your individual road is concerned, that is, the road which is under your jurisdiction, this agreement is very greatly to your advantage, isn't it?

Mr. MILLER: Yes sir, very greatly to our advantage.

Mr. COTTON: And is not the effect of this whole arrangement to send traffic along the best route and along the line of least resistance?

Mr. MILLER: Yes sir, and very much in the public interest.

Mr. COTTON: That is all.

Mr. SEVERANCE: Then this "divvy" was made in the public interest chiefly, was it; is that right?

Mr. MILLER: I don't know whether the public got any
952 part of the "divvy" or not, but I regard it very much to their interest to have the freight move by the lines of least resistance, by the shortest and best route.

Mr. SEVERANCE: That is, you think it is to the interest of the public to move their traffic out of Portland over the O. R. & N., don't you?

Mr. MILLER: Modesty prevents me from answering that question.

Com'r LANE: We will not have any more of these pleasantries. If you have any further testimony to introduce you will proceed with its introduction.

Mr. SEVERANCE: In view of the admissions made by Mr. Miller, it is entirely unnecessary to call the other witnesses, of which I have

a number, because he has admitted all that we wish to prove. That is all with you, Mr. Miller.

Witness excused.

Com'r LANE: Mr. Cotton, have you any witnesses that you desire to examine?

Mr. COTTON: No sir.

Com'r LANE: This hearing is adjourned until next Tuesday morning at ten o'clock in the Appellate Court Room at San Francisco.

953 SAN FRANCISCO, CALIFORNIA,
TUESDAY, *January* 29, 1907—10 a. m.

Present: Commissioner Franklin K. Lane.

Appearances.

C. A. Severance, Esq., for the Interstate Commerce Commission.
R. S. Lovett, Esq., and Peter F. Dunne, Esq., for the Railroad Companies.

Commissioner LANE: We will resume this morning the inquiries as to the relations existing between the Union Pacific Railway Company, the Oregon Railway and Navigation Company, the Oregon Short Line, and the Southern Pacific Company, and the effect of the consolidation, if any. Mr. Severance will represent the Commission, and Judge Lovett and Mr. Dunne will represent the Southern Pacific and allied companies. Are you ready to proceed?

Mr. SEVERANCE: We are ready. I promised Mr. John D. Spreckels yesterday that I would call him first. I suppose he will be here in a moment. He is not very well and wants to leave the city, and I agreed to call him as the first witness.

Commissioner LANE: It is now 10 minutes after 10 o'clock, and I think you had better put on another witness.

Mr. DUNNE: We will have no objection to your withdrawing your first witness and putting on Mr. Spreckels whenever he may arrive.

Mr. SEVERANCE: Very well. I will call Mr. Payson.

A. H. PAYSON, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Payson, where do you live?

Mr. PAYSON: I live in San Mateo.

Mr. SEVERANCE: And what is your business?

954 Mr. PAYSON: I am Assistant to the President of the Santa Fe.

Mr. SEVERANCE: How long have you occupied that position, Mr. Payson?

Mr. PAYSON: I think four years; I don't remember exactly the date of my appointment to that office. I was in the employ of the Santa Fe before that.

Mr. SEVERANCE: What in a general way are your duties?

Mr. PAYSON: My duties have been practically limited to the acquisition of terminals in San Francisco by the Santa Fe Company, and its general relations with the public in the matter of Franchises.

Mr. SEVERANCE: Have you had anything to do with traffic?

Mr. PAYSON: Nothing whatever.

Mr. SEVERANCE: Who is the representative of the Santa Fe here in regard to traffic?

Mr. PAYSON: Mr. W. A. Bissell.

Mr. SEVERANCE: Mr. W. A. Bissell you say, Mr. Payson?

Mr. PAYSON: Mr. W. A. Bissell, and now—Mr. W. A. Bissell for both freight and passenger, and Mr. Chambers for freight traffic.

Mr. SEVERANCE: Mr. Bissell is what? What is his title?

Mr. PAYSON: W. A. Bissell, assistant traffic manager.

Mr. SEVERANCE: I am informed that an effort was made to serve a subpœna on Mr. Chambers to appear here, but we are informed he is out of the city. Do you happen to know where Mr. Bissell is in the city?

Mr. PAYSON: Mr. Bissell is in the city.

Mr. SEVERANCE: I suppose we could get him on the telephone, then?

Mr. PAYSON: I think so.

Mr. SEVERANCE: Now, Mr. Payson, you say that your duties have largely been confined to the acquisition of terminals in about San Francisco Bay, do I understand?

Mr. PAYSON: Yes.

955 Mr. SEVERANCE: And you have had nothing whatever to do with traffic?

Mr. PAYSON: Nothing whatever.

Mr. SEVERANCE: And are not consulted about traffic at all?

Mr. PAYSON: And not consulted about traffic, no.

Mr. SEVERANCE: We were informed that you were, by some one at your office. Mr. Payson, you are one of the incorporators, I believe, of the Northwestern Pacific—is that the title?

Mr. PAYSON: Northwestern Railroad Company.

Mr. SEVERANCE: Northwestern what?

Mr. PAYSON: Railroad Company.

Mr. DUNNE: If you will pardon me, it is the Northwestern Pacific Railroad Company.

Mr. SEVERANCE: The Northwestern Pacific Railroad Company, yes.

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: And that company was formed by whom?

Mr. PAYSON: It was formed by the Atchison and Southern Pacific Companies, holding the stock as owners.

Mr. SEVERANCE: What is the capital stock of the Northwestern Pacific Company?

Mr. PAYSON: Thirty-five millions of dollars.

Mr. SEVERANCE: And in what proportions do the two corporations you have mentioned own that stock?

Mr. PAYSON: It is equally divided.

Mr. SEVERANCE: Prior to the incorporation of the Northwestern

Pacific, did the Santa Fe have any railroad lines off to the north and west of San Francisco?

Mr. PAYSON: It did.

Mr. SEVERANCE: Will you state what those lines were and where they ran?

Mr. DUNNE: At this time you refer to the Northwestern Pacific?

Mr. SEVERANCE: Yes.

Mr. PAYSON: It had a line of railway running from Arcata, which is nine miles north of Eureka, in California, southwardly
956 through Eureka, to a point on the Eel River south of Eureka about forty-three or forty-four miles, as I recollect, from its point of origin.

Mr. SEVERANCE: When was that line of road built?

Mr. PAYSON: I don't know when it was built. It was already built when it was acquired by the Santa Fe.

Mr. SEVERANCE: When was it acquired by the Santa Fe?

Mr. PAYSON: I can't give you that information; I would not like to answer that offhand.

Mr. SEVERANCE: I don't care about the exact date. Give me about the date.

Mr. PAYSON: I think about four or five years ago.

Mr. SEVERANCE: Four or five years ago?

Mr. PAYSON: I think so.

Mr. SEVERANCE: What are the connections at present, if any, of this line of road running from Arcata through Eureka and to the south?

Mr. PAYSON: It has no connections except with—there is a physical connection at Arcata with a road called—something—Mad River Road, I think, which is practically a logging road running up the Mad River. That is all.

Mr. SEVERANCE: This road, as I understand you, is a little over fifty miles long?

Mr. PAYSON: About that—less than fifty.

Mr. SEVERANCE: Do you know by whom it was built?

Mr. PAYSON: It was built by several people in Eureka. Prominent among them were Mr. John Vance and Mr. William Carson.

Mr. SEVERANCE: Has the Santa Fe been operating this road since it was built?

Mr. PAYSON: Ever since it was acquired.

Mr. SEVERANCE: I mean since it was acquired by it?

Mr. PAYSON: Since it was acquired, yes.

Mr. SEVERANCE: What is the nature of the traffic tributary to that road?

Mr. PAYSON: Mainly lumber, forest products, with some
957 dairy products from the Eel River Valley. It also does a large, or relatively large, passenger business; there is a good deal of travel on it.

Mr. SEVERANCE: This passenger business is in and out of Eureka, is it?

Mr. PAYSON: The passenger business is in and out of Eureka to the various mills, and to the Eel River Valley, which is a thriving agricultural settlement.

Mr. SEVERANCE: And where was that built?

Mr. PAYSON: That was built on the southern end, an extension on the southern end towards San Francisco, along the line that will ultimately be built, and it was built to get into another body of timber which was owned by the Scotia Mill.

Mr. SEVERANCE: To what point do you transport these various products and lumber over the line of this road?

Mr. PAYSON: We transport logs to the mills, and lumber to the landings.

Mr. SEVERANCE: What landings?

Mr. PAYSON: There is one important landing at what is known as South Bay, which is about nine miles south of Eureka; and the wharves in Eureka themselves. Those are the principal landings.

Mr. SEVERANCE: And from these wharves in Eureka, and this other place called South Bay, to what points is the lumber distributed?

Mr. PAYSON: Well, it goes to San Francisco, it goes to Australia, and it goes to China. We have nothing to do with it after it goes to the wharves.

Mr. SEVERANCE: I understand. Are there lines of ships running to Eureka that take this lumber?

Mr PAYSON: There are frequent steamers to Eureka, between Eureka and San Francisco.

Mr. SEVERANCE: And between Eureka and Australia?

Mr. PAYSON: That is an incidental traffic, done in sailing vessels of small size that come in there for orders. It is not a regular line.

958 Mr. SEVERANCE: Then the bulk of the lumber, I take it, comes down to San Francisco. Is that right?

Mr. PAYSON: I think the bulk of it does.

Mr. SEVERANCE: And from San Francisco is it further transported over rail lines?

Mr. PAYSON: Yes. I can't give you any figures about that. Some of it goes east, but a comparatively small amount, as I understand it. The bulk of it is, I think for California consumption, and is distributed from San Farncisco.

Mr. SEVERANCE: But some of it goes to the east?

Mr. PAYSON: Some of it, but not very much.

Mr. SEVERANCE: Over what lines or road does it move to the east from San Francisco?

Mr. PAYSON: Well, it is moved by any line after it gets to San Francisco. I don't know about the subdivision of it.

Mr. SEVERANCE: There are only two lines from San Francisco east?

Mr. PAYSON: Only two lines.

Mr. SEVERANCE: It is moved by either of the two lines?

Mr. PAYSON: It is moved by either line.

Mr. SEVERANCE: Either the Southern Pacific or the Santa Fe?

Mr. PAYSON: Either the Southern Pacific or the Santa Fe, yes.

Mr. SEVERANCE: What is the name of this corporation that owns this fifty mile road?

Mr. PAYSON: Since the incorporation of the Northwestern Pacific Railroad Company——

Mr. SEVERANCE (int'g): I don't mean the Northwestern Pacific, but what was the name of the corporation that owned it when the Santa Fe acquired its stock?

Mr. PAYSON: The bulk of it was owned by what was called the Eel River & Eureka Railroad.

Mr. SEVERANCE: By the Eel River & Eureka Railroad?

959 Mr. PAYSON: The Eel River & Eureka Railroad, yes.

Mr. SEVERANCE: By what corporation was the balance of it owned?

Mr. PAYSON: The balance of it was owned by the owners of the Eel River & Eureka, but under different names; they had formed some smaller corporations and built extensions.

Mr. SEVERANCE: Did the Eel River and Eureka Road, or any of these other smaller corporations, acquire the stock or that logging road that you spoke of that ran up the Eel River?

Mr. PAYSON: No sir.

Mr. SEVERANCE: That is separate, is it?

Mr. PAYSON: That is separate now.

Mr. SEVERANCE: That belongs to some other lumber company?

Mr. PAYSON: That belongs to some other lumber company? I think they call it the Arcata & Mad River, but I am not quite sure.

Mr. SEVERANCE: Mr. Payson, I think by consent of counsel, if you do not mind, we will ask you to step aside for a few moments and let me examine Mr. Spreckels. He has come in now, and I promised to call him first.

Mr. A. H. Payson was then temporarily withdrawn from the witness stand.

JOHN D. SPRECKELS, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Spreckels, what is your full name?

Mr. SPRECKELS: John D.

Mr. SEVERANCE: And you live in San Francisco?

Mr. SPRECKELS: I do.

Mr. SEVERANCE: And have for a good many years?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: Are you a member of the firm or corporation, whichever it may be, of John D. Spreckels Brothers' Company?

960 Mr. SPRECKELS: Yes, sir. I am president of the Company.

Mr. SEVERANCE: Its corporate name is John D. Spreckels & Brothers——

Mr. SPRECKELS: Company.

Mr. SEVERANCE: Company?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: It appeared, Mr. Spreckels, at the hearing of this matter in New York, by the introduction of a resolution from the minutes of the Executive Committee of the Southern Pacific Railroad Company, that on the 23rd of July, 1906, Mr. Harriman, the Chairman of the Board, reported to the Committee that he had

purchased from J. D. Spreckels & Brothers Company for the sum of thirteen hundred thousand dollars, all of the property of the Coos Bay, Roseburg & Eastern Railroad & Navigation Company, the Coos Bay & Coquille Valley Railroad Company, including coal lands in Beaver Hill—I think it should be, although it says here Fibre Hill——

Mr. SPRECKELS: It is Beaver Hill.

Mr. SEVERANCE (cont'g): —Alluvial Hard Coal Company, with their machinery, buildings, dockage, coal bunkers at San Francisco and docks, coal bunkers, water front property, and terminal lots at Marshfield, and all property complete, in that country, which belongs to J. D. Spreckles & Brothers Company, and the entire company, including all bonds, to be delivered under the guaranty of J. D. Spreckels, free and clear of all incumbrances and liabilities. And the action of the President, Mr. Harriman, in authorizing that purchase was approved. You are familiar with that transaction, are you, Mr. Spreckels?

Mr. SPRECKELS: I am.

Mr. SEVERANCE: And also with the property that J. D. Spreckels & Brothers Company sold to the Southern Pacific?

Mr. SPRECKELS: Well, in a general way only. I have never been to the property and visited it myself.

961 Mr. SEVERANCE: What member of your corporation is familiar with it, Mr. Spreckels?

Mr. SPRECKELS: Mr. Samuels, Mr. F. S. Samuels.

Mr. SEVERANCE: Mr. F. S. Samuels?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: Is he in the City?

Mr. SPRECKELS: He is in the City; yes, sir.

Mr. SEVERANCE: How many years, Mr. Spreckels, has your company been interested in that property?

Mr. SPRECKELS: Well, I would not be positive as to that; ten or fifteen.

Mr. SEVERANCE: You say that in a general way you are familiar with the property. In what does it consist?

Mr. SPRECKELS: Coal Mines, a Railroad, and steamship lines.

Mr. SEVERANCE: And steamship lines, did you say?

Mr. SPRECKELS: Yes.

Mr. SEVERANCE: Now this railroad is how long?

Mr. SPRECKELS: About 29 miles I think.

Mr. SEVERANCE: And one terminus of that road is Marshfield, on Coos Bay?

Mr. SPRECKELS: No, sir; Myrtle Point.

Mr. SEVERANCE: Myrtle Point?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: But it passes through Marshfield?

Mr. SPRECKELS: It passes through Marshfield; yes, sir.

Mr. SEVERANCE: And Marshfield is the principal town on Coos Bay, is it not?

Mr. SPRECKELS: Yes sir, I think so.

Mr. SEVERANCE: And where, in a general way, that is, into what kind of country does the little railroad run?

Mr. SPRECKELS: It runs through a timber country and into the coal fields.

Mr. SEVERANCE: Is there any agricultural country tributary to it?

Mr. SPRECKELS: Yes, I believe there is.

962 Mr. SEVERANCE: And are the products of that agricultural country marketed over this railroad and in those steamships?

Mr. SPRECKELS: Yes sir, and brought by steamer down to San Francisco. It is principally coal, however; some lumber.

Mr. SEVERANCE: Coal and lumber.

Mr. SPRECKELS: Yes, and they have some dairy products.

Mr. SEVERANCE: Mr. Spreckels, what are the names of the ships owned by this company?

Mr. SPRECKELS: One is called the "Breakwater" and the other is called the "Czarina".

Mr. SEVERANCE: What is the tonnage capacity of the "Breakwater"?

Mr. SPRECKELS: The "Breakwater" will carry about 600 tons—that is her capacity in coal.

Mr. SEVERANCE: I beg your pardon?

Mr. SPRECKELS: She is a passenger steamer and——

Mr. SEVERANCE: The "Breakwater" is a passenger steamer?

Mr. SPRECKELS: Yes, sir. The other, the "Czarina," carries about 1400 tons. She is a collier.

Mr. SEVERANCE: Mr. Spreckels, does the "Breakwater" also carry freight?

Mr. SPRECKELS: Yes sir, she carries freight.

Mr. SEVERANCE: Carried freight and passengers?

Mr. SPRECKELS: Yes sir, both.

Mr. SEVERANCE: What is her capacity as far as carrying passengers is concerned?

Mr. SPRECKELS: She will carry about 48 passengers.

Mr. SEVERANCE: 48 you say?

Mr. SPRECKELS: 48 passengers, yes sir.

Mr. SEVERANCE: Between what ports have these boats been plying?

Mr. SPRECKELS: The "Breakwater" has been plying between Coos Bay and San Francisco.

Mr. SEVERANCE: Between what points?

Mr. SPRECKELS: Coos Bay and San Francisco. And the "Czarina" has plied between other ports as well.

963 Mr. SEVERANCE: What ports?

Mr. SPRECKELS: At a time when we could not get our sufficient quantity of coal to give her a cargo, we would divert her and send her to Portland for a cargo of wheat, for instance.

Mr. SEVERANCE: And she would stop in going down the coast, whereabouts?

Mr. SPRECKELS: I say she went up to Portland, for instance.

Mr. SEVERANCE: So that the "Czarina" has been plying between Portland and San Francisco, and between intermediate ports?

Mr. SPRECKELS: No sir, not between Portland and San Francisco

and intermediate ports. She would go from Coos Bay to Portland——

Mr. SEVERANCE: She would go from Coos Bay to Portland, you say?

Mr. SPRECKELS: Yes.

Mr. SEVERANCE: And then from Portland, where would she go? Would she come to San Francisco from Portland?

Mr. SPRECKELS: Yes, come to San Francisco.

Mr. SEVERANCE: That is, if I now understand you, she would go up to Coos Bay, and then go to get a load of grain at Portland and bring it from Portland down to San Francisco?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: Has the "Breakwater" ever been up to Portland?

Mr. SPRECKELS: No, sir, she has never been diverted from the regular route.

Mr. SEVERANCE: Her regular route is from Coos Bay to San Francisco?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: And how many years has she been in service, Mr. Spreckels—in that service, I mean?

Mr. SPRECKELS: About two years, I think.

Mr. SEVERANCE: About two years?

Mr. SPRECKELS: Yes, sir, possibly three.

Mr. SEVERANCE: How is that?

964 Mr. SPRECKELS: I say possibly three.

Mr. SEVERANCE: And how long has the "Czarina" been in that service?

Mr. SPRECKELS: She has been in that service for a longer period, probably ten years.

Mr. SEVERANCE: Ten years?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: What was the cost of the "Breakwater," Mr. Spreckels?

Mr. SPRECKELS: Well, I could not tell you, offhand. The "Breakwater" would cost about $75,000.

Mr. SEVERANCE: About $75,000?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: And the "Czarina," how much?

Mr. SPRECKELS: Well, she would cost about $50,000.

Mr. SEVERANCE: About $50,000?

Mr. SPRECKELS: Yes, sir. We bought them as second hand boats.

Mr. SEVERANCE: They were second hand when you bought them?

Mr. SPRECKELS: Yes, sir. We bought a lot from the east—they were eastern boats.

Mr. SEVERANCE: What was the return cargo of the boats running up to Coos Bay?

Mr. SPRECKELS: They were principally engaged in moving coal.

Mr. SEVERANCE: I mean the return cargo, from here to Coos Bay?

Mr. SPRECKELS: General merchandise.
Mr. SEVERANCE: General merchandise?
Mr. SPRECKELS: Yes.
Mr. SEVERANCE: How large a town is Marshfield?
Mr. SPRECKELS: I could not say as to that. I have never been there.
Mr. SEVERANCE: Oh, you have never been there?
Mr. SPRECKELS: No, sir.
Mr. SEVERANCE: Has Marshfield any other direct outlet at present than your steamship line?

Mr. SPRECKELS: No, sir. That is about the only outlet
965 she has. There are other steamers from time to time go in there and take passengers.

Mr. SEVERANCE: But the only regular boats were yours?
Mr. SPRECKELS: Yes sir, regular boats, and then the one belonging to Goodall, Perkins & Company—they had a boat running there, and have still, I think.
Mr. SEVERANCE: From what point?
Mr. SPRECKELS: From San Francisco to Coos Bay.
Mr. SEVERANCE: Do you know the name of that boat?
Mr. SPRECKELS: I think it is called the steamer "Plant."
Mr. SEVERANCE: The steamer "Plant?"
Mr. SPRECKELS: Yes, sir.
Mr. SEVERANCE: She is still running there, is she?
Mr. SPRECKELS: I think so, yes.
Mr. SEVERANCE: Mr. Spreckels, how far is it from Roseburg to Coos Bay?
Mr. SPRECKELS: I think about 90 miles.
Mr. SEVERANCE: I notice the name of this corporation is the Coos Bay, Roseburg & Eastern Railroad Company.
Mr. SPRECKELS: Yes, sir.
Mr. SEVERANCE: Did you build the road?
Mr. SPRECKELS: I did not, no sir.
Mr. SEVERANCE: Who built it?
Mr. SPRECKELS: A man by the name of Graham. He came to me at the beginning—he came to see us, the firm, to negotiate the purchase of some rails. He then made a noise like an honest man, and I let him have the rails. If I had required more from him, I probably would not have been able to sell the road to the Southern Pacific, or to anybody else.
Mr. SEVERANCE: I did not hear that last statement.
Mr. SPRECKELS: I said if I had required more than a noise, I would not have had the road to sell.

Mr. SEVERANCE: If you had required more than what?
966 Mr. SPRECKELS: A noise. They say making a noise like so and so. I said he made a noise like an honest man.

Mr. SEVERANCE: I judge from your remark that Mr. Graham and yourself are not on the best of terms.
Mr. SPRECKELS: No. sir. I have no use for him.
Mr. SEVERANCE: He built the road. That is all I care about. He built the road, did he?

Mr. SPRECKELS: Yes, sir, he built the road.
Mr. SEVERANCE: And it afterwards came into your possession?
Mr. SPRECKELS: Yes, sir.
Mr. SEVERANCE: And there were some coal properties there?
Mr. SPRECKELS: Coal properties, yes sir.
Mr. SEVERANCE: What kind of coal?
Mr. SPRECKELS: It it lignite.
Mr. SEVERANCE: And the boats bring that down——
Mr. SPRECKELS: To the market here.
Mr. SEVERANCE: To the markets?
Mr. SPRECKELS: Yes, sir.
Mr. SEVERANCE: Who conducted the negotiations with Mr. Harriman for the sale of this property to him?
Mr. SPRECKELS: It was not conducted with Mr. Harriman directly. It was through an intermediary, Mr. Smith—Mr. James Smith.
Mr. SEVERANCE: Who is Mr. James Smith?
Mr. SPRECKELS: He is the President, I think, of the Western Fuel Company. I don't know whether he has any middle name or not.
Mr. SEVERANCE: And with whom did Mr. Smith have his dealings?
Mr. SPRECKELS: With myself, and also with my brother. I felt at the time that he was negotiating for the Southern Pacific, because at the time that Mr. Collis P. Huntington was still alive, they were then looking into the proposition of acquiring the road, because they wished to overcome the grades on the Shasta Mountains, rather than haul the wheat, as they did, up to Port-
967 land, and then bring it down by steamer, that they could cut off about 300 miles up and 300 miles back, or 600 miles in all, by going into Coos Bay. And they having, as I say, during the lifetime of Mr. Huntington, looked into the proposition, and we supplied them with the surveys and different things, and a list of the property that we had, and then the negotiations were never concluded because Mr. Huntington died about that time—for that reason I thought it was the Southern Pacific Company that were negotiating for the property.
Mr. SEVERANCE: Were the negotiations resumed several years ago, or only a short time before the acquisition of the property?
Mr. SPRECKELS: Well, it was last summer—it was not concluded, a payment was to be made for the property on the day of the catastrophe last year, at 10 o'clock that morning, and of course the catastrophe knocked everything out.
Mr. SEVERANCE: You mean the earthquake here?
Mr. SPRECKELS: Yes sir, last spring.
Mr. LOVETT: Will you read the answer of the witness as to Mr. Collis P. Huntington—in which he stated that Mr. Huntington was looking into the sale of the property.
Mr. SPRECKELS: I did not say he personally—I did not mean that.
Mr. LOVETT: For the purpose of understanding him, I would like

to have it read. I am not sure I understood him. Will you turn and read that question and that answer. He said something about a shortening of the line 300 miles. It is in reference to that inquiry.

(The answer in question repeated by the reporter.)

Mr. SPRECKELS: I would not say that they tried to overcome the grades, because they could not do it by acquiring this road—that is inaccurate.

Mr. SEVERANCE: Prior to the time that this trade was concluded, which you state was at the time of the catastrophe last spring,
968 had Mr. Harriman commenced the construction of the line of road, a connection with the Southern Pacific towards Coos Bay?

Mr. SPRECKELS: Not to my knowledge.

Mr. SEVERANCE: Did he at that time, to your knowledge, have in contemplation such a line?

Mr. SPRECKELS: Yes, sir, they proposed to build—the route was to be from Myrtile Point, I think, to Roseburg, or some other point on the——

Mr. SEVERANCE: From where?

Mr. SPRECKELS: From Myrtle Point to Roseburg.

Mr. SEVERANCE: And how far is it from Myrtle Point to Roseburg?

Mr. SPRECKELS: About 60 odd miles—69 miles, I think.

Mr. SEVERANCE: Do you happen to know, Mr. Spreckels, whether that line is under construction, or a line similar to that is now under construction?

Mr. SPRECKELS: No sir. I haven't really paid much attention for I have been really sick for the period of a year, and I didn't pay much attention as to what was going on in the way of railroad building.

Mr. SEVERANCE: These matters have been more in charge of your brother, or Mr. Samuels?

Mr. SPRECKELS: Yes sir. For one thing, after disposing of the road, I had no further interest in that.

Mr. SEVERANCE: You say the deal was to be closed the day of the——

Mr. SPRECKELS (intg.): Yes sir. The payment was to be made on that day, the day of the earthquake, and it was not made until——

Mr. SEVERANCE (intg.): But when was the trade made, Mr. Spreckels?

Mr. SPRECKELS: I think on—oh, when the trade was made? I don't know; I was sick, you know, about a year ago in July, and up to the time of the earthquake I was confined to the house, and it was prior to that time negotiations were pending, and as I said, the payment was to be made on the 18th of April, the day of the earthquake, and it was not made, I think, until some months subsequently.

969 Mr. SEVERANCE: I understand that. Do you happen to recall, Mr. Spreckels, how long prior to last spring the negotiations were commenced with Mr. Smith?

Mr. SPRECKELS: Quite a while before that. Oh, I suppose the negotiations ran over a period of six or eight months.

Mr. SEVERANCE: Ran over a period of six or eight months?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: Were those negotiations thus protracted because of discussions of the price to be paid?

Mr. SPRECKELS: Well, that had something to do with it, yes sir.

Mr. SEVERANCE: Mr. Smith first approached you or your brother, did he, with reference to the sale?

Mr. SPRECKELS: He first approached my brother, yes.

Mr. SEVERANCE: That is, the initiative did not come from you, but came from Mr. Smith?

Mr. SPRECKELS: Came from them, yes.

Mr. SEVERANCE: When did you learn for the first time that Mr. Smith represented the Southern Pacific?

Mr. SPRECKELS: Well, I had my suspicion all along that they were the ones, that the Southern Pacific wanted it, because I could see that they had need for that road.

Mr. SEVERANCE: Since the purchase by the Southern Pacific, do you happen to know whether they are running the road and the ships?

Mr. SPRECKELS: They are operating the road now.

Mr. SEVERANCE: And the ships?

Mr. SPRECKELS: Yes sir.

Mr. SEVERANCE: This resolution speaks of two railroads. One is the Coos Bay, Roseburg & Eastern Railroad & Navigation Company. The other is the Coos Bay & Coquillo Valley Railroad Company. Were there two corporations there?

Mr. SPRECKELS: Well, not to my knowledge.

970 Mr. SEVERANCE: You never heard of that last one, did you?

Mr. SPRECKELS: No sir, I never did.

Mr. SEVERANCE: What was the nature of the sale that you made. Was it the stock of the railroad, or the property?

Mr. SPRECKELS: No sir, it was a cash proposition.

Mr. SEVERANCE: I know; we understand that it was cash to you.

Mr. SPRECKELS: Yes sir.

Mr. SEVERANCE: But I mean, did you sell this property by turning over the stock, or give a deed?

Mr. SPRECKELS: The stock and bonds.

Mr. SEVERANCE: The stock and bonds?

Mr. SPRECKELS: Yes sir, and the property itself.

Mr. SEVERANCE: What was the amount of bonds?

Mr. SPRECKELS: I could not say as to that. The bonds were never issued.

Mr. SEVERANCE: They were never issued?

Mr. SPRECKELS: No sir.

Mr. SEVERANCE: Do you now recall, Mr. Spreckels, the cost of this property to you, that is, of the railroad and coal lands?

Mr. SPRECKELS: No, I could not tell you as to that. It was over a million dollars.

Mr. SEVERANCE: That is, the whole property cost over a million dollars?

Mr. SPRECKELS: Yes sir.

Mr. SEVERANCE: Do you feel very sure of that, sir?

Mr. SPRECKELS: Oh, yes.

Mr. SEVERANCE: How is that?

Mr. SPRECKELS: Yes sir, considerably more than that.

Mr. SEVERANCE: Was the operation of the boats that you have mentioned a profitable one, sir?

Mr. SPRECKELS: No sir.

Mr. SEVERANCE: It was not profitable?

Mr. SPRECKELS: It was not profitable?

Mr. SEVERANCE: Was the operation of the railroad profitable?

971 Mr. SPRECKELS: Well, yes, there was more profit in that—yes.

Mr. SEVERANCE: That is, you got in a little more than you paid out?

Mr. SPRECKELS: Yes sir.

Mr. SEVERANCE: Was the traffic large or small?

Mr. SPRECKELS: No sir, the traffic was small.

Mr. SEVERANCE: The traffic was small?

Mr. SPRECKELS: Yes sir.

Mr. SEVERANCE: Were you informed during these negotiations as to whether this line of road that the Southern Pacific contemplated building would connect with the end of this road of yours?

Mr. SPRECKELS: Yes sir, that is my understanding.

Mr. SEVERANCE: That is your understanding?

Mr. SPRECKELS: Yes sir.

Mr. SEVERANCE: So that it is really an extension of yours?

Mr. SPRECKELS: It is an extension, yes.

Mr. SEVERANCE: Are you sure about that, Mr. Spreckels?

Mr. SPRECKELS: Well, I thought it was to be an extension to Roseburg, but later I saw in some paper that they were going to some other point nearer the road.

Mr. SEVERANCE: Do you happen to know whether it is going to Myrtle Point, your terminus?

Mr. SPRECKELS: I think so, yes.

Mr. SEVERANCE: Is it a good harbor at Coos Bay?

Mr. SPRECKELS: Yes sir, a very good harbor, for light draft vessels. You could not load a vessel drawing over 15 feet there. That is the utmost you can take out of there.

Mr. SEVERANCE: Was the operations of the coal mines a profitable one?

Mr. SPRECKELS: No sir.

Mr. DUNNE: What did you say?

Mr. SPRECKELS: I said "no."

Mr. SEVERANCE: Then, as I understand it, the only self
972 sustaining part of these properties was the little railroad?

Mr. SPRECKELS: Yes sir. The profits net on the road were very small.

Mr. SEVERANCE: And the operation of the coal mines and the vessels did not prove profitable?

Mr. SPRECKELS: No sir. I had in mind or contemplated extending the road from Myrtle Point to Roseburg, so as to connect with the Southern Pacific there, and had surveys made, which surveys I think were turned over to Mr. Huntington at that time.

Mr. SEVERANCE: I did not understand that.

Mr. SPRECKELS: I turned it over to Mr. Huntington, or his representative at least, at that time.

Mr. SEVERANCE: Did you ever get them back?

Mr. SPRECKELS: I could not say. I have no use for them now, anyhow.

Mr. LOVETT: What was that?

Mr. SEVERANCE: I asked him if he got them back.

Mr. LOVETT: What?

Mr. SEVERANCE: The surveys from Myrtle Point to Roseburg. In the course of your negotiations with Mr. Smith, did you indicate to him that you had contemplated building a road over to the east?

Mr. SPRECKELS: No sir, I don't remember that.

Mr. SEVERANCE: You don't remember that you did?

Mr. SPRECKELS: No sir.

Mr. SEVERANCE: Then, as I understand you, the whole story is that you built this road, put on those steamers, did this business at the coal mine, put in a million dollars, the property was operated at a loss, Mr. Smith approached you on behalf of the Southern Pacific to buy you out and paid you $1,300,000 for it?

Mr. SPRECKELS: Yes sir, about that.

Mr. SEVERANCE: That is about the story?

Mr. SPRECKELS: That is about the story.

Mr. SEVERANCE: And the Southern Pacific have now the entire outlet into San Francisco from Oregon?

Mr. SPRECKELS: Yes sir.

973 Mr. SEVERANCE: That is all.

Mr. LOVETT: When was that road constructed? Do you remember?

Mr. SPRECKELS: I don't know just what year it was. I think about 10 or 15 years ago—as near as I can remember.

Mr. LOVETT: You said Mr. Huntington, Mr. C. P. Huntington looked into it?

Mr. SPRECKELS: Well, his representative did; I think it was Mr. Kruttschnitt.

Mr. LOVETT: Who?

Mr. SPRECKELS: Mr. Kruttschnitt.

Mr. LOVETT: You wanted to *see* the property, I presume?

Mr. SPRECKELS: I did, yes. I was glad to get rid of it.

Mr. LOVETT: I infer from the reference you have made to your sale of rails to Mr. Graham, that you got into it rather unwillingly?

Mr. SPRECKELS: Well, I had to take it over. As I say, I sold him the rails, and he could not pay for them.

Mr. LOVETT: How far is it, Mr. Spreckels, from the nearest point of that road to the Southern Pacific, the existing line?

Mr. SPRECKELS: Well, I could not say as to that. My impression

is that it is Roseburg—there may be some nearer point—about 69 miles.

Mr. LOVETT: About 69 miles?

Mr. SEVERANCE: About 65 miles?

Mr. SPRECKELS: 69 miles.

Mr. SEVERANCE: Oh, 69. Pardon me.

Mr. LOVETT: What is the character of the country between?

Mr. SPRECKELS: I have never been there and I could not tell you.

Mr. LOVETT: Have you any information on the subject?

Mr. SPRECKELS: I took so little interest in the thing that I didn't go there.

974 Mr. LOVETT: You have no information on the subject, no reports as to the character of the country?

Mr. SPRECKELS: No sir.

Mr. LOVETT: You don't know whether it is mountainous or not?

Mr. SPRECKELS: Yes sir, it is a mountainous country.

Mr. LOVETT: It is a mountainous country?

Mr. SPRECKELS: Yes sir.

Mr. LOVETT: Quite a rough country, is it not?

Mr. SPRECKELS: It is a rough country, as I have been informed, going up towards Roseburg, up through the canyon; as I understand it, there is only sufficient room for one rail.

Mr. LOVETT: For one what?

Mr. SPRECKELS: For one rail—one line of road.

Mr. LOVETT: It is a thinly populated country, is it not?

Mr. SPRECKELS: Yes sir, I think it is—well, I would not say as to that, I really don't know. I think it is thinly populated. I only judge by the travel we had on the steamers.

Mr. LOVETT: Is it not true, Mr. Spreckels, that practically the only outlet for the products and commerce of that country were by boat?

Mr. SPRECKELS: That is all, yes sir.

Mr. LOVETT: The Southern Pacific never competed in that, did they?

Mr. SPRECKELS: No sir, never got in there at all.

Mr. LOVETT: Never handled freight or passengers from the territory served by you?

Mr. SPRECKELS: No sir, except a few who had to go down on urgent business, I suppose. They would take the stage from Myrtle Point up to Roseburg, and take the train there.

Mr. LOVETT: But there is no traffic of any consequence?

Mr. SPRECKELS: Nothing of any consequence.

Mr. LOVETT: I believe that you stated that the "Breakwater" cost $75,000.

Mr. SPRECKELS: Well, thereabouts.

975 Mr. LOVETT: Thereabouts?

Mr. SPRECKELS: Yes, sir.

Mr. LOVETT: And the "Czarina" about $50,000?

Mr. SPRECKELS: About $50,000.

Mr. LOVETT: You understood the coal mines contained the principal inducement?

Mr. SPRECKELS: The coal mines were the principal property there.

Mr. LOVETT: You understood that that was the main object of the purchase, did you not, in acquiring this property?

Mr. SPRECKELS: No, sir. I thought that the Southern Pacific wanted to build a line connecting with their road, I thought at Roseburg, but I think at some other point that they wanted to connect, simply to do away with the haul of wheat from the vicinity of Roseburg, which is a very productive country, up to Portland, and then down by steamer. They could save about 600 miles, as I take it.

Mr. LOVETT: And wished to utilize this 29 miles of existing road as a part of it?

Mr. SPRECKELS: As a part. And then they had landings and wharves, and such other things as they necessarily would have to have.

Mr. LOVETT: On Coos Bay?

Mr. SPRECKELS: Yes, sir; on Coos Bay.

Mr. DUNNE: Did the Southern Pacific have some coal properties adjoining your coal properties there?

Mr. SPRECKELS: Not to my knowledge.

Mr. DUNNE: Not to your knowledge?

Mr. SPRECKELS: No.

Commissioner LANE: Is there any railroad competing with the Southern Pacific there?

Mr. SPRECKELS: No, sir.

Commissioner LANE: Did you have knowledge of any other railroad making any surveys from Eastern Oregon over into your section?

Mr. SPRECKELS: No, sir; excepting merely by rumor. I think the Rock Island proposed to build in there, but it never amounted
976 to anything. It was merely a rumor.

Commissioner LANE: No other railroad sought to buy that property from you?

Mr. SPRECKELS: No, sir.

Mr. DUNNE: Mr. Spreckels, whether the Southern Pacific Company, as a matter of fact, had or had not coal properties adjoining the coal properties connected with your road, the coal properties in that neighborhood were made accessible by this road?

Mr. SPRECKELS: Yes, sir.

Mr. DUNNE: And the facilities at the terminals?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: Mr. Spreckels, Judge Lovett asked you if there had been any competition between the Southern Pacific and your line, and you stated, I believe, that there had not?

Mr. SPRECKELS: There has not.

Mr. SEVERANCE: As soon as the Southern Pacific got its line through to Coos Bay, there would have been competition, would there not, between your boats and the trains of the Southern Pacific, necessarily?

Mr. SPRECKELS: Well, I suppose so; I don't know.

Mr. SEVERANCE: Yes. And it was a very easy way to remove your competition to take the course that was adopted, to buy you out?

Mr. SPRECKELS: I was very glad to get rid of it.

Mr. SEVERANCE: There is no doubt about that. I should think, with a losing property of that kind and $300,000 bonus on top of it, you might be glad to get rid of it?

Mr. SPRECKELS: They appeared to be more anxious to acquire it than I had to hold it.

Mr. SEVERANCE: I have no doubt whatever of that. That is all, Mr. Spreckels.

Mr. LOVETT: You were not in a position to be a very formidable competitor of the Southern Pacific, were you?

Mr. SPRECKELS: No, sir.

977 Mr. SEVERANCE: Now let us see about that, Mr. Spreckels. You were in business there?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: You had a line of boats?

Mr. SPRECKELS: Yes, sir.

Mr. SEVERANCE: Popular rumor attributes to you sufficient funds to procure more boats if they tried to run you out?

Mr. SPRECKELS: I am afraid we had too many boats as it was, and that is from the fact that we did not have enough work for the two boats we did have, and had to charter one of them to outsiders.

Mr. SEVERANCE: That is all.

A. H. PAYSON, recalled.

Mr. SEVERANCE: Mr. Reporter, will you kindly turn to Mr. Payson's testimony, and let me know the last question.

The REPORTER: "Mr. Severance: Did the Eel River & Eureka Road, or any of these other smaller corporations, acquire the stock of that logging road that you spoke of that ran up the Eel River? Mr. Payson: No, sir."

Mr. SEVERANCE: There is one question that I did want to ask Mr. Spreckels, which I forgot. You need not resume the stand, Mr. Spreckels, but you may answer from where you are. What coal bunkers in San Francisco went with this trade that you made?

Mr. SPRECKELS: Coal bunkers on the Howard Street wharf.

Mr. SEVERANCE: Did your company own the bunkers, or simply lease them—I mean own the dock?

Mr. SPRECKELS: No, the dock was owned by the State, and we had the bunkers there.

Mr. SEVERANCE: What was their value, about? Have you any idea?

Mr. SPRECKELS: No, sir; I have no idea.

Mr. SEVERANCE: And you paid a rental for the use of the docks?

978 Mr. SPRECKELS: Paid a rental for the use of the docks, yes, in addition to the regular wharfage charges and dockage charges for vessels.

Mr. SEVERANCE: Now, Mr. Reporter, what was that question again.

Mr. PAYSON: If you will allow me, I misunderstood that question. In a previous question you asked me if we had any connections, and

I said with only one foreign road, and that was the Arcata & Mad River, that made a connection, physical connection, with our tracks in Arcata.

Mr. SEVERANCE: I got the name wrong in this last question then.

Mr. PAYSON: You have got the name wrong, yes.

Mr. SEVERANCE: What is the name of it?

Mr. PAYSON: The Arcata & Mad River. That runs up the Mad River, not the Eel River.

Mr. SEVERANCE: And that road is still owned by a lumber company?

Mr. PAYSON: Still owned by a lumber company.

Mr. Payson: So that the Santa Fe's holdings are this line of road, about 51 miles of road—something like that.

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: With the connections at Eureka, and the other landings that you have mentioned?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: And that has been run for four years by the Santa Fe?

Mr. PAYSON: About.

Mr. SEVERANCE: What kind of an organization did that road have? Did you have a manager up there?

Mr. PAYSON: We had a Vice President and General Manager there, and he reported directly to me. The property was under my charge, practically.

Mr. SEVERANCE: What other railroad, if any, did the Santa Fe have which ran into the Northwestern Pacific?

Mr. PAYSON: It owned what was called the Fort Bragg and Southeastern.

979 Mr. SEVERANCE: The Fort Bragg and Southeastern?

Mr. PAYSON: Yes sir.

Mr. SEVERANCE: Where is that line located?

Mr. PAYSON: It starts from the coast at the port of Albion, and runs from there about 23 miles southerly and easterly.

Mr. SEVERANCE: How far is Albion from Eureka?

Mr. PAYSON: Oh, pretty nearly 200 miles, I should say.

Mr. SEVERANCE: Nearly 200 miles from there?

Mr. PAYSON: 200 miles, yes sir.

Mr. SEVERANCE: Further north?

Mr. PAYSON: South.

Mr. SEVERANCE: Further south, I meant to say?

Mr. PAYSON: Yes sir.

Mr. SEVERANCE: And how far is Albion from San Francisco?

Mr. PAYSON: About 80 miles, I think. Perhaps more than that—nearly 100 miles.

Mr. SEVERANCE: So that you had this line of road, commencing about 80 miles north of San Francisco?

Mr. PAYSON: Yes sir, 80 miles—more than that—perhaps nearly a hundred miles. A hundred miles say.

Mr. SEVERANCE: And running southeasterly?

Mr. PAYSON: Yes sir.

Mr. SEVERANCE: Towards San Francisco?

Mr. PAYSON: Towards San Francisco.

Mr. SEVERANCE: So the southerly terminus of this road, the Fort Bragg & Southerly, is between 75 and 80 miles north, or northwest, of San Francisco?

Mr. PAYSON: Well, the 20 miles was not directly cutting off the distance to San Francisco. The present southern terminus of the Fort Bragg & Southeastern, by the nearest way you could get to it, would be more than a hundred miles from San Francisco.

Mr. SEVERANCE: From whom did the Santa Fe people acquire the Fort Bragg & Southeastern?

Mr. PAYSON: The lumber interests that had the Albion mill.

980 Mr. SEVERANCE: And what was the purpose of that acquisition by the Santa Fe?

Mr. PAYSON: It was the nucleus of a feeder which would tap the Mendocino timber country and be tributary to San Francisco.

Mr. SEVERANCE: That is, you bought that line with the intention of making it the nucleus of a line of roads to go up from San Francisco to tap the timber country?

Mr. PAYSON: A part of line of roads to go north to tap the timber country.

Mr. SEVERANCE: And at that time the Santa Fe expected to construct that line itself?

Mr. PAYSON: It did.

Mr. SEVERANCE: Yes. And it was also contemplated by the Santa Fe, that this line, the Fort Bragg & Southeastern, would be extended farther north, to a connection with this other line that you first mentioned, called the——

Mr. PAYSON (int'g): At the time we bought the Fort Bragg & Southeastern, we had not sufficient knowledge of the country to know whether it would form part of a through line from San Francisco north to Humboldt Bay, or whether it could only be used as a feeder to such a through line. Our subsequent surveys disclosed the fact that it could not be made a part of the through line, that it could only be used as a feeder.

Mr. SEVERANCE: As a feeder?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: But the line in the north, the Arcata line, was to be part of a through line to San Francisco?

Mr. PAYSON: It was.

Mr. SEVERANCE: Did the Santa Fe own any other railroads that went into the Northwestern Pacific?

Mr. PAYSON: None, except the Fort Bragg & Southeastern, and the aggregation, which I have described to you, about Humboldt Bay.

981 Mr. SEVERANCE: What was the nature of the traffic moving over the Fort Bragg & Southeastern?

Mr. PAYSON: Nothing but logs for the Scotia mill—I should say the Albion mill.

Mr. SEVERANCE: The Albion mill saws the logs and shipped them down by water?

Mr. PAYSON: Yes sir.

Mr. SEVERANCE: Now, what railroad lines did the Southern Pacific have that went into the Northwestern Pacific?

Mr. PAYSON: They had the North Shore, the——

Mr. SEVERANCE (int'g): Let us take them up one at a time and have them described. Where does the North Shore line run?

Mr. PAYSON: The North Shore line runs from Sausalito to a point called Cazadero, up just north of the Russian River, with a branch to the town of San Rafael.

Mr. SEVERANCE: How long is that railroad?

Mr. PAYSON: Well, I can't say exactly; I think about 80 miles.

Mr. SEVERANCE: And how near does that come to San Francisco?

Mr. PAYSON: Sausalito, which is across the Bay, on the other side of the Bay, on the Marin County shore, about six miles by water.

Mr. SEVERANCE: Does the Southern Pacific have a rail connection between Sausalito and its lines running to the east and south?

Mr. PAYSON: I can't say exactly as to that. I think it does.

Mr. DUNNE: What do you mean, an all-rail connection?

Mr. SEVERANCE: From Sausalito, Mr. Dunne?

Commissioner LANE: You could have rail connection by Tiburon and through there to the rest of the system?

Mr. SEVERANCE: Yes, that is what I mean?

Mr. DUNNE: Do you mean, is there at present such an all-rail connection? Is that the question?

982 Mr. SEVERANCE: Yes, whether there is a rail connection so that cars could be switched from Sausalito, or from some other point on that road, to your main lines to the east and south. Do you know, Mr. Dunne?

Mr. DUNNE: I don't know of any all-rail connection, except very circuitous one.

Commissioner LANE: That can be done by the Southern Pacific by way of Vallejo Junction.

Mr. DUNNE: It would have to go that way.

Mr. LOVETT: There is a connection up there somewhere that would connect with the Southern Pacific, but I don't know just where.

Mr. SEVERANCE: How far is this 80 mile of the Southern Pacific from the Fort Bragg and Southeastern?

Mr. PAYSON: It is not very far as regards distance, but a connection between them would be a practical impossibility on account of the country.

Mr. SEVERANCE: On account of the grades?

Mr. PAYSON: On account of the country, the mountainous, difficult country.

Mr. SEVERANCE: What is the distance between them, Mr. Payson?

Mr. PAYSON: You mean from the Fort Bragg and Southeastern, the nearest point of the Fort Bragg and Southeastern?

Mr. SEVERANCE: Yes.

Mr. PAYSON: To Cazadero?

Mr. SEVERANCE: Yes.

Mr. PAYSON: Well, it would be, I should say, 80 miles as the crow flies, across the country.

Mr. SEVERANCE: It would be 80 miles?

Mr. PAYSON: Yes.

Mr. SEVERANCE: Then it is just as far from the nearest point on the Sausalito road as it is from San Francisco, to the Fort Bragg and Southeastern?

Mr. PAYSON: Well, it is not very much farther, because there is not very much difference. The Duncans' Mills road does not run due north; it runs over towards the coast. I can't speak of these distances, you know, with exact knowledge.

983 Mr. SEVERANCE: What is the next line of road owned by the Southern Pacific which goes into the Northwestern Pacific?

Mr. PAYSON: What is called the San Francisco & North Pacific Coast—I believe that was the title for it—now called the California Northwestern, that is the late title for it.

Mr. SEVERANCE: How long a road is that?

Mr. PAYSON: The California Northwestern?

Mr. SEVERANCE: Yes.

Mr. PAYSON: I can't say exactly. I think about 137 or 140 miles, but I have never had any direct connection with those properties, and I don't carry those figures in my head.

Mr. SEVERANCE: In making this consolidation, you acted for the Santa Fe, did you not?

Mr. PAYSON: No, sir. Those negotiations were made in New York.

Mr. SEVERANCE: They were made in New York?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: Between whom? Do you know?

Mr. PAYSON: No, sir.

Mr. SEVERANCE: This California Northwestern, you say, is 150 miles long?

Mr. PAYSON: I think so; I am not quite sure about that.

Mr. SEVERANCE: Does the California Northwestern run anywhere near these other lines?

Mr. PAYSON: It runs up the Sonoma Valley; the California Northwestern goes up the Sonoma Valley, which is a valley parallel to the coast, but entirely separated from the North Shore topographically.

Mr. SEVERANCE: It is separated from the North Shore line topographically and is also separated from the Fort Bragg & Southeastern?

Mr. PAYSON: Absolutely. Of course, connections could be made by going through the hills down into the Sonoma Valley.

Mr. SEVERANCE: There is still another line of road, is there not?

984 Mr. PAYSON: Of the Southern Pacific?

Mr. SEVERANCE: Yes.

Mr. PAYSON: That is the Eureka & Klamath.

Mr. SEVERANCE: The Eureka and what?

Mr. PAYSON: Klamath.

Mr. SEVERANCE: Where does that run?

Mr. PAYSON: That runs north from Arcata towards Trinidad, on the coast.

Mr. SEVERANCE: Runs north from Arcata, which is the terminus, is it not, of your——

Mr. PAYSON (int'g): Of our road.

Mr. SEVERANCE: Of your road, yes?

Mr. PAYSON: Yes sir.

Mr. SEVERANCE: And it runs to what point?

Mr. PAYSON: Well, near Trinidad.

Mr. SEVERANCE: Does it reach a harbor on the Pacific Ocean?

Mr. PAYSON: Not yet.

Mr. SEVERANCE: How far is it from it?

Mr. PAYSON: Only a few miles. But it is not a harbor, it is an open roadstead.

Mr. SEVERANCE: Is it under construction?

Mr. PAYSON: Those few miles?

Mr. SEVERANCE: Yes.

Mr. PAYSON: I don't think so.

Mr. SEVERANCE: At the present time, then, that line does not reach any port?

Mr. PAYSON: It reaches no port except the port of Eureka—indirectly the port of Eureka.

Mr. SEVERANCE: Over your rails?

Mr. PAYSON: Over our rails. And also there is a branch that leaves Arcata and goes around on the spit which separates Eureka from the sea, and therefore reaches tidewater on the Bay of Eureka.

Mr. SEVERANCE: Do ships meet it at — point?

Mr. PAYSON: Yes sir.

Mr. LOVETT: What is that?

Mr. SEVERANCE: I asked him if ships meet that branch at that point. What is the class of traffic that moves over that line?

985 Mr. PAYSON: Practically a lumbering road exclusively. It brings logs to the mill on Humbolt Bay and that is practically all—with supplies for the logging camps out.

Mr. SEVERANCE: I don't think you told me how long that road is, the Eureka & Klamath?

Mr. PAYSON: Well, I don't know. I think about 20 or 30 miles.

Mr. SEVERANCE: About 25 or 30 miles?

Mr. PAYSON: Not more than that.

Mr. SEVERANCE: And that does not do a general business, as your line running into Eureka does?

Mr. PAYSON: It hasn't got it to do.

Mr. SEVERANCE: Except to the extent of lumber?

Mr. PAYSON: And the supplies for the campers out.

Mr. SEVERANCE: Supplies out, yes. Now, the Northwestern Pacific has been organized by those two companies, and it has covered these roads. What additional lines is it proposed to build?

Mr. PAYSON: It is proposed, as I understand it, to build the connecting link between the present northerly end of the California Northwestern and the southerly end of what was the San Francisco Northwestern. In other words, it is proposed to connect the Southern Pacific properties on the south with the properties formerly of the Atchison on the north. And also——

Mr. SEVERANCE (int'g): Do you mean the California Northwestern?

Mr. PAYSON: Yes sir. The two names are confusing. One was San Francisco Northwestern, the other California Northwestern. The California Northwestern was the——

Mr. SEVERANCE: The California Northwestern is the Southern Pacific line?

Mr. PAYSON (cont'g): Southern Pacific line, and the San Francisco Northwestern was the Atchison line in the north.

Mr. SEVERANCE: They had the Fort Bragg & Northeastern?

986 Mr. PAYSON: No sir, the Fort Bragg & Southeastern is the one.

Mr. SEVERANCE: Then that is still another one you have not mentioned yet, is it?

Mr. PAYSON: Yes, I described it to you a little while ago.

Mr. SEVERANCE: I think not.

Mr. PAYSON: It is the road from Albion.

Mr. SEVERANCE: Oh, that is the one?

Mr. PAYSON: That is the one.

Mr. SEVERANCE: I thought you called that the Fort Bragg & Southeastern?

Mr. PAYSON: That is the Fort Bragg and Southeastern, yes; that is the one I described to you.

Mr. SEVERANCE: You are speaking now of the California Northwestern?

Mr. PAYSON: The California Northwestern included the North Shore and that other road up the Sonoma Valley.

Mr. SEVERANCE: Belonging to the Southern Pacific?

Mr. PAYSON: Belonging to the Southern Pacific.

Commissioner LANE: You intended, Captain, to extend down this way towards the Bay of San Francisco?

Mr. PAYSON: That was our plan.

Commissioner LANE: That was your plan, the Santa Fe's plan?

Mr. PAYSON: Yes, sir.

Commissioner LANE: Instead of that you have consolidated the two roads, and you intend that the road that extends up through Willits shall meet your road up to Humboldt Bay?

Mr. PAYSON: Yes sir.

Commissioner LANE: And the connection that you make you call the San Francisco Northwestern?

Mr. PAYSON: The San Francisco Northwestern was the name which the Santa Fe gave to those small properties which it got into a single corporation up around Humboldt Bay.

987 Commissioner LANE: You consolidated those companies there?

Mr. PAYSON: Yes sir, consolidated them.

Commissioner LANE: And called the consolidated roads the San Francisco Northwestern?

Mr. PAYSON: Yes sir, the San Francisco Northwestern.

Mr. DUNNE: The Fort Bragg & Southeastern is a lateral?

Mr. PAYSON: The Fort Bragg & Southeastern is a lateral, yes. I did not finish my answer as to the projected construction.

Mr. SEVERANCE: Proceed with your answer.

Mr. PAYSON: First the link of which I speak, connecting those properties on the south with those on the north.

Mr. SEVERANCE: How long a link was that?

Mr. PAYSON: That would be about 110 miles. And then possibly a lateral which will connect this Fort Bragg & Southeastern with the main trunk line, and tap Mendocino County.

Mr. SEVERANCE: And that other line, then, will be controlled by the two companies, jointly.

Mr. PAYSON: By the two companies, jointly.

Mr. SEVERANCE: Have you a contract between the Southern Pacific and Santa Fe with reference to that matter, in writing?

Mr. PAYSON: There is such a contract. I haven't it.

Mr. SEVERANCE: Who has that?

Mr. PAYSON: It was prepared in New York.

Mr. SEVERANCE: Is it in New York, as far as you know?

Mr. PAYSON: As far as I know.

Mr. SEVERANCE: It is not here.

Mr. PAYSON: Well, I don't know that it is not here.

Mr. SEVERANCE: At least, if it is, you don't know where it is?

Mr. PAYSON: I don't know where it is.

Mr. LOVETT: It is in New York and we will furnish it to you.

988 Mr. SEVERANCE: That contract, as you understand it, contemplates a change from year to year of management, does it?

Mr. PAYSON: As has been reported to me, it gives the two companies alternately a majority of the Board of Directors, in alternate years.

Mr. SEVERANCE: We will get the contract in New York.

Commissioner LANE: Judge Lovett, will you let me see that map, please?

Mr. LOVETT: Certainly, your Honor.

Mr. SEVERANCE: I suppose that, in view of having made this arrangement with the Southern Pacific, the Santa Fe has abandoned its idea of extending the lines down to San Francisco Bay. You intend to use this road jointly?

Mr. PAYSON: Not abandoned it. We intend to pay half the cost of it.

Mr. SEVERANCE: But as an independent proposition, you have abandoned it; you have substituted a joint line for your own proposed line?

Mr. PAYSON: Exactly. We have abandoned the intention of building it alone.

Mr. SEVERANCE: This projected line that you intended to build would that have gone up the coast alongside of either of these Southern Pacific lines?

Mr. PAYSON: No, sir.

Mr. SEVERANCE: It would not?

Mr. PAYSON: No, sir.

Mr. SEVERANCE: It would have gone through a different valley?

Mr. PAYSON: Through a different valley.

Mr. SEVERANCE: Entirely separate?

Mr. PAYSON: Oh, I beg pardon, perhaps I did not understand your question.

Mr. SEVERANCE: I asked you whether—you said you had contemplated building a line down from the north.

Mr. PAYSON: Quite so.

Mr. SEVERANCE: And to the Bay?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: I asked you whether that contemplated line would have gone up to your line, to your connection, alongside of or in the vicinity of the Southern Pacific lines?

Mr. PAYSON: I don't know. It would not have done so if we could have avoided it. Our surveys were directed towards finding an alternate line which would be practicable and to get into an entirely different territory.

Mr. SEVERANCE: Do you know whether you were successful?

Mr. PAYSON: We were successful in finding possible lines through Lake County.

Mr. SEVERANCE: That country up there is mostly timber country, is it not, Mr. Payson?

Mr. PAYSON: Where do you mean?

Mr. SEVERANCE: Well, all that northern country from here up. From 50 miles north up to Eureka?

Mr. PAYSON: From the present end of the Southern Pacific Company's lines, I will call them, for the sake of clearness——

Mr. SEVERANCE: Yes.

Mr. PAYSON (cont'g): From there north to Humboldt Bay, there is practically nothing in the way of timber along the Eel River; it is a stock country pure and simple, of but little value. The redwood timber is not found until you get within a very short distance of Humboldt Bay. There is nothing to feed a railway between the present northern end of the Southern Pacific properties and the redwood timber, which comes but a short distance south of Humboldt Bay.

Mr. SEVERANCE: And that is a matter of 150 miles?

Mr. PAYSON: 110 miles.

Mr. SEVERANCE: 110 miles?

Mr. PAYSON: Not 110 miles out of the timber; it will be possibly 90 to 100 before you get to the timber—90 miles, certainly, north.

Mr. SEVERANCE: Do you happen to know, sir, whether there are any other lines of railroad projected into that region, into that timber country, I mean?

Mr. PAYSON: I don't know of any.

Mr. SEVERANCE: You haven't heard of any?

Mr. PAYSON: I haven't heard of any.

Mr. SEVERANCE: Is your company operating steamships?

Mr. PAYSON: No, sir.

Mr. SEVERANCE: You do not?

Mr. PAYSON: No, sir, except the ferryboats on the Bay.

Mr. SEVERANCE: Yes, I understand, but you do not connect by steamer with any of these northern ports for this lumber traffic?

Mr. PAYSON: There is one exception that I should state. We have a contract with the Albion Steamship Company to bring lumber to San Francisco—the Fort Bragg & Southeastern has a contract with the Albion Steamship Company, by which they take the lumber we deliver at Albion and bring it down to San Francisco.

Mr. SEVERANCE: That is the Santa Fe has a contract with the Albion Steamship Company?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: By which it takes lumber delivered to it by you at Albion?

Mr. PAYSON: At Albion.

Mr. SEVERANCE: And brings it down to San Francisco?

Mr. PAYSON: To San Francisco, yes sir.

Mr. SEVERANCE: Do they make through shipments to the points on the line of the Santa Fe road?

Mr. PAYSON: No, not—the lumber may go through, but it is not billed through. We know nothing about what becomes of it after we deliver it to them.

Mr. SEVERANCE: There is no connecting line, no billing through?

Mr. PAYSON: No, sir.

Mr. SEVERANCE: They do not issue through bills?

Mr. PAYSON: No, sir. We do not know what becomes
991 of it after it leaves Albion. We simply have an arrangement with the steamship company by which they take it down, and that is the end of it as far as we know.

Mr. LOVETT: Until it reaches where?

Mr. PAYSON: San Francisco?

Mr. SEVERANCE: In other words, it has an outlet over the Santa Fe or Southern Pacific?

Mr. PAYSON: Or Southern Pacific, yes, sir.

Mr. SEVERANCE: Either one?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: Is that a contract which is subject to be terminated at any time, that contract that you speak of?

Mr. PAYSON: That contract was a contract we inherited from the people from whom we bought the road, and it terminates by its terms whenever there is a rail connection with San Francisco.

Mr. SEVERANCE: So that they won't be in your way after the rail connection is made?

Mr. PAYSON: With the rail connection, it ends.

Mr. SEVERANCE: Now, you say that that is the only contract that you have with any steamship line?

Mr. PAYSON: That is the only contract of which I have any knowledge.

Mr. SEVERANCE: Have you any contracts or any transactions, Mr. Payson, with any of the Oriental lines, the Oriental steamship lines?

Mr. PAYSON: I have nothing to do with that part of the business. I said that is the only contract of which I have any knowledge.

Mr. SEVERANCE: In whose charge would that matter be, the matter of contracts, with Oriental lines—Mr. Bissell's?

Mr. PAYSON: I assume Mr. Bissell would know about those arrangements.

Mr. SEVERANCE: He would know about that?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: Do you have charge of the other lines, or have anything to do with the other lines of the Santa Fe in the
992 State, outside of the lines around San Francisco, and in the north?

Mr. PAYSON: I have nothing to do with the operation of any of the lines of the Santa Fe, except these northern properties.

Mr. SEVERANCE: But you are familiar with the ownership, are you not?

Mr. PAYSON: In a general way.

Mr. SEVERANCE: Is there a line of road down near Mojave somewhere which is used jointly by the Southern Pacific and Santa Fe?

Mr. PAYSON: There is a line from Bakersfield to Mojave over the Tehachapi Pass that is used jointly by the Southern Pacific and the Santa Fe.

Mr. SEVERANCE: Who owns the line?

Mr. PAYSON: The Southern Pacific,

Mr. SEVERANCE: How long a line of road is that? How much track?

Mr. PAYSON: About 70 miles, I think, I think it is 70 miles.

Mr. SEVERANCE: Is it operated independently by the two companies, or how is it done?

Mr. PAYSON: It is operated by the Southern Pacific, the Santa Fe paying a rental, which was fixed by the estimated cost of the property, and which is constant for each year, and also a proportion of the operating expenses and maintenances, which is divided between the two companies in the proportion of their use of the road.

Mr. SEVERANCE: And you each run through trains over it.

Mr. PAYSON: We each run through trains over it.

Mr. SEVERANCE: But it is operated by the Southern Pacific?

Mr. PAYSON: It is operated under the direction of the Southern Pacific.

Mr. SEVERANCE: Does that mean any more than that the train dispatcher of the Southern Pacific has charge of the track? You run your own trains, do you not?

993 Mr. PAYSON: The operating officials of the Southern Pacific have control of our trains. Our trains are our own equipment, but they are under the control of the Southern Pacific officials while they are on that track.

Mr. SEVERANCE: But it is your own power that pulls them through?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: And your own trainmen?

Mr. PAYSON: Yes, sir.

Mr. LOVETT: All of that is expressed by the contract, Mr. Severance, and we will furnish you that contract.

Mr. SEVERANCE: All right, I would like to have that if you will let me have it.

Mr. LOVETT: Yes. I think we have a copy of it.

Mr. SEVERANCE: Outside of that line there, that 70 miles, is there any track in Southern California that you know of which is used jointly or owned jointly by the Southern Pacific and Santa Fe?

Mr. PAYSON: I don't know of any.

Mr. SEVERANCE: There is none of the track up the valley from Los Angeles to San Bernardino that is used jointly?

Mr. PAYSON: I don't think there is any used jointly by the Southern Pacific and the Santa Fe. It is my impression there is none.

Mr. SEVERANCE: Some of that track down in the valley there is used by the Salt Lake Road, is it not?

Mr. PAYSON: I think that what you are speaking of, between San Bernardino, and that part of the country, there is some arrangement with the Salt Lake road about. I am not familiar with the details.

Mr. SEVERANCE: We have the contract relating to that.

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: Your Company owns the road running to San Diego, does it not?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: Do you happen to have any knowledge
994 as to the steamship connections with San Diego, or does that all come under Mr. Bissell?

Mr. PAYSON: All comes under Mr. Bissell. I have no knowledge of it.

Mr. SEVERANCE: You have no knowledge of that?

Mr. PAYSON: No, sir.

Commissioner LANE: Is there any practicable way, Captain, of shipping down the coast from Oregon, excepting over one of the lines that the Northwestern Pacific owns?

Mr. PAYSON: I think it is practicable to come down the coast from—well, by a line of railway. It would be very expensive but it is practicable, possible.

Commissioner LANE: In order to get to San Francisco Bay, would it be necessary to come down over the lines of the Atchison that the Atchison owns, or that the Southern Pacific owns?

Mr. PAYSON: From the north?—no.

Commissioner LANE: What way could the line come down?

Mr. PAYSON: The line could follow the coast for most of the way. It would be very difficult, but it is possible.

Commissioner LANE: You have then, in this consolidation those lines which have the easiest means of access to the Bay of San Francisco from the North?

Mr. PAYSON: I think it is the best line.

Commissioner LANE: And you have all the roads from the north of San Francisco Bay up to the Oregon line?

Mr. PAYSON: Our joint interest with the Southern Pacific extend no farther than Trinidad, than this Eureka & Klamath, which I believe ends somewhere up near Trinidad.

Commissioner LANE: There are some roads up farther north than that in California, are there?

Mr. PAYSON: I believe there is a road projected from Coos Bay to the coast, but there is no road along the coast north of that.

995 Mr. SEVERANCE: Do you know anything about the arrangements that are made with the Japanese line of steamships here—the connection?

Mr. PAYSON: No, I know nothing about that.

Mr. SEVERANCE: You don't have anything to do with that at all?

Mr. PAYSON: Nothing whatever.

Mr. SEVERANCE: Nor do you have anything to do with the connections that are made at Los Angeles or San Diego?

Mr. PAYSON: Nothing to do with it whatever.

Mr. SEVERANCE: Has the Southern Pacific Company any interest in your San Joaquin line?

Mr. PAYSON: None at all.

Mr. SEVERANCE: None at all?

Mr. PAYSON: None at all.

Mr. SEVERANCE: That is owned by the Santa Fe alone?

Mr. PAYSON: Absolutely.

Mr. SEVERANCE: And the only part of the Southern Pacific line that you use is the line from Bakersfield to Mojave?

Mr. PAYSON: It is practically a bridge, that is all it is. There is practically no traffic alongside of it. It was simply a bridge from one piece of line to another, over the Tehachapi.

Mr. SEVERANCE: Are the terminals in San Francisco in which the Santa Fe is interested owned exclusively by the Santa Fe?

Mr. PAYSON: Exclusively by the Santa Fe.

Mr. SEVERANCE: Are the terminals around the Bay of San Francisco known as Santa Fe terminals exclusively owned by the Santa Fe?

Mr. PAYSON: Exclusively by the Santa Fe.

Mr. SEVERANCE: The Southern Pacific has no property interests whatever in any of the terminal lines that come under your management?

Mr. PAYSON: Has no interest in any of the terminal facilities in San Francisco that are known as Atchison terminal facilities.

996 There is no interest in any of the property of the Santa Fe in San Francisco or in Oakland held by the Southern Pacific.

Mr. SEVERANCE: There is no interest, you say, in any of the property of the Santa Fe, in San Francisco or Oakland, owned by the Southern Pacific? That is a correct statement, is it?

Mr. PAYSON: Oh, I beg your pardon. I think I have made one error there. There is a joint ownership of the dockyards out there in the Potrero; that is, the land is jointly owned by the Southern Pacific and Santa Fe. But with that exception, the statement is true.

Mr. SEVERANCE: Then is it a correct statement of your relations with the Southern Pacific that you have no joint ownership in any railroad properties, either main line or terminals or terminal facilities, except in such as you have in the Northwestern Pacific, and the portion that you use from Bakersfield to Mojave?

Mr. PAYSON: And this joint interest in the stockyards.

Mr. SEVERANCE: That is all?

Mr. PAYSON: That is all.

Mr. LOVETT: He has forgotten the line from Needles to Mojave, owned by the Southern Pacific.

Mr. SEVERANCE: Is that jointly used?

Mr. LOVETT: It is owned by the Southern Pacific, but used exclusively by the Santa Fe. I am referring now to the line from The Needles to Mojave——

Mr. PAYSON: The old Atlantic and Pacific.

Mr. LOVETT: Yes, owned by the Southern Pacific, but leased to the Atchison.

Mr. PAYSON: That is a piece of ancient history that I did not know. But I knew we operated it exclusively.

Mr. LOVETT: For all practical purposes it is the Atchison line. The legal title is in the Southern Pacific, but the Atchison has run it since 1879, I think.

Mr. J. C. STUBBS: You have forgotten about the Sunset Oil Fields Road?

997 Mr. PAYSON: Oh, yes, I did forget the Sunset. There is a small road out of Bakersfield to the Sunset oil fields built jointly by the Southern Pacific and ourselves several years ago, and it is jointly owned and alternately operated. We take turns in operating it.

Mr. SEVERANCE: Under a similar arrangement to that you have with the Northwestern Pacific?

Mr. PAYSON: No, sir, not exactly. In the Northwestern Pacific, it is supposed the operation will be continuous, but the majority of the directors will change from year to year, whereas with the Sunset line we actually take turns in operationg the road. The Southern Pacific takes it for one period, and then we take it afterwards for a like period.

Mr. SEVERANCE: That road is practically an oil road exclusively?

Mr. PAYSON: That is an oil road exclusively, goes out to the oil fields at Sunset.

Mr. SEVERANCE: It taps wells owned by the Atchison road?

Mr. PAYSON: I don't think at present it does, and I don't think—when it was built, the Atchison had no property in that territory at all. Since then it has acquired an interest in the Midway Field, which this Sunset line does not exactly reach, but it is in that direction.

Mr. SEVERANCE: Is the property, then, all property that is also owned by the Southern Pacific?

Mr. PAYSON: No, sir, that is not owned jointly with the Southern Pacific.

Mr. SEVERANCE: There is no oil property in the neighborhood of Sunset that you know of, owned by the Southern Pacific?

Mr. PAYSON: I don't think there is any jointly owned by the Southern Pacific and Santa Fe that I know of, tributary to the Sunset line.

Mr. SEVERANCE: Is there any independently owned by the Southern Pacific in the Sunset District?

Mr. PAYSON: I don't know of any.

Mr. SEVERANCE: How long a line of road is that?

998 Mr. PAYSON: About 20 miles.

Mr. SEVERANCE: You say that was built jointly by the two companies?

Mr. PAYSON: Well, it was a plan of Mr. Tevis, Mr. William Tevis, who lives down there in Bakersfield. He was going to build it himself, and finally the two roads agreed to bear the expense, in other words, take the bonds and jointly own the property.

Commissioner LANE: Now, then, with the exception of the Sunset Road, the lease that you have for the use of the line from Bakersfield to Mojava, and the lease of the line from Mojava to The Needles, the terminals at the union stockyards, and the Northwestern Pacific running north from San Francisco Bay, all the other properties known as Atchison properties in this State, are owned exclusively and controlled by you?

Mr. PAYSON: To the best of my knowledge.

Commissioner LANE: With the exception of what is known as the Clark line that runs into San Francisco—that runs into Los Angeles, I should say—there are no other eastern rail connections to California except the Southern Pacific and the Atchison, are there?

Mr. PAYSON: Not now.

Commissioner LANE: By the acquisition and consolidation of the roads to the north of San Francisco Bay under the Northwestern Pacific system, you have the most practicable route of access from the north?

Mr. PAYSON: I think so. There are other roads possible, but that is the best one.

Commissioner LANE: Is there any practicable way in the southern end of this State, the southeasterly end of this State, for coming into Los Angeles from the south, that is not now controlled either by the Southern Pacific or the Atchison?

Mr. PAYSON: I don't know about that. I understand there are plans for an independent line from San Diego and east over what I believe is a practicable route.

999 Commissioner LANE: That is what is known as the Spreckels line?

Mr. PAYSON: That is what is known as the Spreckels line.

Commissioner LANE: Running east of San Diego over to Yuma?

Mr. PAYSON: Yes sir.

Commissioner LANE: And there to connect, possibly, with the Southern Pacific?

Mr. PAYSON: With any line.

Commissioner LANE: Or with any other line of road?

Mr. PAYSON: Yes, or with any other line of road.

Commissioner LANE: With which they can make a connection?

Mr. PAYSON: Yes sir.

Commissioner LANE: But that does not contemplate going eastward out of California?

Mr. PAYSON: I don't know. I don't know about that.

Commissioner LANE: Have you had any lines surveyed through the north, the northern portion of the State, that is, the Northeastern portion of the State, running from San Francisco Bay up to Lake County and through there?

Mr. PAYSON: We had a survey running north from the Bay of San Francisco to Lake County and thence into the drainage of the Eel River, and so on, to Humboldt Bay.

Commissioner LANE: Was there, at the time the consolidation was made between the Southern Pacific Company and the Atchison of these northwestern lines, any alternative railroad conection from the northwest?

Mr. PAYSON: I don't quite understand the question.

Commissioner LANE: Was there proposed at the time that you made this consolidation, considered possible that a road coming from the east or from the northeast toward any of your lines on Humbolt Bay, would be connected with those lines, that is, alternative to the Southern Pacific?

1000 Mr. PAYSON: Did we have any information that there were other plans of other roads for using that territory?

Commissioner LANE: Yes.

Mr. PAYSON: None whatever. I don't think it was possible.

Commissioner LANE: You don't think it was possible?

Mr. PAYSON: Well, from the east, no; from the Sacramento Valley across to that country, I don't think it was possible. But we heard no plans, at least, I never had any intimation that anybody else was seeking an entrance to that territory. Our arrangement with the Southern Pacific was simply to save expense. We were both staggered by the expense which the surveys disclosed would attend the construction of that line. It is a most difficult country, both for construction and maintenance, and when it came to the question of building two parallel roads into the country, there was not enough in it to make it worth while.

Mr. SEVERANCE: Speaking of there being two parallel roads in the country, had the Southern Pacific in contemplation the extension of their lines to Humbolt Bay?

Mr. PAYSON: Yes, sir. They were also planning to extend their lines.

Mr. SEVERANCE: And they had surveys made?

Mr. PAYSON: They were making surveys, yes.

Mr. SEVERANCE: And both the Southern Pacific and the Sante Fe abandoned the idea of building an independent line which would be parallel, you say, each to the other, in favor of saving expense and building one line?

Mr. PAYSON: Exactly.

Mr. SEVERANCE: And that line to be operated the way you have stated, one year by one company——

Mr. PAYSON: Yes.

Mr. SEVERANCE: And the next year by the other?

Mr. PAYSON: Yes sir.

Mr. SEVERANCE: Had you done to the extent of procuring

1001 any right of way for this extension to the north prior to this consolidation?

Mr. PAYSON: Practically none. For a few miles below the southern end, we had a right of way agreement with the farmers, but practically nothing obtained.

Mr. SEVERANCE: Had you definitely located your line?

Mr. PAYSON: No, sir.

Mr. SEVERANCE: Had you decided on the line within reasonable limits? You knew in a general way where it was going, did you not?

Mr. PAYSON: We knew—if we were forced to build an independent line, we would probably have—there is one line marked out as the best line. All of the others are attended with a good many difficulties. They are possibilities, of course, but they involved very heavy grades and heavy work. The best line is along the drawings of the Eel River.

Mr. SEVERANCE: Is that the line that is to be followed by the joint action of the companies?

Mr. PAYSON: That is the line that is to be followed; that is the line we have practically decided on as the best. But the others could be followed, if necessary.

Mr. SEVERANCE: Was it feasible for the Southern Pacific to build a branch to this Humboldt country from its terminal?

Mr. PAYSON: No, sir. It would be practically impossible.

Mr. SEVERANCE: On account of the nature of the country?

Mr. PAYSON: On account of the nature of the country.

Mr. SEVERANCE: The only feasible way to tap that country is by a north and south line?

Mr. PAYSON: The feasible way is by north and south lines, but there are more possibilities than one in the way of a north and south line.

Mr. SEVERANCE: But you say that the one you have is better, that there is one that you think is better?

1002 Mr. PAYSON: We think it is best, because it gives a better grade.

Mr. SEVERANCE: Gives you a better grade?

Mr. PAYSON: Yes, sir. It will be more difficult of maintenance, but it will give us a better grade.

Mr. SEVERANCE: The country is materially different, is it, than that to be penetrated by the line to Coos Bay?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: The Southern Pacific is now building, as I understand, to Coos Bay?

Mr. PAYSON: They are building at right angles to the coast, yes, at Coos Bay.

Mr. SEVERANCE: Now, as you come further down the coast, does the country get more difficult?

Mr. PAYSON: Oh, I can't say that. They are both difficult.

Mr. SEVERANCE: The difficulties, then, are evidently not insurmountable because the Southern Pacific is now building the line from Coos Bay to Roseburg?

Mr. PAYSON: They are not insurmountable, no, except that it is very costly construction.

Mr. SEVERANCE: Except that it is very costly construction. For that reason you went in together rather than to both build up there and compete with each other?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: I think that is all. I would like to have Mr.

Bissell, Captain Payson, come here. I want to inquire into property conditions, if he can come this afternoon?

Commissioner LANE: I can adjourn at this time, if you desire it, before you begin the examination of Captain Payson, Judge Lovett.

Mr. LOVETT: I have but a few questions and I can ask them now. These lines sold by the Atchison, or which were subsequently merged into the Northwestern Pacific Railroad Company, were wholly in the State of California, were they?

Mr. PAYSON: Wholly within the State of California.

1003 Mr. LOVETT: I believe you testified that they have no connection with any other railroad lines?

Mr. PAYSON: Except—no other railroad line extending out of the state of California.

Mr. LOVETT: Well, I am speaking now of railroad lines extending out of the state of California?

Commissioner LANE: That is not literally true, Judge. The Northwestern Pacific, as I understand it, has a connection which crosses over through little Sonoma Valley into Napa, and directly over into Solano County, and thence to the main line of the Southern Pacific.

Mr. LOVETT: Yes, your Honor, but I was only asking about the two companies that the Atchison control-.

Commissioner LANE: The Atchison?

Mr. LOVETT: Yes. Neither of the companies that the Atchison controlled and put into this consolidated company, had any rail connection at all, did they?

Mr. PAYSON: No, sir.

Mr. LOVETT: Their only outlet was by boat?

Mr. PAYSON: Their only outlet was by boat.

Mr. LOVETT: The Southern Pacific lines that were consolidated with the Atchison Lines, and into the Northwestern Pacific Railroad Company, were also within the State of California, were they not?

Mr. PAYSON: Entirely within the State of California.

Mr. LOVETT: Was it your understanding that those lines were consolidated under the laws of California?

Mr. PAYSON: That is my understanding.

Mr. LOVETT: You testified to some arrangement with some line of boats belonging to this coast. I did not catch the name.

Mr. PAYSON: The Fort Bragg & Southeastern.

Mr. LOVETT: The Fort Brag & Southeastern?

Mr. PAYSON: The Fort Bragg & Southeastern, yes, sir.

Mr. LOVETT: It connected with a line of boats at Arcata?

Mr. PAYSON: At Albion.

1004 Mr. LOVETT: The Fort Bragg & Southeastern?

Mr. PAYSON: Yes sir, that was it.

Mr. LOVETT: Did that line, the Fort Bragg & Southeastern, do any business except haul logs for the mills?

Mr. PAYSON: Practically none; a few little supplies for the camps, but practically its entire business is the hauling of logs for the mills, and lumber from one mill that is established on it.

Mr. LOVETT: There is one mill out on the line?

Mr. PAYSON: There is one mill out on the line, yes.

Mr. LOVETT: These lines controlled by the Atchison were not, as they existed at the time of the merger, competing in any sense with the Southern Pacific Lines, were they?

Mr. PAYSON: Not at all.

Mr. LOVETT: When the links necessary to connect them are completed, the effect will be to give those lines an outlet to California, the rest of it?

Mr. PAYSON: To California and the East.

Mr. LOVETT: If the Southern Pacific had completed its lines to a connection with the Atchison, practically the same arrangement might have been effected by the ordinary trackage contract, might it not?

Mr. PAYSON: Quite so.

Mr. DUNNE: Just as at Mojave?

Mr. PAYSON: Just as at Mojave, yes sir.

Mr. LOVETT: I think that is all.

Mr. SEVERANCE: Except that in the case of the Mojave track, as I understood it, you say there is no local traffic?

Mr. PAYSON: I testified to the same thing as regards the country between Willits and the southern end of our line. I said we didn't get into the timber until we reached the southern end of Humboldt Bay.

Mr. SEVERANCE: Then there would be no traffic there?

Mr. PAYSON: Very little. It is a stock country.

Mr. SEVERANCE: How is that?

Mr. PAYSON: A stock country; a cattle country.

1005 Mr. SEVERANCE: Does that not constitute rather a profitable line?

Mr. PAYSON: Yes sir, but it is a cattle country that requires so much country to sustain a few cattle, that the business is not large. There is very little business, in other words, between the present ends of the proposed road. You go 20 miles south of the present end of the properties about Humboldt Bay, and you have got about out of the timber, and then from there on down to Willits, the end of the Southern Pacific properties, on the north, there is very little business.

Mr. SEVERANCE: You would not compare that, would you, with the country between Mojave and Bakersfield?

Mr. PAYSON: Well, there is not so much difference, so far as I have seen it.

Mr. SEVERANCE: There is not such. You have been over it, have you?

Mr. PAYSON: I have been over it several times.

Mr. SEVERANCE: And the only traffic going out of the county is live stock?

Mr. PAYSON: There will be very little of that. The business of the road will be transporting lumber products from Humboldt Bay across that intervening country.

Mr. SEVERANCE: Counsel asked you if these lines were not all within the State of California. That is true, of course, but after they

are connected up with the main lines of the Southern Pacific and the Santa Fe, they will become part of interstate roads, just the same as any other line of track in the State, will they not?

Mr. PAYSON: That is true.

Mr. SEVERANCE: The lumber traffic would move from that country directly through to the east over your lines?

Mr. PAYSON: Yes, sir.

Mr. SEVERANCE: You expect it to do so?

Mr. SEVERANCE: I think that is all.

Mr. LOVETT: Your understanding is that the ownership
1006 of this line is to be retained in the Northwestern Pacific Railroad Company, and not merged with the Atchison or the Southern Pacific?

Mr. PAYSON: That is my understanding.

Mr. SEVERANCE: You understood, did you not, also, that half the stock is to be owned by each of these companies?

Mr. PAYSON: I did, and so stated, I think.

Mr. SEVERANCE: Yes, that is what I thought. I believe that is a practical ownership. That is all.

Commissioner LANE: That is all Captain. We will adjourn at this point until 2 o'clock.

Afternoon Session.

R. P. SCHWERIN having been duly sworn, testified as follows:

Mr. SEVERANCE: : Mr. Schwerin, where do you live?

Mr. SCHWERIN: San Mateo.

Mr. SEVERANCE: And what is your business?

Mr. SCHWERIN: Steamship operator.

Mr. SEVERANCE: How long have you been in the steamship business?

Mr. SCHWERIN: Since 1893.

Mr. SEVERANCE: Where did you commence your work in the steamship business?

Mr. SCHWERIN: In San Francisco.

Mr. SEVERANCE: With what company were you first connected?

Mr. SCHWERIN: With the Pacific Mail Steamship Company.

Mr. SEVERANCE: Was that in 1893?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: In what capacity?

Mr. SCHWERIN: Vice President and General Manager.

Mr. SEVERANCE: And you still occupy that position?

Mr. SCHWERIN: I do.

1007 Mr. SEVERANCE: So that, so far as that corporation is concerned, there has been no change in your title, at least since 1893?

Mr. SCHWERIN: None.

Mr. SEVERANCE: Will you please state the names of the steamboats that are owned by the Pacific Mail Steamship Company—that is, if you can from memory—or give me the number of steamboats

owned by the Pacific Mail Steamship Company, when you came here in 1893, say, first?

Mr. SCHWERIN: "The City of Pekin," the "Peru," the "Rio Janeiro," the "Colima," the "Colon," the "San Juan," the "San Jose," the "San Blas," the "Acapulco," the "Barracouta," the "Starbuck" and the "City of New York"—I think that is about all.

Mr. SEVERANCE: Now, which of those ships were engaged in the Oriental trade, if any?

Mr. SCHWERIN: The "Rio Janeiro," "City of Peking" and "Peru."

Mr. SEVERANCE: And they sailed out of San Francisco?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And at what ports did they call in the Orient?

Mr. SCHWERIN: They touched at Yokohama, Kobe, Nagasaki, Shanghai and Hongkong; and sometimes at the port of Amoy.

Mr. SEVERANCE: Sometimes at what?

Mr. SCHWERIN: At the port of Amoy.

Mr. SEVERANCE: What connection, if any, did you have with the port of Tientsin?

Mr. SCHWERIN: None, except the transfer of freight, from either Shanghai or Nagasaki.

Mr. SEVERANCE: That is, the freight would be brought to your boats at one or the other of those places by coast steamers?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, how long did those three boats continue in that service, Mr. Schwerin?

1008 Mr. SCHWERIN: Two of them were withdrawn after we placed the "Korea" and "Siberia" on the run.

Mr. SEVERANCE: You put the "Korea" and "Siberia" on that same run, and which boats did you withdraw?

Mr. SCHWERIN: The "Peru" and——

Mr. SEVERANCE (int'g): The "Peking" or "Rio Janeiro"?

Mr. SCHWERIN: No sir, the "Rio Janeiro" was lost.

Mr. SEVERANCE: Oh, yes. Then you had left the "Peking," the "Korea," and the "Siberia"?

Mr. SCHWERIN: We had left the "Peking," the "Siberia," and the "Korea" on the run. There was an interval when we had only two vessels, after we lost the "Rio Janeiro."

Mr. SEVERANCE: How long did those boats make up your Oriental fleet?

Mr. SCHWERIN: Until we got the "Mongolia" and "Manchuria," when we withdrew the "City of Peking."

Mr. SEVERANCE: The "Mongolia" and the "Manchuria" were added?

Mr. SCHWERIN: Yes, and we withdrew the "City of Peking."

Mr. SEVERANCE: So after you had withdrawn the "City of Peking"——

Mr. SCHWERIN: We had the "China" too; I should have said the "China" was put on the run. I should have mentioned her. She was on the run all the time.

Mr. SEVERANCE: All the time?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: So you had four ships?

Mr. SCHWERIN: After the "Rio Janeiro" was lost, we put the "Peru" on the run.

Mr. SEVERANCE: You had four all the time, did you?

Mr. SCHWERIN: We had three on all the time, and we took one off the Panama line and put it on the Transpacific line. The "China" was there all the time. She was there when I went into the company.

Mr. SEVERENCE: Then you had the "China," the "Siberia,"
1009 the "Korea," and the "Peking," and then you got the "Mongolia" and the "Manchuria"?

Mr. SCHWERIN: We added the "Mongolia" and the "Manchuria" and that made five.

Mr. SEVERANCE: Then the line consisted of what?

Mr. SCHWERIN: Of the "Korea," "Siberia," "Manchuria," "Mongolia," and the "China," five ships.

Mr. SEVERANCE: What year was that?

Mr. SCHWERIN: The "Korea" and "Siberia" went on the line in 1902, and the "Mongolia" and "Manchuria" went on the line in 1904.

Mr. SEVERANCE: Prior to 1902 the fleet was made up of the "Korea," "Siberia," "Peking"——

Mr. SCHWERIN: No, prior to 1902 the fleet was made up of the "China," "Peru," and "Peking."

Mr. SEVERANCE: Of the "China," "Peru" and "Peking?"

Mr. SCHWERIN: And "Peking," yes.

Mr. SEVERANCE: And that ran back for how many years?

Mr. SCHWERIN: It ran back to the time the "Rio" was lost.

Mr. SEVERANCE: What year was that?

Mr. SCHWERIN: She was lost four years ago, and we substituted the "Peru" for the "Rio."

Mr. SEVERANCE: You did not understand my question. I asked you what ships made up the line prior to 1902?

Mr. SCHWERIN: The "Rio," the "China," and the "Peking."

Mr. SEVERANCE: The "Rio," "China," and "Peking?"

Mr. SCHWERIN: The "Rio," the "China," and "Peking."

Mr. SEVERANCE: And for how many years back prior to that time did those ships make up the line?

Mr. SCHWERIN: The time I was in the company.

Mr. SEVERANCE: Then from the time that you came here in 1893, down to the loss of the "Rio," the ships that made up
1010 the line were the three you have just mentioned?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And then when you lost the "Rio," you substituted the "Peru" for her?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And afterwards added these other ships that you have mentioned?

Mr. SCHWERIN: Yes, sir; and part of that time the "City of New York" was on the line, when we had extra freight—we put

her on for extra freight when we had extra freight. She was also lost.

Mr. SEVERANCE: Now, Mr. Schwerin, did you have agents or representatives at the different Oriental Cities?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Will you kindly name the representatives of your company there from 1893, if you have them in mind—from 1893 down to 1902, when the change was made in the ships that made up the line?

Mr. SCHWERIN: Mr. Howard, the agent at Yokohama——

Mr. SEVERANCE (int'g): Howard, did you say?

Mr. SCHWERIN: Howard, yes.

Mr. SEVERANCE: Wait a minute. We may as well dispose of him now. Is he still the agent there?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: He was the agent of the Pacific Mail Steamship Company from the time you came here?

Mr. SCHWERIN: Yes.

Mr. SEVERANCE: At Yokohama?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Go on, please?

Mr. SCHWERIN: Mr. Tilden, at Kobe.

Mr. SEVERANCE: Tilden?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: At what place?

Mr. SCHWERIN: Kobe.

Mr. SEVERANCE: Is he still the agent there?

1011 Mr. SCHWERIN: He is out of the company.

Mr. SEVERANCE: Out of the company?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And how long ago did he retire?

Mr. SCHWERIN: About a year and a half.

Mr. SEVERANCE: Up to that time, he was your representative, was he?

Mr. SCHWERIN: Not at that point. He was promoted to Hongkong and afterwards to Shanghai, and then finally left the service.

Mr. SEVERANCE: Mr. Tilden was your representative originally at Kobe? About when did he leave Kobe?

Mr. SCHWERIN: About three years ago.

Mr. SEVERANCE: He was there up to three years ago?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: From the time you came here?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Who was at Nagasaki?

Mr. SCHWERIN: Holmes, Ringer & Company, Commercial Agents.

Mr. SEVERANCE: Who?

Mr. SCHWERIN: Holmes, Ringer & Company.

Mr. SEVERANCE: Are they still your agents there?

Mr. SCHWERIN: They are.

Mr. SEVERANCE: Who is at Shanghai?

Mr. SCHWERIN: At the present time Mr. Thebau.

Mr. SEVERANCE: When you came here——

Mr. SCHWERIN (int'g): We had no agency at Shanghai, regular agency, but we afterwards established an agency there with the fire of—what is that name—connected with the International Bank—Fearin, Daniel & Company.

Mr. SEVERANCE: What year did you establish that agency?

Mr. SCHWERIN: 1894.

Mr. SEVERANCE: And how long did they continue to represent you there?

Mr. SCHWERIN: Until 1904?

Mr. SEVERANCE: Until 1904?

Mr. SCHWERIN: Yes, sir.

1012 Mr. SEVERANCE: Who was your agent at Hongkong?

Mr. SCHWERIN: Mr. Van Buren was the agent when I came into the company.

Mr. SEVERANCE: Van Vuren?

Mr. SCHWERIN: Van Buren, yes.

Mr. SEVERANCE: And how long did he remain there?

Mr. SCHWERIN: He remained there till three years ago.

Mr. SEVERANCE: Who succeeded Fearin, Daniel & Co., at Shanghai, in 1904?

Mr. SCHWERIN: Mr. Thebau.

Mr. SEVERANCE: You say Mr. Van Buren was at Hongkong until four years ago?

Mr. SCHWERIN: Three years ago.

Mr. SEVERANCE: Three years ago. And who succeeded him?

Mr. SCHWERIN: Mr. Tilden.

Mr. SEVERANCE: The same gentleman that was originally at——

Mr. SCHWERIN: At Kobe.

Mr. SEVERANCE: Who succeeded Mr. Tilden at Kobe?

Mr. SCHWERIN: Mr. Campbell.

Mr. SEVERANCE: Campbell?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Now, have all these agents—I will read them over to you, and see if I have them correct. Howard at Yokohama all the time. Is that right?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Tilden at Kobe until three years ago, and afterwards Mr. Campbell there.

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: He is still your agent there?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And Holmes, Ringen & Company——

Mr. SCHWERIN: Ringer—R-i-n-g-e-r.

Mr. SEVERANCE: At Nagasaki. Still your agents there?

1013 Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Fearin & Daniel Company at Shanghai from 1894 until 1904, and since 1904, Mr. Thebau?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And Mr. Van Beuren at Hong Kong until three years ago, and since then Mr. Tilden?

Mr. SCHWERIN: Yes, sir—no, Mr. Tilden was afterwards relieved by Mr. Silverstone.

Mr. SEVERANCE: When?

Mr. SCHWERIN: About 18 months ago.

Mr. SEVERANCE: And Mr. Silverstone is still your agent at Hong Kong?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Where does the freight come from that is brought this way by your line?

Mr. SCHWERIN: It originates as far west as Calcutta, and as far north as North China.

Mr. SEVERANCE: Is it assembled by these various agents at these ports?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: What means do these gentlemen take to secure traffic?

Mr. SEVERANCE: Well, they are in communication with shippers—the usual methods.

Mr. SEVERANCE: It is by the ordinary methods that would be employed anywhere?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: By personal solicitation, and solicitation by correspondence?

Mr. SCHWERIN: Not so much solicitation by correspondence as solicitation personally, or the shipping men coming into the office and asking if they can get space on the steamers.

Mr. SEVERANCE: Are these shipments, Mr. Schwerin, largely made by exporters at these ports you have named? That is, do they buy the stuff in the interior, or bring it in, or handle it on commission, or something of that sort, and ship it?

Mr. SCHWERIN: Yes, sir; the freight is not only handled
1014 by the houses there but very largely controlled by the parent houses in this country.

Mr. SEVERANCE: And the freight, where is the freight usually routed? Is it routed by the houses in China or Japan, or is it routed in this country?

Mr. SCHWERIN: Both.

Mr. SEVERANCE: Now, at all the time that you have represented the Pacific Mail Steamship Company—I am speaking of the Pacific Mail Steamship Company; now when I say "you" and that the Pacific Mail Steamship Company has been represented in the Orient by these gentlemen at various places, they have had practically the same functions, have they not, that is, to look after passenger and freight traffic and procuring it to be sent to this country by your ships?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Did those ships and do they still make through billings of commodities that are destined to points in the eastern parts of the United States?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: They issue the bills of lading over there, do they?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Who is the official of the Pacific Mail Steamship Company that has charge of the through freights?

Mr. SCHWERIN: Mr. Garland is the present manager.

Mr. SEVERANCE: Have you anything to do with that part of the business?

Mr. SCHWERIN: As the General Manager of the Company, I have the right to approve or disprove.

Mr. SEVERANCE: What is your function? Do you personally take a hand in the making of rates, or do you leave that to Mr. Garland?

Mr. SCHWERIN: No sir, I take a hand in it.

Mr. SEVERANCE: How are steamship rates affected? By
1015 what things on the Pacific are steamship rates affected?

Mr. SCHWERIN: By competition.

Mr. SEVERANCE: Chiefly by competition, are they not?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: When you started out here in 1893, the Pacific Mail was competing for business with all the other lines that were crossing the Pacific, was it not?

Mr. SCHWERIN: All the other lines, yes sir, with the exception of the Occidental & Oriental Line, with which it worked in unison.

Mr. SEVERANCE: With the exception of the Occidental & Oriental? Well, did the Occidental and Oriental Steamship line have a separate organization at that time?

Mr. SCHWERIN: It had a separate organization, and the Pacific Mail were its agents for freight and passenger business.

Mr. SEVERANCE: The Pacific Mail was its agent?

Mr. SCHWERIN: Its agent, yes sir.

Mr. SEVERANCE: As it was or has continued to be during all the time you have been with them?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: How many ships had the Occidental & Oriental?

Mr. SCHWERIN: Three.

Mr. SEVERANCE: How many did they have when you came here?

Mr. SCHWERIN: Three.

Mr. SEVERANCE: What were their names?

Mr. SCHWERIN: The "Doric", "Coptic", and "Gaelic".

Mr. SVEVRANCE: What is the third?

Mr. SCHWERIN: The "Gaelic".

Mr. SEVERANCE: I understood the first two, but not the last.

Mr. SCHWERIN: "Doric", "Coptic" and "Gaelic".

Mr. SEVERANCE: What became of the "Gaelic"?

1016 Mr. SCHWERIN: She was given up. I believe the owners sold her.

Mr. SEVERANCE: For several years you have only had the "Doric" and the "Coptic" have you?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: When you came here, you found that line being operated under the auspices of the Pacific Mail, although in different ownership?

Mr. SCHWERIN: Different management, altogether.

Mr. SEVERANCE: What is that?

Mr. SCHWERIN: And different management, I say.

Mr. SEVERANCE: It had a different management?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: I thought you said the Pacific Mail Steamship Company acted as its agent?

Mr. SCHWERIN: It did. It didn't manage the line though.

Mr. SEVERANCE: It didn't manage the line? What part of the management was——

Mr. SCHWERIN (int'g): We simply acted as its agents for freight and passenger business.

Mr. SEVERANCE: That is, the Pacific Mail Steamship Company used its organization to procure freight and passengers for this company?

Mr. SCHWERIN: Yes sir, for which they were paid.

Mr. SEVERANCE: Do you happen to know, Mr. Schwerin, how long the Pacific Mail has been in the Oriental trade.

Mr. SCHWERIN: Since 1868.

Mr. SEVERANCE: That was one of the pioneer lines, was it not?

Mr. SCHWERIN: The only line.

Mr. SEVERANCE: It was the only line?

Mr. SCHWERIN: Took the first cargo of flour in 1868 to the Orient.

Mr. SEVERANCE: When was the Occidental & Oriental line established?

Mr. SCHWERIN: 1874.

Mr. SEVERANCE: You found that in operation when you came here?

1017 Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Who was its manager?

Mr. SCHWERIN: Mr. D. V. Stubbs.

Mr. SEVERANCE: Mr. D. V. Stubbs?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Is he related to Mr. J. C. Stubbs?

Mr. SCHWERIN: Very closely.

Mr. SEVERANCE: How closely?

Mr. SCHWERIN: Brother.

Mr. SEVERANCE: Well, that is close enough. And how long did he continue to be the manager of the Occidental and Oriental?

Mr. SCHWERIN: He is still the manager.

Mr. SEVERANCE: He is still the manager is he?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: You say the Pacific Mail acts as the agent, but aside from acting as the traffic agent to procure passengers and freight through its organization, the Pacific Mail has not assumed the management of the ships of the Occidental & Oriental?

Mr. SCHWERIN: Nothing to do with the management of the ships.

Mr. SEVERANCE: Nothing to do with the management of the ships?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: Do you happen to know who—well, I think we brought that out before, the ownership of the stock. Now, Mr. Schwerin, in so far as the procuring of traffic is concerned, these

two lines are now and always have been since you have been here, acting in harmony?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Through the same instrumentalities?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Did the Pacific Mail Company, at the time you came here, have any agencies in the United States for its business?

Mr. SCHWERIN: Not that I know of.

Mr. SEVERANCE: You have none in New York?

1018 Mr. SCHWERIN: None except the agency here in San Francisco.

Mr. SEVERANCE: Have you ever established an agency in New York?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: When was that done?

Mr. SCHWERIN: Some time between 1895 and 1897—as near as I can recollect.

Mr. SEVERANCE: And who was appointed as agent?

Mr. SCHWERIN: Mr. Hawley.

Mr. SEVERANCE: What is his name?

Mr. SCHWERIN: Hawley—H-a-w-l-e-y.

Mr. SEVERANCE: How long did he continue to be the agent?

Mr. SCHWERIN: Until he left the employ of the Southern Pacific Company.

Mr. SEVERANCE: Do you remember when that was?

Mr. SCHWERIN: About 1902 I should think.

Mr. SEVERANCE: Who succeeded him?

Mr. SCHWERIN: Mr. Nutting, his chief clerk—or Mr. Spence, his chief clerk, in charge of the freight business, and as our general eastern freight agent. Mr. Nutting is our eastern general passenger agent.

Mr. SEVERANCE: Did you establish agencies at any other place in the east?

Mr. SCHWERIN: Yes, sir; in Chicago.

Mr. SEVERANCE: And who was your agent there?

Mr. SCHWERIN: Mr. Neimyer.

Mr. SEVERANCE: In what year did you appoint Mr. Neimyer?

Mr. SCHWERIN: The same period.

Mr. SEVERANCE: Did Mr. Hawley, and after him, Mr. Spence and Mr. Nutting, as well as Mr. Neimyer, sustain any relation to the Southern Pacific Railroad Company?

Mr. SCHWERIN: Not so far as I was concerned. They reported directly to us.

Mr. SEVERANCE: Possibly you do not understand my ques-

1019 tion. I ask whether these gentlemen sustained any relation to the Southern Pacific Railroad Company?

Mr. SCHWERIN: Yes sir, they retained their original titles with the Southern Pacific.

Mr. SEVERANCE: That does not answer it. What was their original title?

Mr. SCHWERIN: I think Mr. Hawley was the general eastern

traffic manager, and Mr. Neimyer was the general eastern agent—western agent, I should say; general western agent.

Mr. SEVERANCE: Mr. Schwerin, have you had any other agency in the east, outside of New York and Chicago?

Mr. SCHWERIN: No. Those were the only ones who were appointed agents.

Mr. SEVERANCE: You had no agency in Boston?

Mr. SCHWERIN: No, sir. We had no regular appointed agent in Boston.

Mr. SEVERANCE: Did you have any representative in Boston?

Mr. SCHWERIN: Yes sir, I believe the representative of the Southern Pacific acted for us there.

Mr. SEVERANCE: He acted for you?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: How about Baltimore?

Mr. SCHWERIN: The same way.

Mr. SEVERANCE: And how about Philadelphia?

Mr. SCHWERIN: The same way. We gave commissions to any—I should say this was principally on passenger business. The agent at Boston never acted for us in freight matters. Mr. Hawley is the only one that acted for us on freight in New York City, and Mr. Niemyer in Chicago, and every ticket agent in the United States of every connecting carrier, trunk line, was appointed as our agent. We asked them to act as our ticket agents, and we pay commissions for all the business they secure.

Mr. SEVERANCE: But nobody had your freight matters in charge other than these general officers in New York and Chicago?

1020 Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: That is correct, is it?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, Mr. Schwerin——

Mr. SCHWERIN (cont'g): That is, they were the only two officers who were appointed by us under a regular form of appointment.

Mr. SEVERANCE: Let me ask this: were there any other agents who had authority to make contracts for you for traffic?

Mr. SCHWERIN: If they did, they would have had to do it for those two gentlemen.

Mr. SEVERANCE: They would have had to act as sub-agents under them?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: But they were contracting agents?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Of the company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And were also, as you have stated, the agents of the Southern Pacific in a certain capacity?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, did you solicit shipments in connection with the Southern Pacific from the Orient?

Mr. SCHWERIN: We solicited shipments to every point in the United States, by any line by which we could move it.

Mr. SEVERANCE: By any line by which you could move it?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You were possibly aware, were you not, Mr. Schwerin, that the authority of the capital stock was owned by the Southern Pacific?

Mr. SCHWERIN: I was not.

Mr. SEVERANCE: Had it not been brought to your attention?

Mr. SCHWERIN: I don't think they owned a share of it.

Mr. SEVERANCE: Pacific Mail stock?

1021 Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: When did they sell it?

Mr. SCHWERIN: They did not buy it until after Mr. Huntington died. I am talking about 1893, 1895, 1896, and 1897, when these gentlemen were appointed. I supposed that was the time you were referring to.

Mr. SEVERANCE: But have you not been informad recently that they own it?

Mr. SCHWERIN: I knew when they bought it.

Mr. SEVERANCE: I didn't know but perhaps they had sold it since we were in New York the other day. When did they buy that stock, if you know about it?

Mr. SCHWERIN: I think it was in the winter of 1901.

Mr. LOVETT: 1900, was it not?

Mr. SCHWERIN: 1900? Mr. Huntington has been dead now—he died in 1900, I think.

Mr. LOVETT: He died in August, 1900.

Mr. SCHWERIN: Then they bought it in the fall of 1900.

Mr. SEVERANCE: Now, Mr. Schwerin, was the Pacific Mail Steamship Company stock now owned by the Southern Pacific formerly owned by Mr. Huntington?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: It was not?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: By whom was it owned?

Mr. SCHWERIN: It was owned by about, I think they had something like 5600 Stockholders on the book.

Mr. SEVERANCE: Do you know from whom the stock was bought or acquired by the Southern Pacific?

Mr. SCHWERIN: In the street.

Mr. SEVERANCE: It was bought in the street?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: By the Southern Pacific Company?

Mr. SCHWERIN: Yes sir. I think Mr. Hawley and Mr. Harriman sold quite a block of it.

Mr. SEVERANCE: They did what?

Mr. SCHWERIN: I think they sold quite a block of it.

Mr. SEVERANCE: That is, Mr. Harriman sold quite a block of it to his railroad company?

1022 Mr. SCHWERIN: Mr. Harriman had nothing to do with the Southern Pacific at that time.

Mr. SEVERANCE: That was before we acquired the Southern Pacific?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: He sold it to the Southern Pacific in the fall of 1900?

Mr. SCHWERIN: Yes, sir; Mr. Hawley and he, I think, sold quite a block short to Mr. Tweed and Mr. Speyer.

Mr. SEVERANCE: Sold quite a block of it short, and then afterwards went into the street and picked up the stock and made deliveries?

Mr. SCHWERIN: I suppose so.

Mr. SEVERANCE: And that was in the Fall of 1900?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: So that at that time, or from that time, the fall of 1900, the Southern Pacific Company did own the majority of the capital stock of the Pacific Mail?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And still own it?

Mr. SCHWERIN: To the best of my knowledge.

Mr. SEVERANCE: That was prior to the purchase of the Southern Pacific Stock by the Union Pacific?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: A few months prior—it was in the spring of 1901, according to the testimony, that the stock of the Southern Pacific was purchased by the Union Pacific. Who owned the stock of the Occidental & Oriental Company?

Mr. SCHWERIN: 50 per cent. was owned by the Union Pacific Company, and 50 per cent. by the Pacific Improvement Company.

Mr. SEVERANCE: The Pacific Improvement Company?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And who owned the stock of the Pacific Improvement Company?

Mr. SCHWERIN: That was owned in equal proportions—
1023 you mean at the time I came into the company?

Mr. SEVERANCE: Yes.

Mr. SCHWERIN: Owned in equal proportions by the estate of Governor Stanford, by the Crocker Estate, by Mr. Huntington individually, and the Searles—Mr. Searles, in New York.

Mr. SEVERANCE: That was the Hopkins stock—the Searles stock was the Hopkins stock?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: So that one-half that stock belonged to the Union Pacific?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And the other half belonged directly to these gentlemen?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: What became of the half of the Oriental & Occidental stock that was owned by Governor Stanford and Mr. Crocker and Mr. Huntington and Mr. Hopkins?

Mr. SCHWERIN: It was afterwards purchased by the Union Pacific interests, with the exception of the Huntington stock, which is still owned by the Huntingtons—that is a one-eighth interest.

Mr. SEVERANCE: Still owned by the Huntingtons?

Mr. SCHWERIN: Yes, sir; the Huntingtons.

Mr. SEVERANCE: And the balance of it was purchased by the Union Pacific Interests?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: You mean by the Union Pacific Railroad Company?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Can you tell when that purchase was made, sir?

Mr. SCHWERIN: Well, I should say between the year 1903 and the year 1905.

Mr. SEVERANCE: Between those years, the Stanford Stock and the Crocker Stock, and the Searles Stock was bought by the Union Pacific?

Mr. SCHWERIN: Yes, sir.

1024 Mr. SEVERANCE: So that at the present time, seven-eighths of the Occidental & Oriental belongs to the Union Pacific?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And one-eighth still belongs to the Huntingtons?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: The Southern Pacific Company as a corporation never owned any of the stock of the Occidental & Oriental?

Mr. SCHWERIN: No, sir.

Commissioner LANE: Did you give the year in which the Pacific Mail became the agent of the Occidental & Oriental?

Mr. SCHWERIN: No, sir; I did not.

Commissioner LANE: What year was it?

Mr. SCHWERIN: I believe they became the agent for the Occidental & Oriental—not speaking of my own knowledge now, but I have heard in 1884. In the Orient, when they first started in, they had a joint agency, and then they split in 1876, and they continued separate agents until 1884, and then the Pacific Mail again took the agency for that Company.

Commissioner LANE: What year did the Occidental & Oriental begin?

Mr. SCHWERIN: In 1874.

Commissioner LANE: They were six years under the Pacific Mail?

Mr. SCHWERIN: The Pacific Mail had been in operation—that was six years after the Pacific Mail had started its transpacific line. But they were in operation on the Panama line afterwards——

Mr. SEVERANCE: I am going to take that up separately, the Panama end of it. I haven't got to that yet. Is that all, Mr. Commissioner?

Commissioner LANE: Yes. I understand that it was 1884 that the Pacific Mail became the agent of the Occidental & Oriental?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: I think you stated, did you not, Mr.

1025 Schwerin, that that agency for the Occidental & Oriental has continued ever since its inception?

Mr. SCHWERIN: I stated that it had been continuous ever since I have been with the company in 1893.

Mr. SEVERANCE: I say, it has continued ever since its inception, as you understand it?

Mr. SCHWERIN: I understand it has continued from 1884.

Mr. SEVERANCE: But I say, it still continues now?

Mr. SCHWERIN: And has continued until the present time.

Mr. SEVERANCE: Yes. Now, what other steamship lines, regular lines, I am not speaking of tramp ships, but what other lines of steamships were going out of San Francisco and to the Orient, at the time you came here in 1893?

Mr. SCHWERIN: Those were the only two lines.

Mr. SEVERANCE: Those were the only two lines, the Pacific Mail and the Occidental & Oriental?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Were there any lines of steamers going out of any other parts on the Pacific Coast at that time?

Mr. SCHWERIN: Yes sir. The Canadian Pacific were operating a line of steamers.

Mr. SEVERANCE: And that was in operation at that time to Vancouver?

Mr. SCHWERIN: Vancouver.

Mr. DUNNE: What line is that, Mr. Severance?

Mr. SEVERANCE: The Canadian Pacific. And that line was competitive with yours?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: With separate agents in the Orient?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Was there any other line?

Mr. SCHWERIN: The Northern Pacific Steamship Company.

Mr. SEVERANCE: The Northern Pacific?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: From Tacoma and Seattle?

1026 Mr. SCHWERIN: Tacoma.

Mr. SEVERANCE: From Tacoma. And that line was in competition with yours?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: What other line, if any?

Mr. SCHWERIN: That is all.

Mr. SEVERANCE: Were any other lines put on between 1893 and 1900, going out of or sailing out of any of the ports along the Pacific here?

Mr. SCHWERIN: The Toyo Kaisha came on to San Francisco.

Mr. SEVERANCE: That is the Japanese line?

Mr. SCHWERIN: To San Francisco, yes sir.

Mr. SEVERANCE: And when did that start?

Mr. SCHWERIN: In 1899. And the Nippon Nushen Kaisha——

Mr. SEVERANCE: Just a moment, before we reach that. Was the line competitive with you, the Toyo Kaisha?

Mr. SCHWERIN: We took the agency of that line—the Pacific Mail did.

Mr. SEVERANCE: Did you have it from the inception of the line?

Mr. SCHWERIN: Yes, sir.
Mr. SEVERANCE: That is, from the time it first came here?
Mr. SCHWERIN: Yes, sir.
Mr. SEVERANCE: That is by "we" you mean the Pacific Mail?
Mr. SCHWERIN: The Pacific Mail took the agency of that line.
Mr. SEVERANCE: And have since kept that agency?
Mr. SCHWERIN: Yes, sir.
Mr. SEVERANCE: And just in passing, before we go to the other lines established up the coast or down the coast, is there any other line from San Francisco to the Orient now, with the exception of the three you have named, the Pacific Mail Steamship Company, the Occidental & Oriental, and this Japanese line?
Mr. SCHWERIN: At the present time?
1027 Mr. SEVERANCE: Yes.
Mr. SCHWERIN: The Standard Oil Company run a line of steamers, yes.
Mr. SEVERANCE: Do they run that line for commercial business?
Mr. SCHWERIN: Oh, yes. They run oil out and commercial freight home.
Mr. SEVERANCE: Oil out and commercial freight home?
Mr. SCHWERIN: Yes sir. And then there is the Dollar Steamship Company.
Mr. SEVERANCE: What Company?
Mr. SCHWERIN: The Dollar.
Mr. SEVERANCE: Dollar?
Mr. SCHWERIN: D-o-l-l-a-r-, yes.
Commissioner LANE: What is the name of the Standard Oil line?
Mr. SCHWERIN: It has no name. They are just called the Standard Oil Steamers.
Mr. SEVERANCE: How many boats have they? the Standard Oil line?
Mr. SCHWERIN: They run about a monthly service.
Mr. SEVERANCE: How many boats?
Mr. SCHWERIN: It must take four boats to run a monthly service.
Mr. SEVERANCE: Do they take any freight west bound?
Mr. SCHWERIN: Do you mean west bound from the Orient?
Mr. SEVERANCE: From here?
Mr. SCHWERIN: We always speak of the freight as inward freight and outward freight.
Mr. SEVERANCE: Inward freight and outward freight?
Mr. SCHWERIN: Inward from the Orient, and outward to the Orient.
Mr. SEVERANCE: Then we will call it outward freight. Then do they take any outward freight, any cargo except their own oil?
Mr. SCHWERIN: Nothing but oil.
1028 Mr. SEVERANCE: And they bring back anything they can get?
Mr. SCHWERIN: Anything they can get hold of.
Mr. SEVERANCE: Are they represented by you in any way over there in the Orient?
Mr. SCHWERIN: No sir.
Mr. SEVERANCE: You have never been agents for them?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Therefore the Standard Oil Company, on business originating in the Orient and coming to this country, is a competitor of yours?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: What was the other company you spoke of, the Dollar Steamship Company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: When was that company established?

Mr. SCHWERIN: It has been running the last three or four years.

Mr. SEVERANCE: Who are the officers of that company?

Mr. SCHWERIN: Mr. Dollar is the President. I don't know the others.

Mr. SEVERANCE: Mr. Dollar is the President?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: How many ships have they?

Mr. SCHWERIN: I don't know.

Mr. SEVERANCE: How frequent a service have they?

Mr. SCHWERIN: Their service is irregular. They load lumber, and come back with general merchandise, anything they can get in the Orient.

Mr. SEVERANCE: They load lumber in San Francisco?

Mr. SCHWERIN: They load lumber from the sound.

Mr. SEVERANCE: And take it to the Orient?

Mr. SCHWERIN: And take it to the Orient. They are competitors homeward, and not outward.

Mr. SEVERANCE: They are competitors homeward?

Mr. SCHWERIN: Yes, sir. Then we have the French line, the——

1029 Mr. SEVERANCE (int'g): Just a moment. As to this Dollar line. Do they have separate agencies in the Orient, to procure traffic?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, what was the next one?

Mr. SCHWERIN: The French Line.

Mr. SEVERANCE: Is that the same French Line that has ships on the Atlantic?

Mr. SCHWERIN: No sir, it is another organization.

Mr. SEVERANCE: Another company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: How many ships does the French line have?

Mr. SCHWERIN: They have an arrival here every month.

Mr. SEVERANCE: Monthly. Do they compete with you both ways, or only one way?

Mr. SCHWERIN: Only homeward, inward.

Mr. SEVERANCE: What do they take over?

Mr. SCHWERIN: They just keep going around to the eastward all the time, keep a line of ships going around the world.

Mr. SEVERANCE: Then they go from San Francisco around the Horn?

Mr. SCHWERIN: Yes sir, and they touch all along the coast of Central America, Mexico, South America, and so on.

Mr. SEVERANCE: And they have separate agencies in the Orient from yours?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And they compete with you for business from the Orient here?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Is there any other line coming inward?

Mr. SCHWERIN: None that I know of.

Mr. SEVERANCE: Well, now we will go up to the Sound again. You have spoken of the Northern Pacific Line. What other line is there?

1030 Mr. SCHWERIN: There is the Nippon Nashen Kaisha, run in connection with the Great Northern.

Mr. SEVERANCE: That was established about 11 years ago?

Mr. SCHWERIN: Oh, no; established about 1898 or 1899.

Mr. SEVERANCE: Was it not established in 1896?

Mr. SCHWERIN: Well, it may have been, I am not sure about it; I would not be sure of the date of that first operation, but I think it was later than that.

Mr. SEVERANCE: Was that company represented in any way by you in the Orient?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Has it been competitive with you?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: What other line is there up there?

Mr. SCHWERIN: There is a line called the Ocean Steamship Company.

Mr. SEVERANCE: Where does that sail from?

Mr. SCHWERIN: Tacoma or Seattle.

Mr. SEVERANCE: Did they have separate agencies from yours?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And are they competing with you?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Both ways?

Mr. SCHWERIN: Yes sir. Then there is the China Mutual Steamship Company?

Mr. SEVERANCE: The what?

Mr. SCHWERIN: The China Mutual Steamship Company.

Mr. SEVERANCE: The China Mutual?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Where do they sail from?

Mr. SCHWERIN: Tacoma or Seattle.

Mr. SEVERANCE: They have separate agencies from yours?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And are competitive with you?

Mr. SCHWERIN: Yes, sir.

1031 Mr. SEVERANCE: Both ways?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Any other lines?

Mr. SCHWERIN: Then there was the Dodwell line, of Portland.

Mr. SEVERANCE: You have omitted the Great Northern line, have you?

Mr. SCHWERIN: That is the Nippon Nashen Kaisha. I am now along there.

Mr. SEVERANCE: I see; you are taking the order in which they were established.

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Now, the line to Portland. In what year was that established?

Mr. SCHWERIN: That was along in 1896 or 1897.

Mr. SEVERANCE: And it lasted three years, did it not?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: They had separate agencies from yours?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Competing with you?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Who succeeded them?

Mr. SCHWERIN: They were succeeded by Samuels & Samuels.

Mr. SEVERANCE: How long did they continue in that trade?

Mr. SCHWERIN: They were there two or three years—or it may have been the other way, by the way; it may have been Samuels & Samuels first. Samuels & Samuels were on at the time the O. R. & N. was in the hands of a receiver.

Mr. SEVERANCE: I thought you had that turned around.

Mr. SCHWERIN: Yes, sir. It was first Samuels & Samuels, and then the other company.

Mr. SEVERANCE: They were both of them competitors of yours?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Who succeeded Dodwell?

1032 Mr. SCHWERIN: The O. R. & N.

Mr. SEVERANCE: For about three months intervening, there was a man named Graham had some ships running in connection with the O. R. & N., was there not?

Mr. SCHWERIN: I never considered that a line.

Mr. SEVERANCE: He had some ships there, chartered some ships?

Mr. SCHWERIN: I think he did; yes, sir.

Mr. SEVERANCE: And that was run in connection with the O. R. & N.?

Mr. SCHWERIN: I don't know what the connection was. I had nothing to do with it.

Mr. SEVERANCE: Run from Portland?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And was it competing with you, so long as it lasted?

Mr. SCHWERIN: We didn't consider it competition.

Mr. SEVERANCE: Too small?

Mr. SCHWERIN Yes, sir; irregular.

Mr. SEVERANCE: In so far as it did any business, it was competitive business?

Mr. SCHWERIN: Well, it took it away from some Transpacific line; if it got any business, it was business that all the lines would have shared. But we didn't consider it a competing line at all, from our standpoint.

Mr. SEVERANCE: You did not represent Graham over there at all, did you?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: So if Graham succeeded in getting any business he got it in opposition to you and the other lines?

Mr. SCHWERIN: Yes, sir; that is right.

Mr. SEVERANCE: Do you regard the Dodwell line as a competing line?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And the Samuels' line?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And the Portland and Asiatic?

Mr. SCHWERIN: Yes, sir.

1033 Mr. SEVERANCE: That Portland and Asiatic Company was organized by the O. R. & N. Company, you have stated—or was it?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: What became of the Portland and Asiatic?

Mr. SCHWERIN: Still running.

Mr. SEVERANCE: At the present time are you representing them?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: How long since?

Mr. SCHWERIN: 1904.

Mr. SEVERANCE: 1904. Prior to that time had it been run independently of you?

Mr. SCHWERIN: I had nothing to do with it.

Mr. SEVERANCE: Well, independently of your agency, the Pacific Mail?

Mr. SCHWERIN: Yes, sir. It is today independent of the Pacific Mail.

Mr. SEVERANCE: Yes. I understand—we will get at that later. But up to 1904, they had agents of their own, had they not?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: In the Orient?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Soliciting traffic?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Performing the usual duties of agents?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Today they have the same agents as the Pacific Mail have they not?

Mr. SCHWERIN: The Pacific Mail are its agents.

Mr. SEVERANCE: The Pacific Mail is its agents?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: I notice on the literature put out by the Southern Pacific Road, or by these steamship companies, that the same agents appear as the representatives of the Portland and

1034 Asiatic in the Orient that also appears as agents of the Pacific Mail. That is the case, is it not?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And this Portland and Asiatic line was put in——

Mr. SCHWERIN (int'g): I would like to correct the thing here, Mr. Severance, and that is to say that in the port of Nagasaki, which is a large coaling port, practically, Holmes Ringer & Company represent all steamship lines that enter that one point, and when you asked me in regard to that one, I neglected to say that that is principally a commercial port attending to the provisioning and coaling of ships.

Mr. SEVERANCE: That only applies to Nagasaki?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: You have been personally in the Orient, Mr. Schwerin?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And are familiar with the way business is done?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: You still have the Great Northern to enumerate?

Mr. SCHWERIN: Yes sir, then the Great Northern came on. Before them came on the Boston Towboat Company, with the Tremont, the Fremont, the Lyra, the Hyades, and the Pleiades.

Mr. SEVERANCE: Lots of stars. Then, in addition to that, were there two ships of the Great Northern.

Mr. SCHWERIN: The "Minnesota" and the "Dakota," yes.

Mr. SEVERANCE: That constitutes the whole list, does it not, of the ships that are plying between those ports, that is, the ports of the Pacific Coast and the Orient, as a regular thing, outside of the tramp books?

Mr. SCHWERIN: At the present time?

Mr. SEVERANCE: Yes.

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Was there at one time, Mr. Schwerin, a line of boats proceeding from San Diego.

1035 Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: What was that line?

Mr. SCHWERIN: A line put out by a shipping firm.

Mr. SEVERANCE: Do you remember who they were, and about when the line was established, and how long it lasted?

Mr. SCHWERIN: I don't remember the name of the firm—Downing something—no, the name of the firm was——

Mr. SEVERANCE (int'g): Well, that is perhaps not material.

Mr. SCHWERIN: Well, it was an English shipping firm put the line on, and they were on, I think, about two years.

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And between what dates, about?

Mr. SCHWERIN: 1901 and '2 or '3—around there.

Mr. SEVERANCE: And was that line a competing line?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You did not represent them?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: That line was procured to be run by the Santa Fe Road, was it not?

Mr. SCHWERIN: They ran in connection with the Santa Fe.

Mr. SEVERANCE: Yes. Was it not your understanding that it

was through the influence of the Santa Fe that the line was established?

Mr. SCHWERIN: I know nothing about their arrangements.

Mr. SEVERANCE: All you know about it was that they ran in connection with the Santa Fe?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that as necessarily so, because the Santa Fe is the only line reaching San Diego?

Mr. SCHWERIN: I presume so.

Mr. SEVERANCE: There are no other railroad lines reaching there?

Mr. SCHWERIN: No, sir.

1036 Mr. SEVERANCE: And there were not at that time?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Do you recall any conferences between the officials of the Santa Fe and the Southern Pacific or yourself about the time this line to San Diego was given up?

Mr. SCHWERIN: I had none.

Mr. SEVERANCE: You had none?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: You were not present at any conference between Mr. Stubbs and Mr. Ripley, or any other representative of the Santa Fe, with reference to the movement by rail of Oriental traffic, or at which there was discussed the movement by rail of Oriental traffic brought to this country by the San Francisco lines under your jurisdiction?

Mr. SCHWERIN: I have no recollection of such a meeting.

Mr. SEVERANCE: You don't remember any such meeting?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Do you remember, Mr. Schwerin, about the time that the San Diego line was given up, that there was some conversation or talk as to how the freight coming here from the Orient should go forward to the East, if that line was abandoned and the Santa Fe people brought their Oriental shipments by the way of San Francisco?

Mr. SCHWERIN: I had always tried to get the Santa Fe into business relations with us; I had always told them I could do it better than they could get it done by anybody else.

Mr. SEVERANCE: I have no doubt you believed it. About that time, Mr. Schwerin, did you represent these modest suggestions regarding your ability to handle it?

Mr. SCHWERIN: I have been soliciting this Santa Fe business all the time, and trying to get it.

Mr. SEVERANCE: Do you recall any assurances that were

1037 given to the Santa Fe people that if they would give up trying to support this line out of San Diego, they would be treated fairly in the division of east bound business outside of San Francisco?

Mr. SCHWERIN: No sir. I know of no meeting where that question was discussed with the Santa Fe officers.

Mr. SEVERANCE: With whom did you have your conferences at which you made those assurances? With what individual?

Mr. SCHWERIN: Every time I saw Paul Morton, I told him he

ought to give up his business, that we could do it better than anybody else. He was very much dissatisfied with the service he was getting at San Diego.

Mr. SEVERANCE: I thought I could lay my hands on some testimony given by Mr. Stubbs, but I guess I have missed it. You were frequently—well, as the result either of the poor service out of San Diego, or of your solicitation, or that of some of your people, the line was abandoned, was it not?

Mr. SCHWERIN: I understood the line was abandoned because they lost so much money.

Mr. SEVERANCE: Because they lost so much money? What arrangements do your agents in the Orient make on business coming to San Francisco as to the route that it shall take by rail when it is consigned to the east, or what do they attempt to make? Do you attempt to distribute it fairly between the Santa Fe and the Southern Pacific?

Mr. SCHWERIN: They do not make any arrangement.

Mr. SEVERANCE: You say that your agents have the right to make through billings.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that they solicit business?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: In the soliciting of that business, do they solicit or ask the shippers to route it in any particular way after it gets to this country?

Mr. SCHWERIN: No sir.

1038 Mr. SEVERANCE: Does the Southern Pacific maintain any separate agencies in the Orient?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Does the Santa Fe maintain any?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Then will you explain, if you can, how the business is divided over there, as to removal to the East after it reaches this country?

Mr. SCHWERIN: A ship comes in here and we just turn the whole cargo over to the Southern Pacific; and another ship comes in and we turn the whole cargo over to the Santa Fe.

Mr. SEVERANCE: That is what I want to get at.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: That is the way you divide it?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Do you divide it equally? By that I mean, do you first give a shipload of merchandise to one road, and then a shipload to the other?

Mr. SCHWERIN: That is the way it is done, yes sir.

Mr. SEVERANCE: How long have you been doing that, Mr. Schwerin?

Mr. SCHWERIN: Well, I think the past six months.

Mr. SEVERANCE: For the past six months. Prior to six months ago what method did you take to secure a distribution of the East bound traffic as between the Southern Pacific and the Santa Fe?

Mr. SCHWERIN: We just loaded the cars put on the dock, and the railroad did the rating.

Commissioner LANE: The last six months, the Santa Fe has had the boats from the Orient?

Mr. SEVERANCE: It has had the same amount, I think he means.

Commissioner LANE: An equal amount.

Mr. SCHWERIN: No, sir, I would not say that.

Commissioner LANE: Approximately so?

Mr. SCHWERIN: No, sir, I would not be able to tell how much one road got or the other, without going to the statistics.

Mr. SEVERANCE: The question whether they got an equal
1039 amount would depend upon the amount carried by the respective ships, I presume.

Commissioner LANE: Is it the agreement that each alternative ship go to the Santa Fe?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: What is the nature of the agreement?

Mr. SCHWERIN: We have no agreement. We simply have an arrangement for the exchange of traffic. The Southern Pacific now gives a much larger proportion of traffic than the Santa Fe does, and we try to give the Southern Pacific as nearly equal percentages as we can offer them, and the same way with the Santa Fe.

Mr. SEVERANCE: That is, if the Southern Pacific gives you 75 per cent. of the inward bound freight?

Mr. SCHWERIN: Yes, sir, we would be in duty bound to give the Southern Pacific 75 per cent. of inward bound freight. If the reverse of that were to take place, and if the Santa Fe should give us 75 per cent. of the outward bound business, I would naturally be inclined to give the Santa Fe 75 per cent. of the inward bound business.

Mr. SEVERANCE: How long do you think that inclination of yours would be indulged, so long as the Southern Pacific owns the control of the Pacific Mail?

Mr. SCHWERIN: The Southern Pacific has never interfered in any shape, form or description, with my operation of the steamship company.

Mr. SEVERANCE: They probably have not had reason to.

Mr. SCHWERIN: Yes, sir they have many times. I think Mr. Stubbs looks upon me in the question of traffic as if I had nothing whatever to do with any incorporation whose stock is owned in the other company which he is employed by.

Mr. SEVERANCE: You think Mr. Stubbs looks on you as a rank outsider?

1040 Mr. SCHWERIN: Absolutely, over and over again—to my sorrow.

Mr. SEVERANCE: Now, Mr. Schwerin, to proceed a little further, with this division of business between the Santa Fe and the Southern Pacific. You say at the present time you give one shipload to one line and another shipload to the other line, and you have done that for six months?

Mr. SCHWERIN: Yes, sir, about six months.

Mr. SEVERANCE: Prior to six months ago, how did you make the division?

Mr. SCHWERIN: Turned the freight over to the Southern Pacific Company.

Mr. SEVERANCE: All of it?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And then the Southern Pacific Company did what with it? What they pleased?

Mr. SCHWERIN: I suppose that they routed it—they had an arrangement by which they routed a certain portion by the Santa Fe, and a certain portion by the Southern Pacific, but that was done under our, under the steamship company's understanding.

Mr. SEVERANCE: Now, let us see, Mr. Schwerin. Prior to six months ago, all the freight was turned over by you to the Southern Pacific. Then the Southern Pacific, of course, had absolute control of that freight, could have sent it forward by its own lines, either by Ogden, the Central & Union Pacific route, or the Sunset route, or deliver it to the Santa Fe. That is true, is it not?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And for how many years had you been delivering all your freight to the Southern Pacific?

Mr. SCHWERIN: Since the—I think shortly after the California and Asiatic line went out of business—the California and Oriental line, I should say, went out of business.

Mr. SEVERANCE: What was the California and Oriental line?

1041 Mr. SCHWERIN: That was the line to San Diego.

Mr. SEVERANCE: While that line was in existence, what did you do with your freight when it was got in here to San Francisco?

Mr. SCHWERIN: Sent it over to the Southern Pacific.

Mr. SEVERANCE: Always?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And did the Southern Pacific send all of it East over their lines?

Mr. SCHWERIN: I don't know.

Mr. SEVERANCE: Aren't your relations with Mr. Stubbs' organization sufficiently intimate so that you know what becomes of the freight that leaves here?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: So that you don't know as to whether they gave any of it to the Santa Fe at any time?

Mr. SCHWERIN: They may have given it to the Santa Fe at that time, without my knowledge.

Mr. SEVERANCE: Yes, without your knowledge. But they did not do it with your knowledge?

Mr. SCHWERIN: Not to my knowledge.

Mr. SEVERANCE: Did they a year ago give any of it to the Santa Fe?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Did they not give a certain amount of that traffic

to the Santa Fe at all times after the San Diego line was abandoned?

Mr. SCHWERIN: That is my impression.

Mr. SEVERANCE: And was it not because of the assurance given to the Santa Fe road that it should have a certain amount of this business coming over the Pacific Mail and its allied lines, that the San Diego line was abandoned?

Mr. SCHWERIN: As I stated before, Mr. Severance, I personally solicited that business myself; I urged the Santa Fe people to give us that business, and I told them, and I talked with Mr. Paul Morton, who was the only Santa Fe man that I had any connection with, and told him that we could transact his business and do it better

1042 for him than he could get it done by anybody else.

Mr. SEVERANCE: Now, Mr. Schwerin, that does not quite touch the point, it seems to me. You say you could transact their business. Now, you have already testified that cargoes coming in from the Orient are discharged from your ships and turned over to the Southern Pacific—they were until those last six months?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Now, it was not the transaction then, of the business of the Santa Fe, in any way, was it, unless you could hold out to them some assurance of traffic. Did you hold out to Mr. Morton an assurance that his line would receive traffic from your ships if he would abandon the San Diego line?

Mr. SCHWERIN: That stood to reason, that we had to, in making a traffic arrangement of that kind—it stood to reason that we had to give him traffic in exchange for the traffic that he gave us.

Mr. SEVERANCE: That is what I am trying to get at. You spoke of handling his business——

Mr. SCHWERIN (int'g): I made a report to the Santa Fe, and showed them the amount of tonnage which we would give them.

Mr. SEVERANCE: That is, the amount you would give them if they would abandon the San Diego line?

Mr. SCHWERIN: No sir; after we were in operation with the Santa Fe.

Mr. SEVERANCE: The amount of tonnage they had been given?

Mr. SCHWERIN: The amount that they had been given; I kept them posted as to the amount of tonnage that passed over their lines.

Mr. SEVERANCE: Do you mean tonnage west bound or east bound?

Mr. SCHWERIN: Tonnage east bound, that is, bound from San Francisco to interior points of the United States.

Mr. SEVERANCE: How did you get that information?

1043 Mr. SCHWERIN: We kept track of it on the dock. The Santa Fe cars would be switched in to be loaded with Santa Fe freight. We did not load Southern Pacific cars with Santa Fe freight.

Mr. SEVERANCE: I understood you turned all your cars over to the Southern Pacific?

Mr. SCHWERIN: So we did, but we kept track of the cars.

Mr. SEVERANCE: You kept track of the amount of the business that was given to the Santa Fe by the Southern Pacific?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: That is right, is it?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And you did assure Mr. Morton, in order to procure them to abandon the San Diego line, that they should have a fair amount, or a certain amount, I don't know how you put it——

Mr. SCHWERIN: I never made any stipulation with Mr. Morton as to any amount.

Mr. SEVERANCE: Not as to any amount, but what was your proposition to him, then, outside of the general statement that you would handle his business better? Did you not give him some assurance?

Mr. SCHWERIN: No sir, I gave him no assurance of a definite amount of freight.

Mr. SEVERANCE: I understand, but did you tell him he would get some freight from you?

Mr. SCHWERIN: Oh, yes, undoubtedly.

Mr. SEVERANCE: Was that as near as you got at the actual result?

Mr. SCHWERIN: I told you, Mr. Severance, that I have no idea of ever having discussed with Mr. Paul Morton anything in regard to a definite amount of freight to be turned over to the Santa Fe.

Commissioner LANE: Have you a copy of that circular, or report that you made to the Santa Fe of the business that you have then?

Mr. SCHWERIN: It was not a circular, but in the shape of a report.

1044 Commissioner LANE: Have you got a copy of that?

Mr. SCHWERIN: No sir. Everything was burned up in the fire.

Commissioner LANE: Perhaps the Santa Fe people have one.

Mr. SCHWERIN: They may have.

Mr. SEVERANCE: When did you make out that report?

Mr. SCHWERIN: Each month, after the month's business passed over the dock.

Mr. SEVERANCE: Up to what time?

Mr. SCHWERIN: I don't think there has been any made since the fire. In fact, I am sure there have been none made since the fire.

Mr. SEVERANCE: That was delivered to whom representing the Santa Fe?

Mr. SCHWERIN: Sent to Mr. Bissell.

Mr. SEVERANCE: Then he would probably know. Were his offices burned up too?

Mr. SCHWERIN: I don't know exactly as to that. I can tell you, Mr. Severance, that sometimes that freight would run for a month 20 per cent., sometimes it would run 30 per cent., sometimes 17 per cent., sometimes 28 per cent.—it varied from month to month.

Mr. SEVERANCE: It depended upon the amount of freight that the Southern Pacific gave to the Santa Fe. That is all there was of it. There was not any way that the Santa Fe could get in there and get that except by sufferance of the Southern Pacific, was there?

Mr. SCHWERIN: I think if the Santa Fe people had had cause to complain in regard to the amount of freight they were receiving in exchange for the amount of outward freight they were giving us, that we would have heard from them: they would have found fault with us.

Mr. SEVERANCE: They were quite content, were they?

Mr. SCHWERIN: Well, we were giving them more freight than they were giving us. They were not giving us the same amount——

1045 Mr. SEVERANCE: I say, they were content, were they?

Mr. SCHWERIN: As far as I know.

Mr. SEVERANCE: They did not make any fuss about the amount of business they were getting?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: You say in those times, you gave them from 17 to 20 per cent. How did you happen to increase that to what might possibly be 50 per cent., assuming that the boats were all equally burdened, six months ago?

Mr. SCHWERIN: Well, a ship may come in here—for instance, the "Mongolia" may come in here with only 1700 tons overland cargo, and the next voyage she might come in here with 8000 tons of overland cargo.

Mr. SEVERANCE: I appreciate that.

Mr. SCHWERIN: There is not a ship comes in with any definite amount of overland cargo.

Mr. SEVERANCE: I appreciate that thoroughly, but if you are without discrimination, turning the ships over to the Santa Fe and the Southern Pacific, turning them over indiscriminately as they come, one of them is just as likely to get a big cargo as the other?

Mr. SCHWERIN: Yes; but if the Santa Fe is not giving us outward tonnage, we would not turn every second ship over to the Santa Fe; we would regulate that so as to have a fair exchange for the amount of tonnage over to us.

Mr. SEVERANCE: I understood you to say, Mr. Schwerin (perhaps I misunderstood you), that about six months ago you adopted the plan of sending alternate ships to the Santa Fe?

Mr. SCHWERIN: That is because it just happened that way at the present time. The through tonnage has been very light.

Mr. SEVERANCE: Where do you discharge your cargo?

Mr. SCHWERIN: At San Francisco, Pier 42 and Pier 44.

Mr. SEVERANCE: At some point that is reached by the Santa Fe as well as by the Southern Pacific?

1046 Mr. SCHWERIN: It is switched from the Southern Pacific.

Mr. SEVERANCE: It is switched from the Southern Pacific to the Santa Fe?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: And you caused that to be done with every alternate cargo?

Mr. LOVETT: He said alternate cargoes from——

Mr. SEVERANCE: I mean you have been lately, for six months past?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: What you mean is that you do not know that you will continue to do that?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: But you have continued that for six months. At whose suggestion, if any one's, did you make that change in the method of handling the amount of traffic for each?

Mr. SCHWERIN: I think the question came up in relation to the steamship company routing the overland freight.

Mr. SEVERANCE: Came up between whom, sir?

Mr. SCHWERIN: Come up between Mr. Luce and Mr. Chambers and myself.

Mr. SEVERANCE: Who is Mr. Luce.

Mr. SCHWERIN: He is the general freight agent of the Southern Pacific Company in San Francisco.

Mr. SEVERANCE: And who is Mr. Chambers?

Mr. SCHWERIN: He is the general freight agent of the Santa Fe.

Mr. SEVERANCE: And this was a conversation between you three gentlemen.

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: What was said at that conversation, in substance, by each of you?

Mr. SCHWERIN: Well, I believe that I raised the point that if we turned the freight—if we turned the freight over to the Southern Pacific Company the question immediately arose in regard to the Santa Fe handling the freight. We had had considerable
1047 trouble on the dock in regard to getting Southern Pacific cars, and I think I threatened that unless I had less trouble in getting cars from the Southern Pacific, I would shove all the freight over the Santa Fe; if the Southern Pacific didn't give me any cars, I would send the freight over the Santa Fe, because the freight was congested on the docks there.

Mr. SEVERANCE: Did that meet with any remonstrance on the part of the majority owners of stock in the Pacific Mail?

Mr. SCHWERIN: No sir. The owners have never remonstrated or said anything upon the question. We discussed the question and concluded the best way to do, instead of apportioning out of the ship any special cargo, for instance, a cargo that might be served best by the Santa Fe lines, to try to aggregate that cargo out of the ship, that we would turn over the whole cargo to the Santa Fe, and let them bill it out as they saw fit, and then turn over the whole net cargo to the Southern Pacific, and let them bill it out as they saw fit.

Mr. SEVERANCE: Mr. Schwerin, did you three gentlemen agree on that?

Mr. SCHWERIN: We did.

Mr. SEVERANCE: And you have since carried out that agreement?

Mr. SCHWERIN: As far as I know.

Mr. SEVERANCE: Up to this date?

Mr. SCHWERIN: As far as I know, it has been carried out.

Mr. SEVERANCE: So that you give those instructions to your subordinates?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that was satisfactory to the two roads with whom you made the trade?

Mr. SCHWERIN: As far as I know, yes sir.

Commissioner LANE: What was the month in which that arrangement was made?

Mr. SCHWERIN: Sir?

1048 Commissioner LANE: What was the month in last year in which that arrangement was made?

Mr. SCHWERIN: I don't just recollect what month it was.

Commissioner LANE: Was it about the middle of the year?

Mr. SCHWERIN: No sir. I think it was between September and November. It may have been later than that, when I finally met those people, and we had that conversation about the delivery of the cars of the Southern Pacific and the Atchison there—it may have been November, and it may have been December. I don't remember, Mr. Lane, just when the meeting took place.

Commissioner LANE: Did you adopt any new policy as to the publishing of rates, either on the other side or on this side, for Oriental business?

Mr. SCHWERIN: No sir.

Commissioner LANE: During last year?

Mr. SCHWERIN: No sir.

Commissioner LANE: Did you publish your new rates over on the other side?

Mr. SCHWERIN: They were published by the rail connections in their joint Oriental traffic.

Commissioner LANE: Published by the rail connections on this side?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: For business moving from this side outward?

Mr. SCHWERIN: I think there is a joint tariff published by them for inward rates also.

Commissioner LANE: For inward rates?

Mr. SCHWERIN: Yes sir, Transcontinental; transpacific and transcontinental.

Commissioner LANE: Where could that rate be found over in the Orient?

Mr. SCHWERIN: That tariff, do you mean?

Commissioner LANE: That tariff, yes.

Mr. SCHWERIN: Our agents have it over there.

1049 Commissioner LANE: Your agents have it over there?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: That is, the tariff for business moving to the United States and inland?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: Is that tariff the same to-day that it was a year ago?

Mr. SCHWERIN: I think there have been some corrections made in the tariff, in relation to certain freights, and also in relation to what they call the outboard freights. You see there is an arbitrary freight originating in Tientsin—they take an arbitrary to Shanghai or Kobe or Newchang or Nagasaki, and these outboard rates were modified, and I think the new rate sheet has got the new, modified rates in it.

Commissioner LANE: Were the rates from San Francisco to eastern points in the United States over the Santa Fe the same as rates to the same points over the Southern Pacific?

Mr. SCHWERIN: To the best of my knowledge, yes. All the transcontinental lines and all the transpacific lines are billing at the same rates. The principal commodities we bring from the Orient are tea and matting.

Commissioner LANE: Do you import much rice?

Mr. SCHWERIN: Not overland, no; locally.

Commissioner LANE: And silk?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: Are curios of much importance?

Mr. SCHWERIN: Yes sir. But the great bulk of the commodities are tea and matting.

Commissioner LANE: When you route business over on the other side for the East, say Chicago or New York, do you give a through bill of lading which names the American railroad that carries it to the East?

Mr. SCHWERIN: No sir.

Commissioner LANE: You do not?

Mr. SCHWERIN: No sir. We give our own bill of lading.

1050 Commissioner LANE: You give your own bill of lading, showing the business as going over the Occidental & Oriental, or the Pacific Mail?

Mr. SCHWERIN: Yes sir—whichever line it moves on.

Commissioner LANE: And that bill of lading runs from the point in China, Hongkong we will say, or Nagasaki in Japan, to Chicago, say?

Mr. SCHWERIN: Yes sir, via the port of San Francisco.

Commissioner LANE: Via the port of San Francisco?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: And it is reserved to you to determine there, or at any time you please, just how the freight shall move, once it reaches the port of San Francisco?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: At the time the line was running to San Diego, you routed all the business to the East over the Southern Pacific, did you not?

Mr. SCHWERIN: It was routed that way.

Mr. SEVERANCE: Well, you caused it to be done, or permitted it to be done?

Mr. SCHWERIN: That was the route that——

Mr. SEVERANCE (int'g): Who routed it? You seem to make a distinction between causing it to be routed, and routing it? Who did it?

Mr. SCHWERIN: I suppose it was routed by the Southern Pacific officials.

Mr. SEVERANCE: Prior to the abandonment of the San Diego line, prior to their abandoning their line to San Diego and coming up here, the Southern Pacific had all the business?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And immediately the line from San Diego was abandoned, and the Santa Fe freight began to go through this

port, the Santa Fe began to get a percentage of the inward business, which you say varied from 17 to 20 per cent.

Mr. SCHWERIN: It went higher than that sometimes.

Mr. SEVERANCE: Sometimes higher than that?

1051 Mr. SCHWERIN: That is right.

Mr. SEVERANCE: Since then, the Santa Fe has had no line of ships in competition with you, and going out of San Diego?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: What lines does that division of traffic embrace? Does it embrace the Japanese line, or only the Occidental & Oriental and the Pacific Mail?

Mr. SCHWERIN: All three.

Mr. SEVERANCE: All three?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that covers the distribution of all the traffic coming in here by those three lines from all ports of the Orient?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: When you turn over to the Southern Pacific its share of this business do you have anything to do with routing it to the east, that is, as to deciding what particular route it shall take to the east?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: As it leaves the lines of the Southern Pacific?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: That is left to the Southern Pacific?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Do you happen to know, sir, whether the Atlantic seaboard business, New York business, Boston business, and so on, moves by the Sunset route, in case the Southern Pacific has the routing?

Mr. SCHWERIN: It could move that way, but if it did we would object.

Mr. SEVERANCE: You would object to the Sunset route?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Why?

Mr. SCHWERIN: We are all competing for the rapidity
1052 with which we deliver tonnage from the Orient destined for the Atlantic seaboard, and we believe that the Central & Union Pacific, and Chicago & Northwestern can make better time than the Sunset—we want that all rail route.

Mr. SEVERANCE: You prefer the all rail route?

Mr. SCHWERIN: Yes sir. The people in New York will telegraph to the Orient asking when the goods will arrive, and all the lines are competing to make the best showing with reference to the time occupied in transit, upon the question of who can give the best service.

Mr. SEVERANCE: You find, do, you, that it is best for you to have the stuff moved by the Southern Pacific, the Union Pacific and the Northwestern?

Mr. SCHWERIN: Yes sir. That has been the route since I can remember.

Mr. SEVERANCE: That has been the route that you have preferred

since you have been there. Do you happen to know whether that is the way——

Mr. SCHWERIN (int'g): The Rio Grande, I believe some of the teas used to go over the Rio Grande

Mr. SEVERANCE: What is that?

Mr. SCHWERIN: Some of the teas used to go by the Rio Grande.

Mr. SEVERANCE: They don't any more, do they?

Mr. SCHWERIN: I don't know, I think so.

Mr. SEVERANCE: They do?

Mr. SCHWERIN: I think so.

Mr. SEVERANCE: Who routes them that way?

Mr. SCHWERIN: I suppose the railroads.

Mr. SEVERANCE: You don't mean to say, do you, Mr. Schwerin, that the Southern Pacific Railroad agents here at San Francisco, if they have the routing of the traffic, route it over the Rio Grande?

Mr. SCHWERIN: I have understood that teas are still going over the Rio Grande.

Mr. SEVERANCE: But it is not routed that way by the Southern Pacific, where it is left in their hands to route, is it?

1053 Mr. SCHWERIN: There is nobody else could route it except the Southern Pacific.

Mr. SEVERANCE: Nobody else could route it?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Then the Southern Pacific absolutely controls the routing of the traffic after you turn it over to them?

Mr. SCHWERIN: It is for their account, yes sir.

Mr. SEVERANCE: Neither the shippers nor the consignee have any voice in that?

Mr. SCHWERIN: If they have, they never exercise it.

Mr. SEVERANCE: They never exercise it?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: So that if the Rio Grande gets any of that traffic, it gets it through the kindness of the Southern Pacific?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, what line to the East does the traffic that goes over the Portland and Asiatic take?

Mr. SCHWERIN: It takes the O. R. & N., the Oregon Short Line, and U. P.

Mr. SEVERANCE: And the Northwestern?

Mr. SCHWERIN: I suppose so.

Mr. SEVERANCE: Can you tell any reason why the traffic goes Northwestern instead of by the Milwaukee & St. Paul, or any other line east of Omaha?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: You know nothing about that?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: You merely know the fact, without knowing the reasons?

Mr. SCHWERIN: I merely know the fact. I don't know that it all goes by the Northwestern. I know that it goes up on the Oregon Short Line, and the Oregon Railway & Navigation Company, up to

the junction of the Union Pacific. After that I don't know where it goes.

Mr. SEVERANCE: After it gets to——

Mr. DUNNE: He has not said it always goes Northwestern.

1054 Mr. SEVERANCE: I understood him to say that that is the way it moved east of Omaha, by the Northwestern.

Mr. DUNNE: No, that was the implication of your question, but that was not his testimony.

Mr. SEVERANCE: I certainly do not want to misquote Mr. Schwerin, or put him in a hole, or anything of that kind.

Mr. SCHWERIN: I want to correct myself.

Mr. SEVERANCE: If I mistook you, correct me.

Mr. SCHWERIN: I made the remark that the Oregon Short Line the Oregon Railway and Navigation Company, the U. P., and the Northwestern, because it is the habit to take it on that line. But I mean that after striking the U. P., I don't deny how it went. I know that up to that point it went over the O. R. & N., and the Short Line. I would suppose it would go the shortest route under the same conditions, if we wanted it to go from San Francisco.

Mr. SEVERANCE: That is, if you were sending it from San Francisco, that is the route you would have to take?

Mr. SCHWERIN: That is the route I would like to have it go.

Mr. SEVERANCE: And that is the route, as you understand it, that the bulk of the traffic takes?

Mr. SCHWERIN: Yes sir, because we have a fast freight, are supposed to have an Asiatic fast freight on that line.

Mr. SEVERANCE: Is there any difference, Mr. Schwerin, any substantial difference in the character of the commodities that are imported through the Portland gateway and those that are imported through the San Francisco gateway, or are they about the same?

Mr. SCHWERIN: As far as the Portland tonnage is concerned, with the exception of silk, silk piece goods, the rougher or common class of goods that go by tramp steamers rather than by mail and

1055 dispatch steamers, and excluding this local Oriental business which we have largely here in San Francisco, the general tonnage is about the same.

Mr. SEVERANCE: The same class of goods?

Mr. SCHWERIN: Matting, tea and curios.

Mr. SEVERANCE: Do you remember whether at the time that the O. R. & N. was running boats to the Orient, or rather had boats running in connection with it, and at the time that the O. R. & N. was independent of the Southern Pacific, whether it was customary for the O. R. & N. boats from Portland to San Francisco, to bring down any Oriental traffic that came in by Portland and deliver it here in San Francisco?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that was done, was it not, without any extra charge to the shipper?

Mr. SCHWERIN: Yes sir, but it was a very small amount.

Mr. SEVERANCE: Yes, a small amount, but whatever it was, that is the fact?

Mr. SCHWERIN: We have the same thing for Portland now.

Mr. SEVERANCE: That is, you bring goods down from Portland?
Mr. SCHWERIN: Yes sir.
Mr. SEVERANCE: If they come in that way?
Mr. SCHWERIN: Yes sir.
Mr. SEVERANCE: Destined to San Francisco?
Mr. SCHWERIN: Yes sir.
Mr. SEVERANCE: And who pays the freight?
Mr. SCHWERIN: The same rates apply to San Francisco via Portland as apply to San Francisco direct.
Mr. SEVERANCE: I understand that. But who absorbs that charge between San Francisco and Portland?
Mr. SCHWERIN: It is divided between the Portland and Asiatic line, and the San Francisco and Portland line—prorated.

Mr. SEVERANCE: Is the San Francisco and Portland line a
1056 connection, legally, I mean, has it any legal connection with the Portland and Asiatic? Does it belong to the corporation?

Mr. SCHWERIN: No sir. It is an independent organization.
Mr. SEVERANCE: But you expect—and I say "you," speaking of you as representing the Portland and San Francisco line—you expect from the Portland and Asiatic a less carriage charge, do you, for bringing these goods from the Orient that come into Portland down to San Francisco that you would expect on a local shipment?
Mr. SCHWERIN: Yes sir.
Mr. SEVERANCE: And that is what you mean when you say that the charge from Portland to San Francisco is divided between the two companies?
Mr. SCHWERIN: Prorated.
Mr. SEVERANCE: Will you explain that a little more in detail, what you mean by "prorated"?
Mr. SCHWERIN: Well, we might prorate on our locals—for instance, there is a certain rate, say a six dollar rate from Hongkong to Portland, and there may be a two-dollar-eighty-rate from Portland to San Francisco. If the Asiatic line took the whole of it, the San Francisco line would not get anything. So we prorate that on the basis of our locals, divide the six dollars on the basis of the relation which the two locals bear to each other.
Mr. SEVERANCE: So that in that case, the Portland and Asiatic, instead of getting the $6 for itself that it would have had if the cargo had gone from there to the East——
Mr. SCHWERIN (int'g): Gone direct to Portland; it is local cargo that I am comparing there.
Mr. SEVERANCE: I want to be sure that we understand each other.
Mr. SCHWERIN: I am talking about local cargo there.
Mr. SEVERANCE: Let us take the case of an importation from the Orient.
Mr. SCHWERIN: Locally, or overland?

Mr. SEVERANCE: To San Francisco, we will say, and it
1057 comes to San Francisco by way of the Portland & Asiatic.

Mr. SCHWERIN: Yes sir, that is a local shipment. We call all shipments to the coast local shipments.

Mr. SEVERANCE: Very well. We understand each other upon that term. I am speaking now of shipments from say China or Japan to San Francisco, and instead of moving directly to San Francisco, it comes via Portland.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: The rate, you say, to San Francisco is just the same?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE (cont'g): Whether it comes direct by ship to San Francisco, or by ship to Portland then trans-shipped to San Francisco?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, take your case that you spoke of, suppose the rate on that commodity is $6 from the Orient to any of these Pacific coast points, such as, for instance, San Francisco. How would you divide that revenue between the Portland & Asiatic and San Francisco & Portland?

Mr. SCHWERIN: Well, if the local rate from Portland was $3, then we would prorate on the basis of 3 to 6.

Mr. SEVERANCE: That would give them half as much for bringing it from Portland down here as the Portland & Asiatic would get for bringing it over?

Mr. SCHWERIN: One would get three-ninths, and the other would get six-ninths.

Mr. SEVERANCE: That is what I say. The San Francisco & Portland would get half as much. That is the basis on which you make the division, is it?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: In making that division, you act for both parties, do you not?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that is your best judgment as to what is a fair division?

Mr. SCHWERIN: Yes sir.

1058 Mr. SEVERANCE: Prior to the time that you established that division, do you happen to know what the charge was that was paid to the San Francisco & Portland line—in the old days when there were O. R. & N. Boats?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: You don't know about that?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: This division you established as soon as you came into charge of the lines, did you?

Mr. SCHWERIN: I don't want you to understand that they always prorated on the basis of the locals. There might be times when we would not prorate on the basis of the locals.

Mr. SEVERANCE: Why, Mr. Schwerin; why so?

Mr. SCHWERIN: Because the local Portland-San Francisco rate on the commodity might be so much higher in proportion to the transpacific rate that it would be entirely unfair to the transpacific to prorate on the locals.

Mr. SEVERANCE: In that case, how do you divide it—on some terms——

Mr. SCHWERIN (int'g): Somewhat like Solomon, cut a fair division to each.

Mr. SEVERANCE: Use a knife?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, to leave the transpacific business for a moment, Mr. Schwerin. The Pacific Mail runs ships in other directions, does it not?

Mr. SCHWERIN: Yes sir, we have the Panama line.

Mr. SEVERANCE: To what ports do you run on that line?

Mr. SCHWERIN: To the port of Manzanilla and Mazatlin, San Blas, Acapulco, Coos, Champerico, San Jose, Acajutla, La Libertad, La Union, Corinta, and Ancon.

Mr. SEVERANCE: And what?

Mr. SCHWERIN: Ancon—that is the new American port.

Mr. SEVERANCE: That is a port at Panama?

1059 Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Before that port was established you run to Panama?

Mr. SCHWERIN: It is the same thing; they just changed the name of the terminal to Ancon.

Mr. SEVERANCE: That is, Ancon is on the American zone?

Mr. SCHWERIN: Yes sir, in the American zone.

Mr. SEVERANCE: The canal zone?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Do you bring out commodities from the east by way of Panama?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Have you any boats on the other side of the Isthmus?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: With what line of ships do you operate in connection with the trade that comes around by Panama?

Mr. SCHWERIN: With the United Fruit Company from Gulf points, and with the Panama Railroad line—from New York—the Panama Railroad Company's steamships—and with the Hamburg American Packet Company from New York to points other than American, and with all the transatlantic lines out of Colon.

Mr. SEVERANCE: Out of Colon?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And you accept their shipments from Europe, do you not, that way?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Brought from transatlantic points and then on down from New York and across the Isthmus?

Mr. SCHWERIN: Yes sir, and to all points I have named, the points along the Central American and Mexican coast.

Mr. SEVERANCE: How many ships had you in that trade when you first came here in 1893? You need not bother to give the names, but give the number?

1060 Mr. SCHWERIN: There were six running on the through line.

Mr. SEVERANCE: That is, from Panama to San Francisco?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Has that fleet been enlarged or diminished?

Mr. SCHWERIN: Enlarged. We are running nine there now.

Mr. SEVERANCE: You are running nine there now?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And how long have you been running nine?

Mr. SCHWERIN: About five years.

Mr. SEVERANCE: Now as to that business, Mr. Schwerin, your line is competitive with the rail lines, is it not, from New York to San Francisco?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And always has been?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Since 1893, when you went into the Pacific Mail?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And the business, you say, has increased; you have three more ships than you had then?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: What is their tonnage as compared with the average tonnage of ships that were running on the line in 1893?

Mr. SCHWERIN: Well, the "Peking" is on that run, and the "Peru" is on that run, and they were transatlantic steamers before.

Mr. SEVERANCE: Are they larger than the old boats?

Mr. SCHWERIN: The "Peking" took the place of three boats, that went off, practically, and the "Peru" of at least two.

Mr. SEVERANCE: Would you be able to without any trouble figure in your head the aggregate tonnage of that fleet in 1893, and
1061 the aggregate tonnage of that fleet at the present time?

Mr. SCHWERIN: I could figure it on a piece of paper better than I could in my head.

Mr. SEVERANCE: All right. I will loan you a piece of paper, and a pencil too, if you like.

Mr. SCHWERIN: Would it not be better if I gave you that accurately afterwards?

Mr. SEVERANCE: No, just give it as near as you can now, I don't care whether it is absolutely accurate, but just approximately.

Commissioner LANE: Mr. Severance, how soon will you be through with this witness?

Mr. SEVERANCE: I don't know, your Honor. I should think I would be half an hour longer. That is my impression. I have some other matters that I want to examine him upon.

Commissioner LANE: We will adjourn at 4 o'clock.

Mr. SEVERANCE: Your Honor wants to adjourn at 4?

Commissioner LANE: Yes, promptly.

Mr. SEVERANCE: Then I will not be able to finish with Mr. Schwerin to-night, because it is 10 minutes to 4 now. All of the witnesses I have caused to be subpœnaed may depart now, and they need

not return until to-morrow morning, as I shall not be able to take them up to-night.

Mr. SCHWERIN (after making the calculation requested): Roughly, about an increase of one-seventh.

Mr. SEVERANCE: What was the tonnage originally, and what is it now, about?

Mr. SCHWERIN: About 15,000 tons originally, and it has increased to about 20,000.

Mr. SEVERANCE: Increased by one-seventh, did you say?

Mr. SCHWERIN: A seventh, yes sir.

Mr. SEVERANCE: That would be more than that, an increase from 15,000 to 20,000.

Mr. SCHWERIN: 15,000 and 20,000 makes 35,000. 15,000 tons and 20,000 tons makes it twenty-thirty-fifths, which is four-
1062 sevenths, and fifteen-thirty-fifths, which is three-sevenths, and that is an increase of one-seventh.

Mr. SEVERANCE: It was originally 15,000, and now it is 20,000, so that it must have increased 5,000 tons?

Mr. SCHWERIN: And that would be one-seventh of the total tonnage of the two.

Mr. SEVERANCE: I know, but the increase is 5,000 tons, and that increase is from 15,000 to 20,000 tons.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that increase of tons would be a $33\frac{1}{3}$ per cent. increase on what it was in 1893. That is right, is it not?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: You may proceed now until 4 o'clock.

Mr. SEVERANCE: I think this will be a good point to take the adjournment, if your Honor please.

Commissioner LANE: Very well. Then we will take an adjournment until 10 o'clock to-morrow morning.

SAN FRANCISCO, CALIFORNIA,
WEDNESDAY, *January* 30, 1907—10 a. m.

Present: Commissioner Franklin K. Lane.

Appearances.

C. A. Severance, Esq., For the Interstate Commerce Commissioner.
Peter F. Dunne, Esq., and R. S. Lovett, Esq., For the Railroad Companies.

Mr. SEVERANCE: Shall we proceed, your Honor?

Commissioner LANE: You may proceed.

Mr. SEVERANCE: I must apologize to your Honor and to the witness for my voice today. It is worse than it was yesterday, if anything, as my cold is worse rather than better. However, I will do the best I can.

1063 R. P. SCHWERIN examination resumed.

Mr. SEVERANCE: Mr. Schwerin, does the Portland & Asiatic Company own its own ships?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: From whom are they chartered?

Mr. SCHWERIN: Chartered from the Hamburg American Packet Company.

Mr. SEVERANCE: Does the Occidental & Oriental own its own ships?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: From whom are they chartered?

Mr. SCHWERIN: Chartered from the White Star Company.

Mr. SEVERANCE: You are acquainted with Mr. William Mahl, are you not?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: He is the Controller of the Pacific Mail, is he not?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Mr. Mahl testified at the hearing of this matter in New York that the Oriental & Occidental Steamship Company has gone into liquidation. Is that so?

Mr. SCHWERIN: Not at present.

Mr. SEVERANCE: Has there been any change in the matter of the management of the Occidental & Oriental Steamship Company?

Mr. SCHWERIN: No Sir.

Mr. LOVETT: He did not testify it had gone into liquidation he said he did not know absolutely, but that was his understanding.

Mr. SEVERANCE: He said "which I believe has gone into liquidation" and when I asked him "when"? he said "Possibly within the last six, seven, or eight months."

Mr. DUNNE: I don't think that is so.

Mr. SEVERANCE: Well, I want to find out. Does the Pacific Mail own its own ships, Mr. Schwerin?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: All of them?

1064 Mr. SCHWERIN: Yes, sir. Do you mean own its own ships that belong to the Pacific Mail, or all the ships it operates?

Mr. SEVERANCE: You gave a list yesterday of the fleet.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: The fleet of the Pacific Mail.

Mr. SCHWERIN: All that I enumerated as a fleet belong to the Pacific Mail.

Commissioner LANE: Are there additional ships that it operates that it does not own?

Mr. SCHWERIN: Yes sir, the "Mongolia" and the "Manchuria."

Mr. SEVERANCE: I was just coming to that. That is what I want to ask you about. There was introduced in evidence at New York an excerpt from the minutes of the meeting of the Executive Committee of the Oregon Short Line of the 26th of March, 1903. At that meeting, Mr. Harriman reported that, pursuant to the authority conferred upon him at the meeting of the Executive Committee on

February 19th, 1903, he had purchased from the Atlantic Transport Company two ocean steamers, known in the contract as Nos. 5 and 6, now under construction at the New York Shipbuilding Yard, at Camden, New Jersey, at the approximate sum of $2,200,000 each, the delivery of which was expected about the end of the present year, and his action was ratified and confirmed. Are those two ships the "Mongolia" and "Manchuria"?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Then those ships belong to the Oregon Short Line, do they?

Mr. SCHWERIN: As far as I know they belong to E. H. Harriman.

Mr. SEVERANCE: Oh, they belong to E. H. Harriman personally.

Mr. SCHWERIN: As far as I know, yes sir.

Mr. SEVERANCE: Would it not appear from those minutes from which I have just read that they were bought for the Oregon Short Line?

1065 Mr. SCHWERIN: I never saw the minutes before you read them, or heard of them.

Mr. SEVERANCE: Mr. Harriman is President of the Pacific Mail, is he not?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And you act under his instructions?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Do you have a charter party covering these ships?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: From whom does it run?

Mr. SCHWERIN: Runs between the Pacific Mail and E. H. Harriman.

Commissioner LANE: At what time was it made?

Mr. SCHWERIN: I don't remember when it was made. The charter parties are in New York now.

Commissioner LANE: What is the date of that minute order?

Mr. SEVERANCE: March, 1903.

Commissioner LANE: It is subsequent to that date, is it?

Mr. LOVETT: Although I have no information on the subject, my understanding is that they were registered in the name of E. H. Harriman.

Mr. SEVERANCE: In the Ninth Annual Report of the Union Pacific, which embraces the Oregon Short Line and the Oregon Railroad & Navigation Company, that is, the report to the stockholders, not to the Interstate Commerce Commission—in the report to the stockholders for the year ending June 30, 1906, there appears on page 12 the following: "The total expenditures. In addition to the above capital expenditures, there was passed during the year, on account of construction and acquisition of new lines, and for equipment and other property, the sum of $17,541,755.88." And then after referring to and enumerating some of this property, it concludes, "And in the steamers 'Mongolia' and 'Manchuria.' Those steamers are chartered to the Pacific Mail." Now, it appears from that entry

in the Annual Report that those ships belong to either the
1066 Union Pacific, the Oregon Short Line, or the Oregon Railroad & Navigation Company. Those companies are making a common report to their stockholders. You never heard of that report before?

Mr. SCHWERIN: I never heard of that report before, until it was brought up in the hearing on Monday.

Mr. SEVERANCE: What hearing was that?

Mr. SCHWERIN: On the salvage case, of the "Manchuria" in Honolulu.

Mr. SEVERANCE: That matter——

Mr. SCHWERIN (int'g): The matter of the price was brought up, and reported in that report—in regard to the value of the ships.

Mr. SEVERANCE: I don't know what that inquiry is.

Mr. LOVETT: It is a suit pending here——

Mr. SCHWERIN (int'g): It is a suit in reference to the salvage of the "Manchuria."

Mr. SEVERANCE: Oh, yes. They on page 26, also in this report, there are entered a number of items under the head of "Deferred Assets," and among the rest "Ocean Steamers 'Manchuria' and 'Mongolia,' $5,126,796.58, as against a similar charge opposite these steamships in the previous annual report of $4,964,986.07." How long has the Pacific Mail been operating those boats?

Mr. SCHWERIN: Since 1904.

Mr. SEVERANCE: Since 1904?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: With whom was the arrangement made for the leasing or chartering of those boats?

Mr. SCHWERIN: With Mr. E. H. Harriman.

Mr. SEVERANCE: Who represented the Pacific Mail in the negotiations?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: I say who represented the Pacific Mail in the negotiations?

Mr. SCHWERIN: I did.

Mr. SEVERANCE: You represented the Pacific Mail?

Mr. SCHWERIN: Yes sir.

1067 Mr. SEVERANCE: You are the Vice President of the Pacific Mail?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And your arrangements were made with the President of the same company, Mr. Harriman?

Mr. SCHWERIN: I recognized Mr. Harriman as acting personally.

Mr. SEVERANCE: You make a distinction between Mr. Harriman as President of the Pacific Mail and Mr. Harriman individually?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: What rental did Mr. Harriman exact for those ships?

Mr. SCHWERIN: I don't think I could tell you the exact figures.

Mr. SEVERANCE: Practically?

Mr. SCHWERIN: It varied. The first year it was somewhere in

the neighborhood of $20,000 a month, and it was gradually increased until it was $30,000 a month.

Commissioner LANE: For both?

Mr. SCHWERIN: For each ship.

Commissioner LANE: For each ship?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Does it depend on the freight carried?

Mr. SCHWERIN: No sir, it is a dead straight charter.

Mr. SEVERANCE: You have a regular contract by which the rental increases?

Mr. SCHWERIN: No, sir. In the operation of a new ship, the expenses are always heavier than after you get the ship running, and also the expenses are heavier to introduce a new ship. So I contended that the first—the first six or nine months of the charter, the charter should be less than what it would be afterwards. So the final charter—we are paying, the last rate that we are paying, is $30,000 a month. But I don't just remember how the terms varied from $20,000 to $30,000, and exactly what period that covered.

1068 Mr. SEVERANCE: That is what you are paying now, is it?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: $30,000 a month for each ship.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And that is paid to Mr. E. H. Harriman, is it?

Mr. SCHWERIN: Yes sir. As far as I know, it is.

Mr. SEVERANCE: Where is the payment made?

Mr. SCHWERIN: In New York City.

Mr. SEVERANCE: By whom?

Mr. SCHWERIN: We remit the money to the controller, Mr. Mahl.

Mr. SEVERANCE: Mr. Mahl is also the controller of the Union Pacific and the Southern Pacific and the Oregon Short Line, is he not?

Mr. SCHWERIN: So I understand, yes.

Mr. SEVERANCE: Who is the auditor of the Pacific Mail?

Mr. SCHWERIN: Mr. Railton.

Mr. SEVERANCE: He lives here in San Francisco?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Who is the auditor of the Portland Asiatic Company?

Mr. SCHWERIN: Mr. Railton.

Mr. SEVERANCE: And is Mr. Mahl also the controller of that company?

Mr. SCHWERIN: I don't know.

Mr. SEVERANCE: You are the Vice-President and General Manager?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Is Mr. Harriman the President?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Who is the President?

Mr. SCHWERIN: There is none.

Mr. SEVERANCE: They have no President?

Mr. SCHWERIN: They have no President.

Mr. SEVERANCE: What is your position with the Occidental
1069 & Oriental Steamship Company? Are you Vice President and General Manager of that Company?

Mr. SCHWERIN: President.

Mr. SEVERANCE: President?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Then if one of those railroad companies, as appears by the minutes, owns those ships, you don't know it?

Mr. SCHWERIN: I don't know it, no sir.

Mr. SEVERANCE: Your only dealing was with your President, Mr. Harriman?

Mr. SCHWERIN: Well, I am dealing with Mr Harriman as the individual owner and registered owner of those ships.

Mr. SEVERANCE: Happening at the same time to be the President of your company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, about the Panama business. I started to interrogate you about that yesterday. Are those ships all the property of the Pacific Mail Steamship Company?

Mr. SCHWERIN: Yes sir, except from time to time we charter ships on that line.

Mr. SEVERANCE: For extra service?

Mr. SCHWERIN: Extra service, yes sir.

Mr. SEVERANCE: Then, as I understand you, the Portland & Asiatic ships are chartered?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: The Occidental & Oriental ships are chartered?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And those two ships, the "Mongolia" and "Manchuria" of the Pacific Mail line to the Orient, are chartered from Mr. Harriman?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And the balance of your ships are owned by the Pacific Mail?

Mr. SCHERWIN: Yes sir.

1070 Mr. SEVERANCE: The ships comprising what is known as the San Francisco & Portland Steamship Company were formerly the property of the Oregon Railroad & Navigation Company, were they not?

Mr. SCHWERIN: There is one ship on that line.

Mr. SEVERANCE: One ship?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You mean you have only one ship on that line?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: How long ago was the San Francisco & Portland Steamship Company organized, Mr. Schwerin?

Mr. SCHWERIN: In 1904, I think.

Mr. SEVERANCE: Prior to that time had you had anything to do with the running of those ships?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: By whom were they run up to that time?

Mr. SCHWERIN: As far as I know, they were known as the water division of the O. R. & N.—as the ocean division of the O. R. & N.

Mr. SEVERANCE: Those ships made the connection of the O. R. & N. with San Francisco?

Mr. SCHWERIN: Yes, sir; I presume so.

Mr. SEVERANCE: You know that, do you not?

Mr. SCHWERIN: I say I presume so.

Mr. SEVERANCE: In 1904, was this company organized as a separate corporation?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And who are the stockholders?

Mr. SCHWERIN: The O. R. & N.

Mr. SEVERANCE: The O. R. & N.?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: So that the only change of ownership was the fact that they owned it by virtue of stock ownership now, while originally they owned the ships direct?

Mr. SCHWERIN: The proposition was to put the ships into
1071 the hands of steamship men rather than a railroad company, and so they put it into the hands of this operating company.

Mr. SEVERANCE: This operating company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Were the ships transferred by the O. R. & N. to the operating company?

Mr. SCHWERIN: Yes sir, chartered.

Mr. SEVERANCE: Are the ships still owned, then, by the O. R. & N. Company.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: So the ships are still owned by the O. R. & N. Company and chartered to the operating company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And you are the head of the operating company?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Now, you say there is only one ship on that line, what is here name?

Mr. SCHWERIN: The "Columbia."

Mr. SEVERANCE: What is her tonnage capacity?

Mr. SCHWERIN: About 1800 tons.

Mr. SEVERANCE: How many ships were there when you took charge of that line?

Mr. SCHWERIN: Two, the "Elder" and "Columbia."

Mr. SEVERANCE: Do you know whether, prior to 1904 there had been more than two ships?

Mr. SCHWERIN: I don't know anything about the history of the Company prior to the time I took hold of it.

Mr. SEVERANCE: You know nothing about that?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: What became of the "Elder?" Was she wrecked?

Mr. SCHWERIN: Lost—she was lost at the Columbia River.

Mr. SEVERANCE: How long ago?

Mr. SCHWERIN: About three years ago. No, it could not have been that long; two years ago.

1072 Mr. SEVERANCE: What efforts have you made since then to replace the "Elder?"

Mr. SCHWERIN: Immediately bought the "St. Paul" and fitted her out and put her on the line, a much better ship than the "Elder." She was lost a year ago last summer, on the coast.

Mr. SEVERANCE: What efforts have you made to replace the "St. Paul?"

Mr. SCHWERIN: Then we chartered the "Barracouta" and "Costa Rica," and the "Aztec" and the "Spokane."

Mr. SEVERANCE: Did the "Barracouta" belong to the Pacific Mail?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: To what companies did the others belong?

Mr. SCHWERIN: The "Aztec" and the "Costa Rica" belonged to the Pacific Mail Steamship Company.

Mr. SEVERANCE: That is, you put those into service there from the Pacific Mail?

Mr. SCHWERIN: Regular official charter. You understand, Mr. Severance, that those ships are insured, and in order to protect the interest of the individual company the charter has got to be made exactly the same as though chartered to Paul Jones, or any other man who is operating the company, entirely distinct and separate company from my own. In other words, the Pacific Mail Steamship Company would charter from the Portland & Asiatic, say, in exactly the way that they would charter from Barneson Hibbard Company.

Mr. SEVERANCE: Except, I suppose, in the charter of the Pacific Mail Steamship Company of steamers to run from San Francisco to Portland, the whole matter would be in your hands as the managing officer of both companies?

Mr. SCHWERIN: Yes sir, and the rate of charter would be governed by the ordinary rate of charter for that character of ships.

Mr. SEVERANCE: And that was fixed by you?

1073 Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: How many boats have you in service there now?

Mr. SCHWERIN: The "Columbia," "Costa Rica" and "Aztec" have been running there.

Mr. SEVERANCE: How frequent is that service?

Mr. SCHWERIN: Well, we have had this summer a very serious time with that line. If you want me to enumerate all the difficulties we have had, I will be pleased to do so. It takes its beginning from the time of the earthquake.

Mr. SEVERANCE: Go ahead.

Mr. SCHWERIN: At the time of the disaster in April, the "Columbia" was on the Union Iron Works drydock. She was shaken off the blocks, and carried the drydock away, and sunk there. She was there from April till September before they were able to salve

her, and repair and restore her to the line. Then about the 1st of May we had a strike on the water front, which tied up all the steamers, and we were finally able to get the line opened without the passenger service—we didn't believe it advisable, with the class of men we were getting, to take the chances of sending the ship to sea with an untrained crew. So we had to abolish the passenger service.

Mr. SEVERANCE: Has that been resumed?

Mr. SCHWERIN: That has been resumed, yes sir.

Mr. SEVERANCE: How long ago?

Mr. SCHWERIN: I think the strike was over in September, and we resumed immediately after the strike ceased. We had the "Costa Rica" and "Barracouta" on the line, and as the business developed, we put the "Aztec" on the line. When we got the "Columbia" back, we took the "Aztec" (she carries freight only) off, then the "Costa Rica" smashed her high pressure cylinder, and the inspector would not let us go out and made us put in a new cylinder, and that took six weeks, and she was taken off the line. So it has been one continual interruption on that line since the disaster.

1074 Mr. SEVERANCE: Assuming that the three boats are all in condition—they are now, are they not?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Assuming that, how frequent is the service?

Mr. SCHWERIN: Five days; that is, five days for the two passenger ships, and the "Aztec" runs as fast as they can load and discharge. She would take 21 days to make the round trip.

Mr. SEVERANCE: About 10 days each way, between loading and unloading?

Mr. SCHWERIN: No sir, that takes in the time in port. It takes about 5 days to go up and down, that is, 5 days up and 5 days down, and the balance of the time is taken in the difficulties of discharging the ships in port.

Mr. SEVERANCE: How long does it take the passenger ships to make the trip?

Mr. SCHWERIN: To Astoria, about 48 hours. They are about 4 or 5 hours going up the Columbia.

Mr. SEVERANCE: And the return?

Mr. SCHWERIN: About the same, we run on a schedule.

Mr. SEVERANCE: And so you have a five day passenger service?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Passenger and freight?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And an extra boat which makes the round trip every 21 days.

Mr. SCHWERIN: And also we have been trying very hard to purchase two five thousand ton ships for that line, but we haven't been able to get a satisfactory price yet.

Mr. SEVERANCE: Has there been within the last year any change in the rates on that line?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: When?

Mr. SCHWERIN: I think the change of rates was made effective this month.

1075 Mr. SEVERANCE: Was it an increase or a decrease?

Mr. SCHWERIN: An increase.

Mr. SEVERANCE: Could you produce a copy of the tariff, of the former tariff, and of the new tariff?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And let us have it in evidence?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Could you state, without reference to the tariff, about the percentage of increase?

Mr. SCHWERIN: No sir, I could not.

Mr. SEVERANCE: Does the increase cover all classes of freight?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: What does it cover?

Mr. SCHWERIN: Roughly speaking, it covers south bound flour and feed-stuffs, and north bound canned goods, heavy wagons, automobiles, sugar—that is about all that I can remember.

Mr. SEVERANCE: General merchandise moving north?

Mr. SCHWERIN: Well, we have general merchandise in different classifications, that is to say, "general merchandise" is not generally a classification. In our tariffs each article is given a rate.

Mr. SEVERANCE: These articles that you have mentioned go under a commodity tariff?

Mr. SCHWERIN: No sir. They just go, for instance, bran, feed-stuffs, flour.

Mr. SEVERANCE: A specific amount?

Mr. SCHWERIN: A specific amount as to the rate.

Mr. SEVERANCE: Do you happen to know, Mr. Schwerin, whether at about the same time that you raised the steamship rates, the Southern Pacific raised its rail rates to Portland and from Portland?

Mr. SCHWERIN: No sir, I haven't heard that they have raised rates.

Mr. SEVERANCE: You haven't heard that?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: This is the first time you ever heard of their raising rates?

Mr. SCHWERIN: Yes sir—I supposed they would.

1076 Mr. SEVERANCE: You supposed they would raise the rates?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You did not know that a notice had been given that the rates would be increased, by rail?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: What made you suppose that the railroad would raise the rates?

Mr. SCHWERIN: Well, they always have raised rates when we raised our rates.

Mr. SEVERANCE: Ever since 1904?

Mr. SCHWERIN: Yes, sir.

Commissioner LANE: Was there a consultation between yourself

and any of the railroad men respecting the raising of rates before it was done?

Mr. SCHWERIN: We had a differential against the railroad, and I have discussed it with the Pacific Coast Steamship Company, and our rates are governed very largely by their water rate; and I have discussed it with the railroad company. And there has been general discussion as to whether the rates were too low, and whether they ought to be advanced or not.

Commissioner LANE: When was it decided upon to advance the rates?

Mr. SCHWERIN: I think it was in November or December.

Commissioner LANE: With what official of the railroad did you deal in matters of that kind—Mr. Stubbs?

Mr. SCHWERIN: No sir.

Commissioner LANE: Who is the man you talked it over with?

Mr. SCHWERIN: Sometimes discussed it with the traffic manager, or one of his assistants.

Commissioner LANE: In this particular case, who was it you discussed it with?

Mr. SCHWERIN: In this particular I think I spoke to Mr. Luce about it.

Commissioner LANE: He is the freight and traffic manager here?

1077 Mr. SCHWERIN: He is the——

Mr. LOVETT (int'g): General Freight Agent, is he not?

Mr. SCHWERIN: General Freight Agent.

Commissioner LANE: It was after that conversation, subsequent to that conversation with Mr. Luce, that you made your advance?

Mr. SCHWERIN: Well, it would not have made any difference whether they made an advance or not, we would have advanced our rates, because the rates were unremunerative. The cost of labor had advanced so, our stevedoring charges had advanced over one-third, and it was costing us as high as 76 cents a ton to take freight out of the ship, and we were getting $2.50 a ton for it.

Commissioner LANE: What is the differential between yourself and the railroad?

Mr. SCHWERIN: I think it is about 60 cents a ton.

Commissioner LANE: 60 cents a ton.

Mr. SCHWERIN: Yes sir. It was absolutely immaterial to me whether the railroad advanced the rate or not. I said we would advance our rates, and the Pacific Coast Steamship Company said they would advance their rates. They were in the same position we were. There had been an advance in the price of fuel and supplies, and an advance in the pay of the officers, and in the crews' wages; and, all together, we were in a very bad shape.

Mr. SEVERANCE: That advance in wages of the stevedores and of the longshoremen would have no effect on the expense of handling railroad traffic, would it? Their traffic expenses were not increased because you had to pay more on the dock?

Mr. SCHWERIN: I suppose not. I suppose our arrangement had nothing to do with them.

Mr. SEVERANCE: Then their rate was not increased for the same reason that yours was, but was merely increased because you had increased yours?

Mr. SCHWERIN: Well, I suppose that is for them to answer.

1078 Mr. SEVERANCE: Is that not your understanding, Mr. Schwerin, that it was done so as to maintain this differential?

Mr. SCHWERIN: I told the railroad company we were going to advance rates.

Mr. SEVERANCE: They didn't protest vigorously at all, did they, against that?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: And after you advanced the rates on the different occasions that you have done so, it has been their custom to advance the rail rates at the same time.

Mr. SCHWERIN: We have advanced rates in cases where they have not advanced rates?

Mr. SEVERANCE: Where sometimes they have not advanced the rates, you say?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: I understood you to testify a few moments ago, Mr. Schwerin, that they customarily advanced the rates when you did?

Mr. SCHWERIN: I did, but I think there are cases where they have not done so.

Mr. *Schwerin:* The general rule is that they do advance the rates when you do?

Mr. SCHWERIN: If they advance their rates we will advance ours, and I suppose if we advance our rates, they will advance theirs, though there is no understanding between us upon that point.

Mr. SEVERANCE: No agreement that they shall do it?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: But the coincidence exists. When one rate goes up, the other goes up?

Mr. SCHWERIN: As a matter of fact, in my study of the traffic between here and Portland, which is largely a traffic that moves from San Francisco to Portland, the Southern Pacific Company is not a competitor.

Mr. SEVERANCE: Why?

Mr. SCHWERIN: We can give so much better service than they can that we get their business.

1079 Mr. SEVERANCE: The railroad men who have testified are under the impression that they are.

Mr SCHWERIN: That is the difference between the steamship men and the railroad men.

Mr. DUNNE: What is that, Mr. Severance?

Mr. SEVERANCE: I say the railroad men who have testified are under the impression that they are.

Mr. DUNNE: You say "the railroad men"?

Mr. SEVERANCE: Yes, sir.

Mr. DUNNE: You do not mean all railroad men?

Mr. SEVERANCE: Several.

Mr. DUNNE: Several, but not all.

Mr. SEVERANCE: Several of them have so testified.

Mr. LOVETT: Some have testified to the contrary.

Mr. SEVERANCE: Let us examine into this for a moment. Does not the Southern Pacific Railroad Company carry from here to Portland goods of the same character that you transport by ship?

Mr. SCHWERIN: I suppose they do. I am not at all familiar with what they carry, Mr. Severance.

Mr. SEVERANCE: If you are not familiar with what they carry how would you hazard this opinion that they are not competitive with you?

Mr. SCHWERIN: Because we get the freight very largely unsolicited, and we are not able to handle all the freight that is offered to us.

Mr. SEVERANCE: You would be if you had enough ships?

Mr. SCHWERIN: And if they were competitors, they would take the freight away from us. We make better time to Portland than they make, for instance. A man can order his groceries in San Francisco, and barring those accidents that we have had, he will know just when he will get his goods in Portland.

Mr. SEVERANCE: And as you understand it, the Southern Pacific service is not as good as yours, so that if the order is given here to send it by rail, he does not know when he will get it in Portland?

Mr. SCHWERIN: Well, transportation by rail has been very much disturbed lately.

1080 Commissioner LANE: One of the reasons the railroad is not competitive is that it cannot give as good service. Is that it?

Mr. SCHWERIN: That is the way I look at it, yes sir.

Mr. SEVERANCE: Mr. Schwerin, do I understand you now to testify that you don't know what kind of traffic is carried by rail from here to Portland?

Mr. SCHWERIN: My testimony is that I have never interested myself to see what the railroad takes from here to Portland, yes sir. I suppose they are in the carrying business, and they are out for all the freight they can get. I know that we compete with them, our solicitors will compete against the Southern Pacific Company for every pound of freight we can get.

Mr. SEVERANCE: How is that?

Mr. SCHWERIN: Our freight solicitors will compete against other freight solicitors in the port of San Francisco for any freight we can get.

Mr. SEVERANCE: If your solicitors are competing with the Southern Pacific for freight, why do you testify that you are not a competitor of the Southern Pacific?

Mr. SCHWERIN: Did I testify to that?

Mr. SEVERANCE: I thought you did a moment ago.

Mr. SCHWERIN: I haven't that impression. I testified I did not consider the Southern Pacific were competitors of ours—just at the present time, on account of the congested amount of freight. But if the market was lean of freight, I would consider that they were competitors.

Mr. SEVERANCE: Then, as I understand it, you do not wish to be understood as testifying that the Southern Pacific and the boats from here to Portland are not competitors of one another, under ordinary conditions?

Mr. SCHWERIN: No, sir; I don't mean that.

Mr. SEVERANCE: No. But it is your opinion that their service by rail is so poor at present that they are not, and that they should not be dignified by the title of competitor?

Mr. SCHWERIN: I could not say that.

1081 Mr. SEVERANCE: What do you mean by your answer?

Mr. SCHWERIN: I mean to say that our service at the present time has been better than the rail service, and for that reason we haven't had such a strenuous time to get freight as we have had at previous times.

Mr. SEVERANCE: There is a great deal of traffic moving out of here?

Mr. SCHWERIN: Yes, sir; south bound; not so much north bound. The north bound movement has been light.

Mr. SEVERANCE: And you need more ships to handle the traffic that is offered, and you are trying to get more?

Mr. SCHWERIN: Well, trying to get a better class of ships that will handle the business better than we have been able to handle it. For instance, the north bound ships have been going out with light tonnage. For instance the "Aztec" on her last trip had 500 tons, and the "Columbia" on her last trip only had 700 tons—the last voyages up there. But the demand for tonnage is south bound.

Mr. SEVERANCE: Who is your agent in Portland?

Mr. SCHWERIN: Mr. Dewson.

Mr. SEVERANCE: And prior to his employment with your steamship company, what was his position?

Mr. SCHWERIN: He was in the employ of a shipping firm of New York City.

Mr SEVERANCE: You brought him out from the East?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Do you have an agent here in San Francisco for this steamship line?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Is that separate and apart from the agency of the Pacific Mail?

Mr. SCHWERIN: Entirely.

Mr. SEVERANCE: A separate organization?

Mr. SCHWERIN: Yes, sir, entirely.

Mr. SEVERANCE: Under your charge?

1082 Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: Does the Pacific Mail run any boats to Alaska?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: Or to Puget Sound points?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Have you ever run any boats up there?

Mr. SCHWERIN: No sir. We chartered boats that run to Alaska, but we never operated them.

Mr. SEVERANCE: I think that is all.

Mr. LOVETT: Mr. Schwerin, you say that you have been endeavoring to get two additional boats for the Portland and San Francisco line?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: And you have not been able to secure them?

Mr. SCHWERIN: No sir.

Mr. LOVETT: Why?

Mr. SCHWERIN: It has been a question of difference of price between the owner and ourselves.

Mr. LOVETT: Are you restricted in your purchase to American boats?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: Why?

Mr. SCHWERIN: It is the coastwise traffic—United States coastwise traffic.

Mr. LOVETT: You can't buy a foreign made ship and put it in this business, because of the tariff that you would have to pay on the foreign built ships.

Mr. SCHWERIN: No sir, that is not it. They do not permit a foreign bottom to operate in the coastwise traffic.

Mr. LOVETT: I didn't know whether that was it; or whether it was the tariff. I knew there was some restriction.

Mr. SCHWERIN: It is against the United States law to operate a foreign bottom in the coastwise traffic.

Mr. LOVETT: And the supply of American made ships is very small?

1083 Mr. SCHWERIN: We have been in great difficulty to try to get even a charter for that line. We have not been able even to do that.

Mr. LOVETT: I believe you testified that the principal amount of traffic on that line was south bound, that is, from Portland?

Mr. SCHWERIN: It has been lately, yes sir.

Mr. LOVETT: What is the character of the traffic? That is as a rule, I am not speaking of any exceptional conditions, but as a rule?

Mr. SCHWERIN: South bound has been mostly mill products.

Mr. LOVETT: Mill products?

Mr. SCHWERIN: Flour, feed, bran and oats, and shakes and shingles and laths.

Mr. LOVETT: Where does it originate?

Mr. SCHWERIN: Most of it originates in Portland, and I suppose along the line of the O. R. & N.

Mr. LOVETT: Those boats do not handle any traffic coming from the east, do they?

Mr. SCHWERIN: No sir.

Mr. LOVETT: Now, as to the north bound cargo. What is that ordinarily?

Mr. SCHWERIN: Canned goods, sugar, salt, cement.

Mr. LOVETT: Products of California?

Mr. SCHWERIN: Yes, sir, almost entirely.

Mr. LOVETT: I believe you testified that on account of conditions

existing at this time, at least, on account of the better time that your boats make, the Southern Pacific has not been able to compete with you. That is under present conditions?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: Is it not true, Mr. Schwerin, that as a rule, generally speaking, railroads are not equal to competing with ocean carriers, that is coastwise carriers? Is that not true on the Atlantic? That is, I mean from seaport to seaport, I am not speaking of the ordinary river steamers, but of coastwise steamers?

Mr. SCHWERIN: I think they get the first call on the traffic.

1084 Commissioner LANE: Is that true as to the rates, or as to time and facilities?

Mr. SCHWERIN: Time and facilities.

Mr. LOVETT: Time and facilities, my question was addressed to?

Mr. DUNNE: From seaport to seaport?

Commissioner LANE: From seaport to seaport.

Mr. SCHWERIN: For instance, the Old Dominion Line has the bulk of the traffic between Norfolk and New York City.

Mr. LOVETT: And the Morgan & Mallory Steamship lines have the bulk of the traffic between New York and New Orleans and Galveston?

Mr. SCHWERIN: So I understand.

Commissioner LANE: What is the basis for the differential between the railroad and the steamship?

Mr. SCHWERIN: I suppose it is based upon the fact that the rail lines give a security which the steamer does not. The bill of lading in the case of the rail line covers the risk to freight, whereas on the steamer the owner has to insure his own risk.

Commissioner LANE: That differential, 60 cents in your case, is far more than would cover the insurance?

Mr. SCHWERIN: That 60 cents a ton?

Commissioner LANE: Yes.

Mr. SCHWERIN: Yes, I should think the insurance would cover about 30 cents a ton.

Commissioner LANE: So that there must be considered that there is some preference to be given a railroad?

Mr. SCHWERIN: But the railroad has always had the higher rate, on account of the fact that it costs more to operate than it does a steamship line. The railroads have always insisted, in a division with the steamship line, for a larger share of the through haul and through traffic—everywhere in the world, the world over, that is true.

Commissioner LANE: That the railroad has insisted upon its larger proportion?

1085 Mr. SCHWERIN: Yes sir, on the ground of its increased expenses. It costs more to operate a railroad than it does a steamship line.

Commissioner LANE: As between yourself running a coast line of steamers, and the Shasta route from here to Portland, you could put the Shasta route out of business, so far as the direct freight going from Portland to San Francisco is concerned, in the matter of rates, and in the matter of time, at present?

Mr. SCHWERIN: Well, I could not say that, because I could not control the shippers. But if I found our rates were diverting business from us, I would be forced to lower our rates again.

Commissioner LANE: Do you know how much cheaper you can haul a ton of freight from Portland to San Francisco than the railroad can haul it?

Mr. SCHWERIN: I do not.

Commissioner LANE: You do not know the comparative cost by railroad and steamboat in competition?

Mr. SCHWERIN: No sir.

Commissioner LANE: That is all, Judge.

Mr. LOVETT: I believe you testified that you also operate steamers between New York and various South American and Central American ports.

Mr. SCHWERIN: No sir.

Mr. LOVETT: Between San Francisco, I should say, and various South American and Central American ports?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: The Pacific Mail Steamship Company has no steamers on the Atlantic?

Mr. SCHWERIN: No sir.

Mr. LOVETT: And never has had?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: When?

Mr. SCHWERIN: It used to operate a line from New York to Panama, and the Panama Railroad Company would not allow us to continue there, in connection with the Panama Railroad.

1086 Mr. LOVETT: When was that discontinued?

Mr. SCHWERIN: I think it was late in '90's.

Mr. LOVETT: Late in the '90's?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: Are there any other lines besides yours operating between San Francisco and Panama, and South American and Central American ports?

Mr. SCHWERIN: Yes sir, the Cosmos Line and the French Line.

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: How long have they been operating?

Mr. SCHWERIN: The Ocean Line has been operating there about 10 years.

Mr. LOVETT: Has the Pacific Mail Steamship Company had competition between San Francisco and the southern ports ever since you have known it?

Mr. SCHWERIN: Yes sir, very severe competition.

Mr. LOVETT: Does not the Hamburg American Packet Company operate ships on this coast?

Commissioner LANE: That is the Cosmos Line, is it not?

Mr. SCHWERIN: No sir. I believe the Hamburg American Packet Company—there are common stockholders in the Hamburg American Packet Company and in the Cosmos Line, but I do not understand that the Cosmos Line is really owned by the Hamburg American Packet Company.

Mr. LOVETT: But the Hamburg American Packet Company, as such, does not operate steamers on the Pacific between the ports mentioned?

Mr. SCHWERIN: No sir.

Mr. LOVETT: I believe you stated that there has been competition on the Pacific between San Francisco and these southern ports ever since your connection with the Pacific Mail Steamship Company.

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: And there is competition now?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: What was the name of the line that was
1087 promoted by the Santa Fe system from San Diego to Asiatic ports?

Mr. SCHWERIN: The California & Oriental.

Mr. LOVETT: The California & Oriental?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: When did that line go out of business. Do you know, Mr. Schwerin?

Mr. SCHWERIN: Sometime along in 1902, 1902 or 1903, as near as I can remember.

Mr. LOVETT: About 1902 or '3?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: How often did that line sail?

Mr. SCHWERIN: They were supposed to have a steamer first every month, and later they, I believe they contemplated having two steamers a month, or a steamer every three weeks, I don't remember which.

Mr. LOVETT: And what was your service from here?

Mr. SCHWERIN: We had a steamer then about every nine days.

Mr. LOVETT: You had a steamer then about every nine days. And you had been for some time soliciting business from the Atchison for Asiatic ports?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: You believe that you could give them better service than the line from San Diego gave them, did you not?

Mr. SCHWERIN: We thought so.

Mr. LOVETT: When did the Atchison get its line into San Francisco. About when, Mr. Schwerin, Do you know?

Mr. SCHWERIN: No, sir, I don't believe I remember that date.

Mr. LOVETT: This line from San Diego was opened by the Atchison before the time it got its rails in San Francisco, was it not?

Mr. SCHWERIN: Well, this line was in operation—I know that when the line started, there were no Santa Fe rails in San Francisco, because the steamship line came here and delivered its local cargo and then went south and delivered its overland in San Diego.

1088 Mr. LOVETT: How long had you been making your efforts with Mr. Morton, I believe you said yesterday—how long had you been making your efforts with Mr. Morton to get the business of the Atchison, the business from Asiatic Ports?

Mr. SCHWERIN: Well, I don't know; it is so long ago I can't remember. Almost from the very beginning of my connection

with the line, I tried to persuade the Santa Fe to give me the business, and every time I saw Mr. Morton, I would joke him about it, or talk earnestly to him, or any way to try to persuade him to give me the business.

Mr. LOVETT: Did you finally arrange with him to get some of the business?

Mr. SCHWERIN: The last talk that I had with Mr. Morton was in the Waldorf in New York, and I told him if he would give us a share of his business, that we would agree to give him equal rates and division with any other connecting carrier from the port of San Francisco.

Mr. LOVETT: The point I was trying to develop, Mr. Schwerin, is when the arrangement with the Atchison, or when the arrangement by which you succeeded in getting their business, was made with reference to the discontinuance of the Oriental line?

Mr. SCHWERIN: This conversation I had with Mr. Morton was long after the California and Oriental line had gone out of business.

Mr. LOVETT: You had no arrangement with him until after that line went out of business?

Mr. SCHWERIN: Some time after that line went out — business.

Commissioner LANE: Did they go out of business in view of any conversation that you had with Mr. Morton or the Santa Fe people?

Mr. SCHWERIN: Absolutely not.

Commissioner LANE: Absolutely not?

Mr. SCHWERIN: No, sir.

Commissioner LANE: It was not in pursuance of any agree-
1089 ment or understanding that they should get a share of the business, that they put that steamship line out of business?

Mr. SCHWERIN: No, sir.

Mr. DUNNE: Do you understand why the steamship line went out of business?

Mr. SCHWERIN: I understood, both from Mr. Morton and from the agent of the line here, that they were losing considerable money—the line was very unprofitable.

Mr. LOVETT: Your information was that the line had been unprofitable?

Mr SCHWERIN: And I understood from the steamship end of it that the Santa Fe declined to hold the sack any more for the steamship company.

Commissioner LANE: I didn't hear that.

Mr. SCHWERIN: I understood that the Santa Fe declined to hold the sack for the steamship company.

Mr. DUNNE: I think Mr. Ripley gave some testimony before your Honor in Chicago upon that subject.

Commissioner LANE: There was a lot of statements made in Chicago about the steamship company, but not as to the reason why it went out of business.

Mr. DUNNE: He said it was disastrous, he used that term.

Mr. LOVETT: Then after that line was discontinued, you arranged with the Santa Fe to get some of their business, and to reserve space for them on your ships out-bound, so as to use their freight?

Mr. SCHWERIN: We had to do that. We had to agree to let them have a certain amount of space on the outward bound ships otherwise they would not have been able to contract it, and we would not have known what they would want to carry, how much.

Mr. LOVETT: And in return for that, you would agree to give them some portion, and you did agree to give them some portion, I think you said 25 per cent.

Mr. SCHWERIN: It varied above and below 25 per cent., but we tried to give them about 25 per cent.

1090 Commissioner LANE: It depended entirely on the amount of freight you get from them, the amount you would give to them?

Mr. SCHWERIN: No sir, I can't say that, Mr. Lane, for the simple reason that the Santa Fe—it is one of the things we complained about, that the Sante Fe has not given us as much freight as we have given them, and we have continually kept after the Sante Fe to get after their agents to get more freight for us.

Commissioner LANE: And you at the present time give them more than they give to you.

Mr. SCHWERIN: Yes sir.

Commissioner LANE: Then why don't you cut them off?

Mr. SCHWERIN: Because I want to have an argument on my side for them to get after freight, because we have all the Sante Fe men working for us to get freight to the port of San Francisco—we are getting freight from the northern lines who are working against us to get freight from the South.

Commissioner LANE: Do they pull freight that would naturally go to the South?

Mr. SCHWERIN: Oh, yes. All the freight originates in common, competitive territory.

Commissioner LANE: So you are trying your best to keep on *to* good side of the Santa Fe people?

Mr. SCHWERIN: Yes sir. Every pound of freight that is taken out of this port can be moved to the Orient without coming here at all. In other words, our business can be absolutely taken away from this port, our transcontinental business, and go out from the South and be served just as well as through this port as far as the rail service is concerned, and getting it to tidewater.

Commissioner LANE: That is not a matter of rates, then but it is a matter of competition between the solicitors?

Mr. SCHWERIN: I don't think you understand. I mean physically that can be done. Therefore we want to get all the solicitors we can to work for tonnage from the port of San Francisco

1091 to feed our line, in competition against the railroad lines that are working for freight for the steamers that go to the north.

Commissioner LANE: Now, then, when you make a rate from the Orient for business to Chicago, or some point that is served by the Santa Fe, there is no competition between the Santa Fe and Southern Pacific, or between the Santa Fe or Southern Pacific and Union Pacific, upon a rate for that import business is there?

Mr. SCHWERIN: Well, there was a time when we could make a

rate from the Orient to any point in the United States without consultation with the rail lines at all; the initial carrier has the right to make that rate, but now, under the Interstate Commerce ruling we have to give 50 days' notice. We are out of competition with the Orient, you may say, with the Orient entirely because the Suez line, with whom we compete there, can change their rates every day, and we have got to give 30 days' notice. They can come in within 30 days and contract, and then we come in with another 30 days' notice under which we will contract, and they can come and contract again, in that way divert all the tonnage.

Commissioner LANE: Do you think the through rate from Hongkong to Chicago comes under that?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: You publish those rates?

Mr. SCHWERIN: Yes sir. They are published and filed with the Interstate Commerce Commissioner.

Commissioner LANE: And you are enabled, by the ownership of the boats by the railroad, to absorb a portion of the inland freight rate?

Mr. SCHWERIN: No, sir. How do you mean, absorb it?

Commissioner LANE: I mean this, that you can make a through rate from Hongkong to Chicago upon business and not publish the proportion from Chicago to San Francisco, and from San Francisco to Hongkong. You simply make one through rate, and that through rate may be divided up between yourselves and the railroad people as you see fit?

1092 Mr. SCHWERIN: As I understand it, yes sir. We can arrange the division as we may desire.

Commissioner LANE: Yes.

Mr. SCHWERIN: It is a matter of traffic arrangement.

Commissioner LANE: Traffic arrangement between you two?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: Is that rate open at San Francisco to the Santa Fe?

Mr. SCHWERIN: Yes, sir.

Commissioner LANE: You have the same rate, then, with the Sante Fe inland which you have with the Southern Pacific?

Mr. SCHWERIN: Yes, sir, the same division.

Commissioner LANE: The same division of through rate?

Mr. SCHWERIN: Yes, sir.

Mr. DUNNE: Just exactly, your Honor, like the orange rate from Southern California. The initial line makes the connection with a number of companies and thereto is the same through all these connections.

Commissioner LANE: So it is practically the same as if you published a rate to San Francisco, and a rate upon import business from San Francisco to Chicago. Is that so, Mr. Schwerin?

Mr. SCHWERIN: Well, I suppose that could be done, but that never has been done.

Mr. LOVETT: The Suez competition that you referred to is principally to the Atlantic seaports?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: You are at a disadvantage with respect to that?

Mr. SCHWERIN: We are entirely at a disadvantage with respect to that. They are all foreign steamships, operated very cheaply, and as tramps.

Mr. LOVETT: The route of this traffic that originates in the Orient and that comes to your possession for the East is in the hands of the Pacific Mail, is it?

Mr. SCHWERIN: So far as turning it over to the initial carrier is concerned.

1093 Mr. LOVETT: That is what I mean.

Mr. DUNNE: Your Honor asked a question about publication. The through rate from the Orient is published as a through rate.

Commissioner LANE: That is what I understand.

Mr. LOVETT: The routing of it, so far as the initial carrier is concerned, that is, the carrier taking it out of San Francisco, is in the hands of the Pacific Mail?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: And where the carrier has to deliver it beyond its own lines, it turns it over—that is, it has the control of the railroad carriers?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: So far as the carriers beyond the initial carrier are concerned, then, the initial carrier has control of the routing?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: Coming back to the point where we were considering the arrangements for this business that you get with the Atchison. You testified yesterday something about there being no agreement. What do you mean by that? Do you mean no written agreement?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: Or contract. You do mean to convey the impression that there was not an arrangement?

Mr. SCHWERIN: I said there was an understanding.

Mr. LOVETT: You testified yesterday that there was an undertsanding.

Mr. SCHWERIN: An understanding, yes sir.

Mr. LOVETT: By which you intended to give them about 25 per cent. of the business, as near as you could apportion it, in that way?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: May I ask you this question: What was the reason that you named that, if there was any reason, aside from your desire to get the Santa Fe solicitors at work for your steamship company?

Mr. SCHWERIN: I don't know that I understand your question.

1094 Commissioner LANE: Why was it that you gave that agreement to give them 25 per cent. of the business?

Mr. SCHWERIN: Well, the reason was that we contemplated trying to build up the San Francisco line, and to put on large carriers across the Pacific—we contemplated putting on the "Korea" and

"Siberia," which were nearing completion, and then I was trying to get a larger shipment, which finally culminated in our getting the "Manchuria," and I wanted to work it up and have all the solicitation I could get. It was absolutely impossible for me to consider that the Santa Fe, from my discussion with Mr. Morton, would work to give us outward tonnage unless I would agree to give him inward tonnage. And in our discussion, he used to laugh, and he said "If I do that, I will swamp you," and I said "Try it on." And finally it started with 25 per cent. and they never gave us a full 25 per cent. of our outward tonnage. They are working more actively lately than they did previously.

Commissioner LANE: These conversations with Mr. Morton were held prior to 1904?

Mr. SCHWERIN: These conversations were held, well, probably running back six or eight months prior to the time that he finally said that he would give us some of his business.

Commissioner LANE: And these conversations are held subsequent to the going out of business of the San Diego line?

Mr. SCHWERIN: Absolutely so. There was no line out of San Diego at the time we talked this over. Prior to that time it was merely a question of solicitation, to give us the business, because we joshed them about losing so much money, and that they didn't know how to run a steamship line. There was a good deal of talk in that way, and every time I got a chance at him I tried to persuade him to come over to our line. This talk about a division occurred after the Santa Fe actually got its trackage into San Francisco, where they could make connection with us, direct rail with us, over their own lines.

1095 Mr. LOVETT: You were trying to get business from the steamship company, Mr. Schwerin?

Mr. SCHWERIN: That is what I was out for, first, last, and all the time.

Mr. LOVETT: You tried to operate the Pacific Mail in the interest of the Pacific Mail?

Mr. SCHWERIN: Entirely so.

Mr. LOVETT: And not for the Southern Pacific line?

Mr. SCHWERIN: I didn't consider the Southern Pacific at all in the matter.

Mr. LOVETT: And if you could make an arrangement with the Atchison to increase your business, you desired to make such an arrangement, did you?

Mr. SCHWERIN: I certainly did.

Commissioner LANE: But you can't very well eliminate Mr. Harriman as a consideration, Mr. Schwerin?

Mr. SCHWERIN: Mr. Harriman has never suggested even a single instruction to me upon that question.

Commissioner LANE: When you come to a division of the through freight between yourselves and the Central and Union Pacific line does not Mr. Harriman have anything to say about that?

Mr. SCHWERIN: No sir. That matter is fought out between Mr.

Stubbs and myself, and he treats me just as though I were a foreign connection.

Commissioner LANE: You don't suppose that Mr. Stubbs has any communication with Mr. Harriman to see what proposition shall be made?

Mr. SCHWERIN: I know he has not. We settle those things, and we settle them ourselves.

Commissioner LANE: Those things are left to you entirely?

Mr. SCHWERIN: As to Mr. Stubbs, when I first started in with negotiations with Mr. Stubbs, the Southern Pacific hadn't a dollar of interest in the Pacific Mail Steamship Company. That was way back in 1893 and '4.

Commissioner LANE: Yes, of course, but conditions have changed since then.

1096 Mr. SCHWERIN: I understand, but our divisions have not changed.

Commissioner LANE: Your divisions have not changed?

Mr. SCHWERIN: No sir, we have the same divisions.

Commissioner LANE: Your divisions are just the same now as they were then?

Mr. SCHWERIN: They are just the same now as they were then, exactly.

Mr. LOVETT: You don't know of any reason why Mr. Harriman should and the Pacific Mail worked in the interest of the Southern Pacific against the interest of the Pacific Mail, do you?

Mr. SCHWERIN: I can't imagine such a thing.

Mr. LOVETT: You don't know of any reason why the Southern Pacific should object to your handling business for the Atchison, do you, or any other line?

Mr. SCHWERIN: No sir. The Pacific Mail is simply a connecting carrier with the Southern Pacific and the Atchison.

Mr. LOVETT: The Pacific Mail Steamship Company is simply a connecting carrier with the Southern Pacific and the Atchison for this Asiatic traffic, is it not?

Mr. SCHWERIN: That is the way I look at it; yes sir.

Mr. LOVETT: You spoke yesterday, testified yesterday about the routing of the Asiatic traffic, and the intention to give 20 or 25 per cent. to the Atchison, and I don't know that I understood exactly your testimony upon that point. You testified, as I understand, that about six months ago it was turned over to the Southern Pacific here, what do you mean by that? I am not clear as to your meaning there.

Mr. SCHWERIN: Well, we have the only rail connection, our docks rather have the only rail connection there is in San Francisco.

Mr. LOVETT: That is the rails on your dock are Southern Pacific rails?

1097 Mr. SCHWERIN: The tracks belong to the Southern Pacific, yes.

Mr. LOVETT: The Atchison has no tracks there?

Mr. SCHWERIN: Actually the Atchison has no rail connections to our docks, and any freight to or from our docks must be passed

over the trackage of the Southern Pacific to reach the tracks of the Santa Fe.

Mr. LOVETT: Is that what you meant by your testimony that all the traffic was turned over to the Southern Pacific?

Mr. SCHWERIN: I meant that the Atchison Company would turn their cars over to the Southern Pacific Company, to be again distributed over to the Santa Fe, to their own line.

Mr. LOVETT: And did the Southern Pacific settle with you for your charges, or did the Atchison settle with you for your charges on freight to go via its lines, and the Southern Pacific for freight that was routed by its lines?

Mr. SCHWERIN: On the inward bound freight, we would bill direct to the Santa Fe for our advance charges for freight routed by the Santa Fe, and the same way to the Southern Pacific. On the Outward freight the Santa Fe would collect direct from us for their proportion of the through rate on any charges there might be, and the same way with the Southern Pacific—they would collect direct from us their proportion.

Mr. LOVETT: In other words, while the traffic was turned over to the Southern Pacific, or on the Southern Pacific tracks, it was in pursuance with the arrangement you had with the Atchison that certain portions of it should be routed by the Atchison, and the Atchison settled with your company for the charges on that that was moved by the Atchison?

Mr. SCHWERIN: Yes sir.

Commissioner LANE: Does that mean that it was not left to the Southern Pacific Company to decide what should go to the Atchison at all?

1098 Mr. SCHWERIN: No sir, it is up to us.

Mr. LOVETT: Is that all your honor?

Commissioner LANE: Yes.

Mr. LOVETT: Mr. Severance asked you something about the arrangement for chartering the "Manchuria" and "Mongolia," and you testified, I believe, that the charter or contract was with Mr. Harriman. You don't know whether the beneficial ownership of those boats is in the Oregon Short Line, or the Union Pacific, or Mr. Harriman; but he is the registered owner?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: Was the rental, or charter, I believe, is the term you used, that was paid for those ships, reasonable, Mr. Schwerin?

Mr. SCHWERIN: Yes sir, it is a fair charter.

Mr. LOVETT: You regarded it as fair to the Pacific Mail?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: You testified just now that at the time the present rates or divisions, I believe you call it, with the Southern Pacific were put in by agreement between Mr. Stubbs and yourself, that the Southern Pacific Company had no interest in the Pacific Mail. That is correct?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: You testified yesterday to the appointment of certain

agents in the East, Hawley in New York, and Neimeyr in Chicago. When were those appointments made?

Mr. SCHWERIN: In 1894 and 1895.

Mr. LOVETT: In 1894 and 1895?

Mr. SCHWERIN: Somewhere along that period.

Mr. LOVETT: The Southern Pacific had no interest in the Pacific Mail at that time?

Mr. SCHWERIN: No sir.

Mr. LOVETT: You were working with the Southern Pacific as a connecting line?

Mr. SCHWERIN: There were certain questions that would come up from time to time that required quick action in the East, in
1099 competition for traffic, and I solicited to have those people appointed there, so they could communicate direct with me, and get our authority as to what we were willing to do at the steamship end of it, and they acted there entirely under that understanding.

Mr. LOVETT: In 1900 and 1901, Mr. Schwerin, about how frequently were the sailings of your vessels from this port?

Mr. SCHWERIN: About the same as they are now, sir.

Mr. LOVETT: That is about every nine days?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: How often were the sailings from Puget Sound at that time?

Mr. SCHWERIN: There was one, at that time there was really one, what we considered one regular line there which had sailings that were absolutely definite. The Canadian Pacific and ourselves consider that we run those lines on railroad train service. That is, we know just exactly what ship is to come into port, and exactly what day she is to leave, and they carry mails. Outside of the Northern Pacific Steamship Company, that operated at that time from Tacoma, I think the Canadian Pacific and ourselves were the only ones that maintained an absolutely regular schedule, although they advertised a schedule possibly of dates of sailings.

Mr. LOVETT: How often were the sailings from the Sound?

Mr. SCHWERIN: Very frequent; there were a great many tramp steamers coming in there under the guise of regular lines, and sailings were very frequent.

Mr. LOVETT: Were they as often, do you think, as your sailings—that is, all the lines from the Puget Sound?

Mr. SCHWERIN: Yes, sir; I should think they were more frequent.

Mr. LOVETT: More frequent?

Mr. SCHWERIN: Yes, sir.

1100 Mr. LOVETT: Were there other lines running out of here at that time besides the Pacific Mail?

Mr. SCHWERIN: The Pacific Mail—I am speaking of the Pacific Mail, and by that I mean what we call the San Francisco lines, the three lines.

Mr. LOVETT: Yes. It takes the three lines to make the nine days' schedule, does it?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: The Dodwell line from Portland was discontinued by 1900, was it?

Mr. SCHWERIN: I think it was discontinued somewhere along in 1900, yes, sir.

Mr. LOVETT: The Portland & Asiatic Company was organized in 1901?

Mr. SCHWERIN: Yes, sir; at least, I think so; I was not connected with the line at that time.

Mr. LOVETT: No; but you have general knowledge of it?

Mr. SCHWERIN: Along in that period, I think—yes, that is right; about 1901.

Mr. LOVETT: Were there any regular lines out of Portland for Asiatic ports at that time?

Mr. SCHWERIN: There was a line advertised there, but we didn't consider it a line.

Mr. LOVETT: In 1900 and 1902 was it in operation?

Mr. SCHWERIN: Prior to 1901.

Mr. LOVETT: Prior to 1901?

Mr. SCHWERIN: Prior to 1901.

Mr. LOVETT: What line do you refer to?

Mr. SCHWERIN: I think Mr. Graham started a line there.

Mr. LOVETT: You refer to the Graham line?

Mr. SCHWERIN: Yes, sir.

Mr. LOVETT: If that be deemed a line, there was that line, but there was no other line out of Portland?

Mr. SCHWERIN: No, sir.

Mr. LOVETT: How often were the sailings of the Portland & Asiatic?

Mr. SCHWERIN: They were at first to sail once a month.

1101 Mr. LOVETT: Did they maintain that schedule?

Mr. SCHWERIN: No, sir; nowhere near it.

Mr. LOVETT: I beg pardon.

Mr. SCHWERIN: Nowhere near it.

Mr. LOVETT: How many steamers were they operating?

Mr. SCHWERIN: Three.

Mr. LOVETT: Were they carrying both freight and passengers?

Mr. SCHWERIN: No, sir; freight only. I believe they did carry some inward Asiatic passengers.

Mr. LOVETT: Mr. Schwerin, what is the principal traffic of the Portland & Asiatic?

Mr. SCHWERIN: Almost entirely flour.

Mr. LOVETT: Do you understand why that line was established?

Mr. SEVERANCE: You mean going out flour?

Mr. SCHWERIN: Yes, sir. I understood it was to take care of the business that originated of the lines of the O. R. & N.

Mr. LOVETT: The flour industry.

Mr. SCHWERIN: Flour and grain—to protect, have the grain go to the mills on the line of the O. R. & N., and to protect the grain going to the south.

Mr. LOVETT: But flour was the principal commodity that they transported?

Mr. SCHWERIN: Yes, sir. We have got two ships there now with a full cargo of flour.

Mr. LOVETT: Has that line ever been able to compete with the San Francisco & Puget Sound lines for business from the East, Mr. Schwerin?

Mr. SCHWERIN: You mean from the East, the Atlantic seaboard?

Mr. LOVETT: Yes.

Mr. SCHWERIN: No, sir.

Mr. LOVETT: Why, if you can give the reason, was that?

Mr. SCHWERIN: On account of the irregularity of the service. May I scratch that out. A man who ships from the East wants to know when his freight is going to leave the seaport through
1102 which the freight passes, and he will figure to send his freight over by rail and reach the port so as to go by a certain steamer. We maintain our schedule some five, six, seven to eight months ahead of our sailings, so that a shipper in correspondence with the Orient can tell his correspondent what freight he is going to get a long time ahead. If a man puts his agreement into the form of a contract, he would contract that freight to be delivered by a certain steamer. It is to maintain that traffic, hold that traffic, that we have tried so hard to maintain our schedule. On the Portland and Asiatic line, they get bunched up sometimes in Portland, and then again they get bunched up in the Orient. They advertise a steamer to sail on a certain date, and she may sail two or three weeks later than that. The result was that the shipper would be continually growling about his freight, or, there might be some delay on the railroad, and the freight would not get in until the steamer had left, she might have gotten out at near her schedule, and then there would not be another steamer at all for a month, and meanwhile that freight would lie in Portland for a month waiting for a steamer; whereas in San Francisco, in case he missed one steamer, we had another steamer in 9 days, and that would take the freight right forward. That was the superiority of our line over the Portland and Asiatic, so far as the shippers are concerned, and what they demanded in the handling of this Oriental freight.

Mr. LOVETT: A line that is not able to afford more than a monthly service really cannot compete with a line running on a 9 or 10 days schedule, on business that originates some distance from port?

Mr. SCHWERIN: Yes, sir. We look upon our line as an express service, as against tramp service in some of these other lines. We were not able to accumulate the overland freight in Portland, as you can do in some ports of the world—they won't stand for that at all.

1103 Mr. LOVETT: What has been the result of the Portland and Asiatic Steamship Company?

Mr. SCHWERIN: Well, it has been a decided loss, as a financial venture.

Mr. LOVETT: Have you a statement showing the result of its operations?

Mr. SCHWERIN: Yes, sir. Here is the statement.

Mr. LOVETT: Mark that "Exhibit No. 1, Schwerin." We offer

that in connection with Mr. Schwerin's testimony as Exhibit 1 to his testimony, it being a statement of the earnings and expenses of the Portland & Asiatic Steamship Company for the year ending June 30, 1902, and for each subsequent year.

Commissioner LANE: Does it show a loss for each year?

Mr. LOVETT: It shows a loss for each year, except for the year ending June 30, 1905, during which the Japanese Russian War was in progress, which helped it out. It shows a loss for the entire period of $283,749.29.

Commissioner LANE: On the face of those figures why do you maintain the line?

Mr. SCHWERIN: Well, if we don't maintain the line, Mr. Wilcox, who has the Portland Flouring Mill, will be compelled to close that mill at the Port of Portland, and the people of Portland would very seriously object to having that enterprise destroyed there and moved to Puget Sound. He has another mill at Dayton upon which it would have some effect. Then all the grain that originates along the line of the O. R. & N. would go to Puget Sound Mills, and mills along the lines tributary to Puget Sound, and be milled there, and shipped to the Orient.

Commissioner LANE: So that really you can stand a loss on the steamship line, because of the freights you get on the O. R. & N. from the tributary territory to Portland?

Mr. SCHWERIN: Well, they are doing that.

Mr. LOVETT: Without this steamship line, your under-
1104 standing is that the grain originating on the O. R. & N. in northern Oregon and Washington would go to the Northern Pacific and Puget Sound, and then out by the Puget Sound lines to the Orient, and Portland Mills and Portland grain people would be practically out of business, would they not?

Mr. SCHWERIN: Yes, sir, unless they got tramp steamers to come in there from time to time and take the cargo and take it out across the Pacific. But they would have no regular service that they could well send their flour by, or sell it against. They sell their flour on monthly deliveries, and there must be a steamer there regularly, in order to meet those monthly deliveries.

Commissioner LANE: Has the Wilcox mill expanded at all in the last four or five years?

Mr. SCHWERIN: It has doubled in capacity in the last three years.

Commissioner LANE: It has doubled in capacity?

Mr. SCHWERIN: Yes, sir.

Commissioner LANE: How much larger is it now than it was in 1900?

Mr. SCHWERIN: I don't remember the exact capacity, but I know he has told me he had doubled his capacity.

Commissioner LANE: On export business?

Mr. SCHWERIN: No, sir; on the number of barrels per day he turns out at the Portland Mill.

Commissioner LANE: Do you know what proportion for export he has increased?

Mr. SCHWERIN: His tonnage?

Commissioner LANE: Yes. Do you know what the increase in tonnage has been?

Mr. SCHWERIN: I think his tonnage has just varied from year to year—some years more than others, and some periods of the year more than others, varying quantities all the time. We have gone out of Portland with not enough freight to ballast the ship.

Commissioner LANE: Ten years ago they shipped a good deal of flour across the ocean, did they not?

1105 Mr. SCHWERIN: From Portland?

Commissioner LANE: Yes.

Mr. SCHWERIN: No, sir; not such a large amount ten years ago. We had 72 per cent. of the total flour sent to the Orient from here until the time Mr. Wilcox came into the market.

Commissioner LANE: At what time was that?

Mr. SCHWERIN: I think he became a factor—it is just about ten years ago that he became a factor, and he has gradually worked it up until he has got the control of it—reversed the situation between the Sound and San Francisco.

Mr. LOVETT: You understand that the O. R. & N. Company owns the stock of the Portland & Asiatic?

Mr. SCHWERIN: I understand so, yes, sir.

Mr. LOVETT: And you understand that the object it has in maintaining this line of steamers at a loss is to hold the traffic to its rails?

Mr. SCHERWIN: Yes, sir; to its rails.

Mr. LOVETT: As against the Great Northern and Puget Sound lines?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: Without the support of the O. R. & N. in that way, could a steamship line of this character be maintained out of Portland?

Mr. SCHWERIN: Unless somebody wanted to simply pay the operating expenses of steamers, it could not.

Mr. LOVETT: In other words, as a steamship proposition, it is not practical, is it?

Mr. SCHWERIN: No, sir.

Commissioner LANE: Could it be made so, if you ran a regular schedule, put on more boats up there and did a regular competitive business with San Francisco?

Mr. SCHERWIN: The more steamers you put on there, Mr. Lane, the more money you will lose.

Commissioner LANE: Why could you not do the same kind of business over the Short Line and the O. R. & N. that you do over the Central, Union and Southern Pacific?

1106 Mr. SCHWERIN: If the San Francisco line was dependent upon through freights alone they would go out of business. There is not a steamer out of the port of San Francisco to-day that we could run if it were merely a question of freight, I mean transcontinental freight. But we have here inward and outward passenger business, and we also have a large passenger business between the Orient and the Hawaiian Islands. It is a combination of the freight and passenger business that permits this line to run, although this

year the Pacific Mail line has lost nearly half a million dollars here in this port.

Commissioner LANE: Go on.

Mr. SCHWERIN: We have mentioned a fairly regular schedule out of Portland. The only time that our schedule has varied we were running four steamers—and in reality it has been at the earnest solicitation of the Portland shippers that we have made the divergences that have caused the irregularity of the Schedule, and have sent one of our steamers, instead of sending it over to Hongkong or Moji, at their earnest solicitation, to Kakodate or Newschwang, or some other place out of the regular line, and as those vessels are freight carriers and run to maximum speed, it is impossible, when making those divergences, to get them back into the schedule again without some little lapse. We tried to maintain a steamer every three or four weeks. Now, in Portland, you have had an illustration there of the "Oregonian," lying four or five days at St. Helens trying to go up the river to discharge a cargo. And while she is lying there, she ought to have been up there and discharged. The "Nikomedia," again, appears up there off Astoria, and we have worked in Portland day and night to keep those ships on schedule. And the same way in the Orient, we have turned them around in Hongkong in 48 hours, unloaded and loaded in 48 hours, working day and night, and we come over to Portland and we can't get in on account of the bar. Then we make up that time again at Portland and go down the river and lie there 7 days trying to get over the bar again.

1107 Commissioner LANE: That is what I was trying to get at——

Mr. SCHWERIN (int'g): We not only have the difficulty of not getting this passenger business, but we have physical difficulties to contend with on the Portland line.

Mr. LOVETT: The ships out by the Portland and Asiatic are not passenger steamers?

Mr. SCHERWIN: No, sir, they are modern freighters.

Mr. LOVETT: Does the Portland and Asiatic own any steamers?

Mr. SCHWERIN: No sir.

Mr. LOVETT: Has it ever owned any, so far as you know?

Mr. SCHWERIN: No sir.

Mr. LOVETT: It charters them?

Mr. SCHWERIN: Yes sir.

Mr. LOVETT: How long, for what period at a time, does it charter these ships?

Mr. SCHWERIN: This present charter—I believe the previous charter of the "Intervelli" Steamers was three years.

Mr. LOVETT: That is, the original charters of 1901?

Mr. SCHERWIN: Yes sir.

Mr. LOVETT: That was for three years?

Mr. SCHWERIN: And this charter was for the period of three years and an option of two more, as I remember, and we declared the option—we have so declared it.

Mr. LOVETT: When were the present charters made?

Mr. SCHWERIN: They were made in 1903, and became operative

I think, in 1904, that is, negotiations were made in the spring of 1904.

Mr. LOVETT: I asked you just now about the frequency of the sailings from Puget Sound in 1901. About how many are they now, taking all of the lines?

Mr. SCHWERIN: Well, I should say, including the lines and the tramp vessels—do you include both?

Mr. LOVETT: Yes.

1108 Mr. SCHWERIN: I should say they are more frequent than they were in 1901.

Mr. LOVETT: You testified yesterday about the handling of some business originating in the Orient and going over to Portland via the Portland & Asiatic, and then to San Francisco by the San Francisco lines. Was that business of considerable volume, or small?

Mr. SCHERWIN: Very small.

Mr. LOVETT: Practically trifling.

Mr. SCHWERIN: Well, it is practically nothing, except some shipper in the Orient may at some time route his freight that way and we take it.

Mr. LOVETT: It is not a traffic of any consequence, really?

Mr. SCHWERIN: No, sir. It is not a physical way to ship the business, when we have as many steamers coming into San Francisco; it is an unreasonable way to ship business under those circumstances. Not only that, but our rates in competition with the Dollar Line and the Standard Oil Company's steamers to San Francisco at the present time are very low, and then the trans-ship to San Francisco again is practically not remunerative at the present rates that prevail.

Mr. SEVERANCE: Mr. Schwerin, you have spoken of the losses in the operation of the Portland & Asiatic. I understood you to say the Pacific Mail sustained a loss of half a million dollars this last year?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: What is the capital stock of the Pacific Mail Steamship Company?

Mr. SCHWERIN: $20,000,000.

Mr. SEVERANCE: Does it pay any dividends?

Mr. SCHWERIN: Indirectly.

Mr. SEVERANCE: How?

Mr. SCHWERIN: Paid for the "Siberia" and "Korea" out of earnings.

Mr. SEVERANCE: How long ago?

Mr. SCHWERIN: Just finished up paying for them this last year. Think run into some $1,300,000 in the last four years, I think.

1109 Mr. SEVERANCE: Now, Mr. Lovett asked you if the rental that you paid for the "Mongolia" and "Manchuria" was fair, and you stated it was fair?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Who pays the insurance and taxes on those boats? Does the Pacific Mail pay it or the lessor?

Mr. SCHWERIN: Insurance is taken out in the name of the Pacific Mail, E. H. Harriman beneficiary, as I remember it.

Mr. SEVERANCE: Who pays the premium?

Mr. SCHWERIN: The premium is paid out of this $30,000 which we send on to New York.

Mr. SEVERANCE: That is what I want to know.

Mr. SCHWERIN: I suppose so.

Mr. SEVERANCE: The Pacific Mail does not pay the insurance premium?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Who pays the taxes on the boat?

Mr. SCHWERIN: Mr. Mahl, I suppose.

Mr. SEVERANCE: Is that paid by the Pacific Mail?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: It is paid by the owner?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: Do you happen to know what the taxes and insurance amount to, approximately?

Mr. SCHWERIN: The Legislature of the State of New York, by an act to promote American shipping, in the foreign trade, collects no taxes upon an American bottom in the foreign trade.

Mr. SEVERANCE: So there are no taxes?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: Do you happen to know what the insurance amounts to per annum?

Mr. SCHWERIN: No sir, but they are insured for nearly four millions of dollars.

Mr. SEVERANCE: Do you know what the premium amounts to—you mean the two boats together are insured for about four million dollars?

1110 Mr. SCHWERIN: Yes sir, and it is pretty nearly three per cent.

Mr. SEVERANCE: About $120,000?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: The aggregate rental, or what you have to pay is $720,000 a year for the two boats?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And out of that are there any fixed charges, aside from the $120,000 for insurance?

Mr. SCHWERIN: The owners pay for all the repairs and all the maintenance of the ships.

Mr. SEVERANCE: They pay for all the repairs?

Mr. SCHWERIN: Yes sir, all the maintenance of the ships, all the upkeeps and outfit, and all the renewals.

Mr. SEVERANCE: Do you happen to know what that originally amounts to, in percentage to the value of the ships?

Mr. SCHWERIN: No sir, I do not, I know Mr. Harriman told me they had not made very much money on the ships.

Mr. SEVERANCE: You were saying that the Portland and Asiatic cannot compete with San Francisco on business originating on the Atlantic Seaboard. How is it with business in the Orient and destined to eastern points in the United States?

Mr. SCHWERIN: It is the same difficulty here. Kobe is one of

our principal ports, and sometimes in the port of Kobe there are four different lines of express steamers, and we have a pretty hard time getting any freight on a tramp steamer against four express steamers, for instance, the "Minnesota" might be there and the "Fremont" might be there, and the Canadian express steamer in there, and perhaps one of our express steamers in there.

Mr. SEVERANCE: I noticed the other day, Mr. Schwerin, when we were in Portland, an item about this ship that you spoke about, being stuck in the ice?

Mr. SCHWERIN: Yes sir, the "Arragonia."

1111 Mr. SEVERANCE: And it gave a statement of the tonnage, the commodities on board of her. There were 7000 tons, were there not?

Mr. SCHWERIN: I don't remember just what was on the "Arragonia" but the newspaper report is absolutely misleading, Mr. Severance, because we have had the "Manchuria" and "Mongolia" go out reported with 17,000 to 18,000 tons of freight in them, when we have not more than 3,000.

Mr. SEVERANCE: I don't know anything about that?

Mr. SCHWERIN: I would be very glad to furnish you with the inward manifest of the "Arragonia."

Mr. SEVERANCE: As a matter of fact, you do bring back from the Orient considerable portions of merchandise, on the Portland & Asiatic boats, do you not?

Mr. SCHWERIN: Yes sir, we bring back some, but we don't bring back anything like full cargoes.

Mr. SEVERANCE: Do you bring back full cargoes on the Pacific Mail boats?

Mr. SCHWERIN: Sometimes.

Mr. SEVERANCE: Do you usually?

Mr. SCHWERIN: At certain periods of the year, yes sir.

Mr. SEVERANCE: Do your agents over there in the Orient work equally hard for all the boats they represent?

Mr. SCHWERIN: Those are our instructions.

Mr. SEVERANCE: That is, you instruct them to compete on behalf of the Portland line with yourself acting for the Pacific Mail, do you, as actively as they can?

Mr. SCHWERIN: No sir.

Mr. SEVERANCE: What are your instructions in that regard?

Mr. SCHWERIN: I will tell you. There is a certain class of freight that we can get by tramp steamers, that moves by tramp steamers. We can't get silk, or silk piece goods, or high grade curios, for the tramp steamers; they all move by the express steamers. But we will work just as hard for the Portland and

1112 Asiatic line for the matting and teas, and for general curios, as we will for the San Francisco line. Those are our instructions. For instance, we may have a steamer, on the berth now, and then there may be an interval when there will be no steamer on the berth. Shippers in the Orient will almost invariably ship by the first steamer, and they will give the preference to the better steamer.

Mr. SEVERANCE: Then, as I understand it——

Mr. SCHWERIN (cont'g): Then again——

Mr. SEVERANCE: Pardon me. I thought you had finished.

Mr. SCHWERIN (cont'g): Then again, where freights control in the East, we try to solicit freight in this country by the Portland and Asiatic line.

Mr. SEVERANCE: Do the Portland and Asiatic Steamship Company have agents in the East?

Mr. SCHWERIN: Yes sir. Mr. Ten Broeck.

Mr. SEVERANCE: In New York City.

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You solicit, your agents in the Orient solicit just as actively for the Portland and Asiatic as they do for the Pacific Mail, and the Occidental and Oriental, do they?

Mr. SCHWERIN: Yes sir, or the T. K. E.

Mr. SEVERANCE: And the agents are the same?

Mr. SCHWERIN: Yes sir; that is the Pacific Mail Steamships Company is the agent in the Orient for the Portland and Asiatic.

Mr. SEVERANCE: Yes, I understand.

Mr. SCHWERIN: And we get a commission, we transact the business of the Portland and Asiatic, and they pay us a regular commercial commission; the same as we pay any commercial house that transacts the business for us.

Mr. SEVERANCE: Suppose a Pacific Mail ship is in port at an Oriental port at the same time with a ship of the Portland & Asiatic. How do your agents distribute the cargo between those two, the cargo that they have accumulated to ship to this country?

1113 Mr. SCHWERIN: They don't distribute it. For instance the ships may be in the port of Hongkong. If we allowed the agent in liners we will say he will go to Kobe and have no space, and go to Yokohama and have no space.

Mr. SEVERANCE: Let us imagine they are both at Yokohama, the last port of call.

Mr. SCHWERIN: Before the ships arrive there, the agents have been engaging space. The San Francisco line might not have more than 200 tons of space allotted to Yokohama, and the Portland & Asiatic steamer might have 550 tons of space available for Yokohama. Our agent will go out and try to get all the freight he can to fill up the 200 tons of space on the San Francisco steamer, and what he can for the Portland & Asiatic steamer.

Mr. SEVERANCE: That is, you give the Portland & Asiatic steamer what the Pacific Mail Steamer cannot carry. That is the idea, is it?

Mr. SCHWERIN: No, sir.

Mr. SEVERANCE: That is what you said just now.

Mr. SCHWERIN: You asked me a question involving a specific case. I say they go out and take all the freight they can get. If the shipper declined to ship the 200 tons on the San Francisco steamer, and said he wanted to ship on the P. & A. steamer, it would go on the P. & A. steamer.

Mr. SEVERANCE: I understand, but the first duty of the Pacific Mail agents over there is to load the Pacific Mail steamers, because

that is a more important branch of your business than the Portland & Asiatic Line?

Mr. SCHWERIN: I can only say, Mr. Severance, that the agents have no instructions of that kind.

Mr. SEVERANCE: I thought from your statement just now that they did.

Mr. SCHWERIN: No, sir. That is merely a physical way of explaining to you when you take the port of Yokohama, our ships go into Yokohama in the busy season of the year jammed for freight.

Mr. SEVERANCE: Do I understand it that it is to be left to
1114 the discretion of your agents in the Orient, as far as unrouted traffic is concerned, as to which way they will send it?

Mr. SCHWERIN: The agent must use his own discretion to get the ships unloaded, and get as much competitive freight as he can get hold of.

Mr. SEVERANCE: That is, competitive as between your lines and outside lines?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: There is no competition between the Portland & Asiatic, the Occidental & Oriental, the Pacific Mail, and the Japanese line, controlled by the Pacific Mail Steamship Company, but they are all four lines competing against the Great Northern and Canadian Pacific and other lines?

Mr. SCHWERIN: Well, you might describe it that way.

Mr. SEVERANCE: That is about right?

Mr. SCHWERIN: About right, yes, sir.

Mr. SEVERANCE: Do the Pacific Mail take shipments from the Orient for Los Angeles, the port of San Pedro?

Mr. SCHWERIN: Yes, sir.

Mr. SEVERANCE: How are they delivered? How are shipments for Los Angeles delivered? Are they trans-shipped at San Francisco?

Mr. SCHWERIN: Trans-shipped by the Pacific Coast Steamship Company.

Mr. SEVERANCE: You were asked by the Commissioner, and also by Judge Lovett, with reference to these conversations with Mr. Paul Morton concerning the San Diego Line. In 1902, there was an investigation in Chicago—it was January, 1902, five years ago and Mr. Stubbs, Mr. J. C. Stubbs, gave testimony there. He was asked about this same matter, and I would like to see if your recollection corresponds with what Mr. Stubbs testifies to. Mr. Stubbs was asked with reference to all-rail shipments from California, orange shipments, and the maintenance of rates, and about a certain arrangement between Mr. Morton and Mr. Stubbs.

1115 Mr. LOVETT: From what page are you reading, or about to read?

Mr. SEVERANCE: Page 24 of the record. Then the testimony is as follows:

"Mr. DAY: Is there not an understanding regarding the percent-
"age of the transpacific traffic that the Atchison shall have or take?

"Mr. STUBBS: No sir. The Atchison has run its own lines. Its
"own steamers.

"Mr. DAY: Where?

"Mr. STUBBS: From San Diego.

"Mr. DAY: Is it running now?

"Mr. STUBBS: I don't know whether they are running now or "not.

"Mr. DAY: Is there any arrangement that the line shall be "abandoned?

"Mr. STUBBS: There is an understanding that after the 1st day "of April, I will not be sure about the 1st day of April, I believe "that the Santa Fe will use the transpacific lines from San Fran- "cisco.

"Mr. DAY: Is that what is popularly known as the Pacific Mail?

"Mr. STUBBS: That is one of them?

"Mr. DAY: What was the consideration for that proposal? How "was the Atchison to profit or benefit by them?

"Mr. STUBBS: I think the understanding is that it will receive "a fair share of the traffic from those steamers.

"Mr. DAY: Is that an arrangement between the Southern Pacific "railroad officials or the Union Pacific Railroad officials and the "Atchison?

"Mr. STUBBS: I don't think there is any agreement.

"Mr. DAY: Or understanding; is it an agreement between the "steamship company and the railroad, or all three?

"Mr. STUBBS: I don't think there is anything more than the ex- "pectation of that result.

"Mr. DAY: There has been no promise?

1116 "Mr. STUBBS: I think there has been no complete prom- "ise.

"Mr. DAY: Well, what propositions were made?

"Mr. STUBBS: Well, propositions were made to the effect that if "you work for the San Francisco lines, you get a fair share of the "traffic.

"Mr. DAY: That they will abandon the San Diego part?

"Mr. STUBBS: It would not be stated that way, in my judgment. "It would be stated, 'If you work in connection with our lines from "'San Francisco, we will see that you get a fair share of the busi- "'ness.'

"Mr. DAY: What steamship line at San Diego is the Atchison "connected with?

"Mr. STUBBS: I don't recall the name of the line."

Does that correspond with your recollection of the transaction and the negotiations?

Mr. SCHWERIN: Well, I have never known Mr. Stubbs to have this discussion that he spoke about there. I was not present at the time.

Mr. SEVERANCE: You would not undertake to say, would you, that Mr. Stubbs has not correctly stated the suggestions that were made to the Santa Fe Company?

Mr. SCHWERIN: No sir, I could not state as to the correctness of that statement.

Mr. SEVERANCE: All you know about it is as to your talk with Mr. Morton?

Mr. SCHWERIN: And from time to time I have talked generally on the question.

Mr. SEVERANCE: Talked with Mr. Stubbs?

Mr. SCHWERIN: Talked to Mr. Stubbs and talked to Mr. Sproule.

Mr. SEVERANCE: Did you talk with Mr. Stubbs and Mr. Sproule about the desirability of getting the Atchison to quit San Diego, and bring their stuff here?

Mr. SCHWERIN: Naturally. They were connecting carriers of ours.

1117 Mr. SEVERANCE: You were asked this question by Judge Lovett, and I was a little surprised at your answer. Judge Lovett asked you whether the Southern Pacific had any reason to object to your giving traffic to the Santa Fe, and you said "no." Do you mean that sir, that the Southern Pacific Railroad Company, carrying freight east from San Francisco, has no reason to object to your handing traffic over to the Santa Fe, "no object in objection"—that is the way the question read, I think.

Mr. SCHWERIN: Perhaps I may not have understood Judge Lovett's question just as you put it now. But I have always recognized my right as Manager of the Pacific Mail and the affiliated San Francisco lines, to work those lines in every way that I know how for the benefit of San Francisco, and for the individual lines, and that I had a right to go to the Sante Fe and to ask the Sante Fe to make an arrangement with me by which they would give me a larger share of their through freight, in return for which I could turn any or all of the business of our lines over to the Sante Fe. I have always believed I had that right.

Mr. SEVERANCE: That is what you meant, then, by that answer?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You did not mean by that that the Southern Pacific would not have less traffic if you gave it to the Santa Fe? They would, would they not?

Mr. SCHWERIN: Well, naturally, if the Southern Pacific Company had had the entire traffic that came in, and a part of it were given to the Santa Fe, they would lose traffic. But we felt that we were building up this traffic all the time. There is a larger volume of traffic coming in, and the competition for outward traffic was very fierce, and we wanted the entire assistance of the Santa Fe if we could get them to help us through this port.

Mr. SEVERANCE: You do not want us—

Mr. SCHWERIN (int'g): I do not recognize the railroad at all, and do not consider the railroad at all.

1118 Mr. SEVERANCE: Mr. Schwerin, you do not want the Oriental traffic coming to California or going from California to the Orient to be divided between two Ports, but you want to bring it all to San Francisco?

Mr. SCHWERIN: Naturally. My interests lie in the port of San Francisco.

Mr. SEVERANCE: Do you operate in connection with the Hawaiian Line?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: You take shipments from here and take them up to Portland?

Mr. SCHWERIN: Yes sir.

Mr. SEVERANCE: And also the Panama route. That is all.

Mr. LOVETT: We have no further questions.

Commissioner LANE: Mr. Schwerin, you understand there is a difference between the statement as made by Mr. Stubbs and the statement as made by you this morning in relation to the reason for abandoning the Don Diego line across the Pacific?

Mr. SCHWERIN: No Sir, I don't think so. As I understand Mr. Severance's question, it was whether I had previous knowledge of that understanding that Mr. Stubbs may have stated as taking place between him and the Santa Fe officers.

Commissioner LANE: As I understand Mr. Severance, he asked if you knew whether that was correct statement as made by Mr. Stubbs?

Mr. SCHWERIN: I don't know what conversation Mr. Stubbs may have had with any officers in relation to this question, except with myself.

Commissioner LANE: Except yourself?

Mr. SCHWERIN: I can't remember, Mr. Lane, that Mr. Stubbs and myself were present at any meeting with Santa Fe officers where this question was seriously considered.

Commissioner LANE: You did not know that Mr. Stubbs was carrying on negotiations with the Santa Fe Railroad for the abandonment of its steamship line across the water?

Mr. SCHWERIN: No Sir.

1119 Commissioner LANE: And making an arrangement by which that business was to be diverted from San Diego to San Francisco, and go over your lines to the Orient?

Mr. SCHWERIN: No sir.

Mr. DUNNE: I don't think Mr. Stubbs' testimony will bear that construction, your Honor.

Commissioner LANE: I understood that that was Mr. Schwerin's statement, that he knew nothing about any transaction, anything in the way of a negotiation looking towards the divergence of this traffic, until after the San Diego line had been abandoned. Now, then, I understand Mr. Stubbs' statement to be that there were negotiations of that kind.

Mr. DUNNE: I don't understand Mr. Stubbs' testimony to mean that this general traffic arrangement between the Santa Fe and Pacific Mail Steamship Company was made as a result of and in transpacific connection out of San Diego. I understood the historical fact to be that that transpacific connection had ceased because it was financially unprofitable, and that it was after that and independently of that that the general traffic arrangement between the Pacific Mail Company and the Santa Fe was entered into.

Commissioner LANE: I may have misunderstood the statement of Mr. Stubbs as read by Mr. Severance from Mr. Stubbs' testimony. Will you kindly read that?

Mr. SEVERANCE: I wish Judge Lovett would kindly read it for me, my voice is so bad, if you don't mind, Judge Lovett.

Mr. LOVETT: I will read it. I understood also Mr. Schwerin to

testify that he had frequently solicited this business from Mr. Morton during the existence of that line.

Mr. LANE: So I understood.

Mr. LOVETT: But that no arrangement was made until after that line was discontinued.

Commissioner LANE: Yes. Now, if Mr. Stubbs' statement, as I understand it, is correct, Mr. Stubbs was negotiating for the
1120 abandonment of the steamship line and transfer of the traffic to the Pacific Mail, over which Mr. Schwerin is in absolute control.

Mr. LOVETT: I will read the statement, your Honor:

"Mr. DAY: Is there not an understanding regarding the per-"centage of the transpacific traffic that the Atchison shall have or "take?

"Mr. STUBBS: No, sir. The Atchison has run its own lines, its "own steamers.

"Mr. DAY: Where?

"Mr. STUBBS: From San Diego.

"Mr. DAY: Is it running now?

"Mr. STUBBS: I don't know whether they are running now or "not.

"Mr. DAY: Is there any agreement that the line shall be aban-"doned?

"Mr. STUBBS: There is an understanding that after the 1st day "of April, I will not be sure about the 1st of April, I believe"——

Commissioner LANE: Right there. Mr. Schwerin, do you know of or were you a party of that understanding relating to the 1st day of April.

Mr. SEVERANCE: That is 1902.

Commissioner LANE (cont'g): 1902.

Mr. SCHWERIN: I can't recollect of having any definite talk with Mr. Morton in relation to the operation of our lines positively, until after the abandonment of the California & Oriental line.

Commissioner LANE: You do not know that there was an arrangement, not a contract, but an arrangement or a gentlemen's understanding, that after the 1st day of April, 1902, there should be a transfer of their business to you?

Mr. SCHWERIN: I will frankly state that my impression is that there was an interregnum, that the California & Oriental line had practically gone out of business when Morton told me "Well, we will give you some of the business." But I want to say that this had been talked over (you understand unofficially) for all of the two or three years that the California & Oriental line had been running.

1121 Mr. LOVETT: Does your Honor desire the rest of this read?

Commissioner LANE: Yes. I want to see how far Mr. Stubbs went.

Mr. LOVETT: I did not finish the last answer of Mr. Stubbs. I will repeat it:

"Mr. STUBBS: There is an understanding that after the 1st day "of April, I will not be sure about the 1st day of April, I believe

"that the Sante Fe will use the trans-Pacific lines from San Fran-
"cisco.

"Mr. DAY: Is that what is popularly known as the Pacific Mail?

"Mr. STUBBS: That is one of them.

"Mr. DAY: What was the consideration of that proposal. How
"was the Atchison to benefit or profit by that?

"Mr. STUBBS: I think the understanding is that it will receive
"a fair share of the traffic from those steamers.

"Mr. DAY: Is that an agreement between the Southern Pacific
"railroad officials, or the Union Pacific railroad officials and the
"Atchison?

"Mr. STUBBS: I don't think there is any agreement.

"Mr. DAY: Or understanding; is it an agreement between the
"steamship company and the railroads, or all three?

"Mr. STUBBS: I don't think there is anything more than the ex-
"pectation of that result.

"Mr. DAY: There has been no promise?

"Mr. STUBBS: I think there has been no completed promise."

Commissioner LANE: "No completer promise" is the language.

Mr. LOVETT (cont'g): "Mr. DAY: Well what propositions were
"made?

"Mr. STUBBS: Well, propositions were made to the effect that if
"you work for the San Francisco line, you get a fair share of the
"traffic.

"Mr. DAY: That they will abandon the San Francisco
1122 "part?

"Mr. STUBBS: It would not be stated in that way, in my
"judgment. It would be stated, 'If you work in connection with
"'our lines from San Francisco, we will see that you get a fair
"'share of the business.'

"Mr. DAY: What steamship line at San Diego is the Atchison
"connected with?

"Mr. STUBBS: I don't recall the name of the line.

"Mr. DAY: Is there not an agreement regarding the division of
"the"——

Commissioner LANE: That is all there is that I wanted to hear. Thank you. That account differs from your statement to the Commission, does it not, as to there being an agreement or understanding that the Santa Fe should have a proportion of the business?

Mr. SCHWERIN: From what Mr. Stubbs says there taking his testimony there, it seems that he had discussed that thing with the Santa Fe in relation to a proposition of that business.

Commissioner LANE: Was he not trenching on your preserve when he was negotiating for transpacific business?

Mr. SCHWERIN: Well, I have asked Mr. Stubbs to help me in a great many things.

Commissioner LANE: But you did not ask him in tha matter?

Mr. SCHWERIN: In this? I have discussed that question with Mr. Stubbs, as to our advisability of handling the Santa Fe traffic for the benefit of the steamship line, a great many times and I have discussed with the other officials of the Southern Pacific Company, in regard to the port of San Francisco, building up the port of San

Francisco, that is, the steamship connections. You understand, Mr. Lane, the more steamers that can be gotten out at the port of San Francisco and an increasing of the importance of the port of San Francisco, will naturally increase the volume of the tonnage that moves by the port of San Francisco, and I look to the question of having the rail connection, in fact I have asked the
1123 Southern Pacific to help me in that direction, to help me to get the Santa Fe to make a traffic arrangement with us.

Commissioner LANE: Is it in furtherance, or was it in furtherance of any negotiations which you had with Mr. Stubbs, that this agreement was had?

Mr. SCHWERIN: I have no doubt Mr. Stubbs may have discussed the thing with the Santa Fe people—must undoubtedly have done so.

Mr. DUNNE: Mr. Schwerin, do you understand that there is anything in this testimony that has been read here of Mr. Stubbs' statements, which goes to the point that he made this understanding?

Mr. SCHWERIN: No, sir, I do not.

Mr. DUNNE: Do you understand this to be any more than a suggestion that he knows as a matter of history, that there was some such arrangement, or result, or expectation?

Mr. SCHWERIN: I so understand it, the way it was read, yes, sir.

Mr. DUNNE: By the way, Mr. Schwerin, do you know whether the date here specified by Mr. Stubbs was before or after the abandonment by the Santa Fe of its transpacific water connection at San Diego?

Mr. SCHWERIN: What was the date, please, that he specified there?

Mr. DUNNE: The date he specified is April, 1902.

Mr. SEVERANCE: That is the time they were to begin the work at San Francisco on the transpacific line?

Mr. DUNNE: Yes. He says here he is not certain about the date, but assuming provisonally that that was the date, do you happen to know whether or not at that point of time the Santa Fe had abandoned its connection with the water carrier out of San Diego?

Mr. SCHWERIN: Well, I would not like to state on that. I am not positive of the exact date that they abandoned that line?

Mr. DUNNE: At all events, Mr. Schwerin, independently of this whole question of abandonment, the Santa Fe had a connection with a water carrier at San Diego and you had been seeking
1124 yourself, prior to the abandonment of the connection, to have the Santa Fe establish joint traffic relations with you. Was that not so?

Mr. SCHWERIN: Yes, sir, during the entire time, practically—well, not the entire time, but practically after the first year of the operation of the California & Oriental.

Mr. DUNNE: As connecting carriers?

Mr. SCHWERIN: Yes, sir.

Commissioner LANE: May I ask, Mr. Schwerin, if Mr. Stubbs did not do this, and you didn't do it, who did it? Now, as I understand Mr. Dunne's question, it is based upon the implication that

Mr. Stubbs did not carry out that arrangement, and you say you did not. Now, then, is there anybody in authority, anybody with authority from you who could carry it out?

Mr. SCHWERIN: I don't think I have said I didn't carry out that arrangement, Mr. Lane.

Commissioner LANE: You have mentioned the arrangement, and——

Mr. SCHWERIN (int'g): You mean in regard to these negotiations?

Commissioner LANE: At the time that Mr. Stubbs testifies to; at the time that he refers to prior to the 1st day of April, 1904?

Mr. SEVERANCE: 1902, your Honor.

Commissioner LANE: 1902, yes.

Mr. SCHWERIN: I can only answer that question by saying that that was a matter of general discussion all along the line in relation to our getting control of the Santa Fe outward tonnage.

Commissioner LANE: The whole thing amounts to this: That there was an understanding and that Mr. Stubbs knew about it, and I want to know by whom it was done. Mr. Stubbs, as I understand him, didn't do it, and as I understand you, you didn't do it. Now I would like to know just who did?

Mr. SCHWERIN: The first information I had upon the sub-
1125 ject was that the Santa Fe—and Mr. Paul Morton told me "Well, I guess we are going to give you some business" in New York, and I asked him when "Well," he said, "I don't know when." I don't remember the date of this conversation, but he said, "We have thought the whole thing over, and we are not going to put on a line of our own, and we will give you the business." Now, we had previously discussed many times before that in relation to a division of the traffic outward and homeward. So I understood that when the first arrangement was made in regard to the division of the traffic I understood from Mr. Sproule that the Santa Fe had accepted my proposition, and the date of that I am unable to state—had accepted my proposition that we were to reserve a certain amount of our tonnage space for the outward Santa Fe traffic, and we were to give them in the neighborhood of 25 per cent. of the homeward traffic.

Commissioner LANE: I think that is all.

Mr. DUNNE: I would like to ask this question of Mr. Schwerin: This matter had been developing and progressing, this question of joint traffic relations between your company and the Santa Fe, throughout quite a period of time, had it not?

Mr. SCHWERIN: Yes sir, it was all mixed up, and it is absolutely impossible for me to state now how the thing culminated in an agreement.

Mr. DUNNE: I was just going to put that question to you, if it would not be extremely difficult to reduce the proposition of its concrete elements?

Commissioner LANE: It manifestly is, Mr. Dunne. There isn't anybody that appears to know exactly how it was done.

Mr. DUNNE: I want your Honor to appreciate that we want to give you all the information that we can.

Commissioner LANE: I appreciate that.

Mr. DUNNE: That this thing had been going on a long time, backwards and forwards, to and fro, and to take it and give it concrete dimensions and proportions and limitations is very dif-
1126 ficult to do, and that is true of a great deal of business that this witness does, or any other man of large affairs.

Commissioner LANE: Are there any further questions to be asked of Mr. Schwerin?

Mr. DUNNE: That is all, Mr. Schwerin.

Commissioner LANE: At 2 o'clock we will take up informally a matter touching the 20 cent unloading rate that has been put in here, and I would like to have the traffic officials of the Southern Pacific and of the Santa Fe present at that time. It probably will take but a very few minutes, and immediately after its conclusion we will continue this inquiry. We will now adjourn until 2 o'clock.

After Recess, 2 p. m.

At the opening of the afternoon session, the Commission considered informally the matter touching the 20 per cent. unloading rate referred to by *the* Commisioner Lane at the adjournment hour. At 3 o'clock P. M. the hearing of the inquiry was resumed.

Commissioner LANE: You may proceed gentlemen.

Mr. SEVERANCE: We will call Mr. Shotwell.

W. J. SHOTWELL, having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live Mr. Shotwell?

Mr. SHOTWELL: San Francisco.

Mr. SEVERANCE: And what is your business?

Mr. SHOTWELL: Railroading, representing the Denver & Rio Grande, and other through lines.

Mr. SEVERANCE: How long have you lived in San Francisco?

Mr. SHOTWELL: About 14 years.

Mr. SEVERANCE: And during that time what business have you been in?

1127 Mr. SHOTWELL: Representing the D. & R. G. principally.

Mr. SEVERANCE: What is your title here?

Mr. SHOTWELL: General Agent.

Mr. SEVERANCE: Has that been your title all the time you have been here?

Mr. SHOTWELL: Yes, sir.

Mr. SEVERANCE: What are your duties?

Mr. SHOTWELL: I am representing the traffic department, soliciting freight and passenger business.

Mr. SEVERANCE: Soliciting business?

Mr. SHOTWELL: Yes, sir.

Mr. SEVERANCE: Will you state how the business of the Denver & Rio Grande, both in and out of San Francisco, the business in which you share in and out of San Francisco, compares with the business you did prior to 1901?

Mr. SHOTWELL: Well, we are not doing as heavy a business to-day as we did in 1901.

Mr. DUNNE: Will you speak a little louder, please.

Mr. SHOTWELL: We are not doing as much business to-day as we did in 1901.

Mr. SEVERANCE: And previous years.

Mr. SHOTWELL: And previous years.

Mr. SEVERANCE: What is the difference, in a general way—say in percentages?

Mr. SHOTWELL: We are doing less than 50 per cent. of the business to-day than we were in 1901.

Mr. SEVERANCE: Will you state, if you know, the reason for that?

Mr. SHOTWELL: The reason is that the Southern Pacific devote their efforts to securing the business for the Union Pacific, and in that way that effects our traffic.

Mr. SEVERANCE: How was it before 1901? What was the attitude of the agents of the Southern Pacific towards your Company and the Union Pacific?

Mr. SHOTWELL: I considered them neutral.

Mr. SEVERANCE: They were neutral?

Mr. SHOTWELL: Yes, sir.

1128 Mr. SEVERANCE: And how soon after the acquisition of the Southern Pacific stock by the Union Pacific did you find this change take place in the attitude of the agents of the Southern Pacific?

Mr. SHOTWELL: Well, it was gradual.

Mr. SEVERANCE: And is constantly more noticeable?

Mr. SHOTWELL: Becoming more noticeable, yes sir, at the present time.

Mr. SEVERANCE: In soliciting business, in the position—I assume that you are in opposition to the Union Pacific in soliciting business?

Mr. SHOTWELL: Yes, sir.

Mr. SEVERANCE: In soliciting business in opposition, in your work of soliciting that business, what do you find is the attitude of the agents of the Southern Pacific and Union Pacific in routing business?

Mr. SHOTWELL: I find that the business controlled by the Southern Pacific agents is almost invariably routed either by the Union Pacific, or by the Sunset to New Orleans.

Mr. SEVERANCE: That is what I want to get at. Does the business that originates or goes to any particular section go by either one of those routes as against the other?

Mr. SHOTWELL: Yes, sir. I consider the business subject to the control of the Southern Pacific is routed one way or the other, by the Sunset or by the Union Pacific.

Mr. SEVERANCE: Is there any difference as to the way it is routed, depending on the origin of the traffic?

Mr. SHOTWELL: I think they usually—at the present time I don't know that there is very much difference or very much preference one way or the other, but previous to 1901 the Sunset route business was considered by us to be seaboard business and southeastern states

business—southeastern territory of the United States—or business that could be reached by New Orleans.

Mr. SEVERANCE: Do you know now, which way, if either way, the Southern Pacific Agents endeavor to route traffic that goes
1129 to the seaboard or comes from the seaboard, as between the route by Ogden and the Union Pacific on the one hand, and the Sunset on the other?

Mr. SHOTWELL: I think they are neutral as to that.

Mr. SEVERANCE: Neutral.

Mr. SHOTWELL: As between these two routes; yes, sir.

Mr. SEVERANCE: Is this testimony that you have given with reference to the efforts made by the Southern Pacific to influence business with the Union Pacific as against your company testimony that applies only to the freight business, or does it apply also to the passenger business?

Mr. SHOTWELL: It applies to both.

Mr. SEVERANCE: How is that?

Mr. SHOTWELL: On both freight and passengers.

Mr. SEVERANCE: You may examine him.

Mr. LOVETT: We have no questions.

Mr. DUNNE: I would like to ask him one question. You are an officer of the Western Pacific, are you not?

Mr. SHOTWELL: A Director; yes, sir.

Mr. DUNNE: You are a Director of the Western Pacific?

Mr. SHOTWELL: Yes, sir.

J. D. MANSFIELD having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Mansfield?

Mr. MANSFIELD: In San Francisco.

Mr. SEVERANCE: What is your business?

Mr. MANSFIELD: Commercial agent of the Denver & Rio Grande.

Mr. SEVERANCE: Who is your immediate superior?

Mr. MANSFIELD: Mr. Shotwell.

Mr. SEVERANCE: This gentleman that has just testified?

Mr. MANSFIELD: Yes, sir.

1130 Mr. SEVERANCE: What kind of work do you do as commercial agent?

Mr. MANSFIELD: Under Mr. Shotwell, I have the direction of the solicitation of freight business, and general charge of the detail connected with the freight business here.

Mr. SEVERANCE: How large a force has the Rio Grande here that aids in the solicitation of its business?

Mr. MANSFIELD: In the solicitation entirely?

Mr. SEVERANCE: In the office work in connection with it too?

Mr. MANSFIELD: Our entire force in this territory is 16 men.

Mr. SEVERANCE: That is, in this city?

Mr. MANSFIELD: No, sir; in the territory assigned to this agency.

Mr. SEVERANCE: What is the extent of the territory of this agency?

Mr. MANSFIELD: Its present lines are the Bakersfield and San Luis Obispo and the Oregon State Line.

Mr. SEVERANCE: How many are there in this City, Mr. Mansfield?

Mr. MANSFIELD: There are 12.

Mr. SEVERANCE: How does the number of men that you have soliciting traffic now compare with the number that you employed here four or five years ago?

Mr. MANSFIELD: It is larger.

Mr. SEVERANCE: You have more?

Mr. MANSFIELD: Yes, sir.

Mr. SEVERANCE: Did you hear Mr. Shotwell's statement as to the falling off of business?

Mr. MANSFIELD: Yes, sir.

Mr. SEVERANCE: What have you to say as to that?

Mr. MANSFIELD: Well, his statement is correct, so far as my knowledge goes.

Mr. SEVERANCE: What do you find is the attitude of the agents of the Southern Pacific and Union Pacific here in the matter of routing business, their attitude towards your company?

1131 Mr. MANSFIELD: Do you want to—do you couple the agents of the Southern Pacific and the Union Pacific together?

Mr. SEVERANCE: I will take the Southern Pacific alone, the agents of the Southern Pacific?

Mr. MANSFIELD: The agents of the Southern Pacific are, or rather their attitude is, I don't know, you can't call it unfriendly, but their efforts are directed to the securing of business for the Harriman lines, that is, the Union Pacific and the Sunset route.

Mr. SEVERANCE: That is, their efforts are combined towards securing business for both of their lines, or either of them, as against you?

Mr. MANSFIELD: As against the Rio Grande?

Mr. SEVERANCE: Have you noticed any change in the attitude of the Southern Pacific agents in that regard in the last three or four years?

Mr. MANSFIELD: Yes, sir.

Mr. SEVERANCE: What is the change?

Mr. MANSFIELD: Well, while in former years their attitude was neutral, so far as the line selected beyond Ogden is concerned, at the present time they are favoring the Union Pacific as against us.

Mr. SEVERANCE: That is all.

Mr. LOVETT: What is the Western terminus of your line?

Mr. MANSFIELD: Ogden.

Mr. LOVETT: How far is that from San Francisco?

Mr. MANSFIELD: It is, I think, about eight hundred and some odd miles.

Mr. LOVETT: How does the traffic that you secure in San Francisco get to your line?

Mr. MANSFIELD: It gets to us over the Southern Pacific.

Mr. LOVETT: Entirely, does it not?

Mr. MANSFIELD: No, sir. From this territory, it does, yes, sir.

Mr. DUNNE: Do you send any California business East bound over the Texas & Pacific?

Mr. MANSFIELD: Yes, sir.

1132 Mr. DUNNE: The Texas & Pacific is a part of the Gould system, is it not?

Mr. MANSFIELD: Popularly so known.

Mr. DUNNE: And the Denver & Rio Grande is a part of the Gould system, is it not?

Mr. MANSFIELD: Yes, sir.

Mr. DUNNE: The Western Pacific is also a part of the Gould system, is it not?

Mr. MANSFIELD: I presume it will be.

Mr. DUNNE: And when the Western Pacific is completed, you expect to favor the Denver & Rio Grande?

Mr. MANSFIELD: I don't know what we will expect to do when that time happens.

Mr. DUNNE: As a railroad man you have no doubt about that, have you?

Mr. MANSFIELD: Well, condition—I would not want to say as to that.

Mr. DUNNE: Well, I won't ask you to commit yourself. That is all.

WILLIAM A. BISSELL having been duly sworn testified as follows:

Mr. SEVERANCE: Mr. Bissell, where do you live?

Mr. BISSELL: I live across the Bay at Alameda.

Mr. SEVERANCE: And where is your office in San Farncisco?

Mr. BISSELL: San Francisco—673 Market Street.

Mr. SEVERANCE: What is your business?

Mr. BISSELL: I am Assistant Traffic Manager of the Atchison System.

Mr. SEVERANCE: Who is your Traffic Manager?

Mr. BISSELL: They have no Traffic Manager; they have a Freight Traffic Manager, and a Passenger Traffic Manager. Mr. Gorman is Freight Traffic Manager, and is over me, and also Mr. Black, located in Chicago.

Mr. SEVERANCE: Are you assistant to both of them?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: You are the chief representative of the traffic department here on the coast?

Mr. BISSELL: Yes sir.

1133 Mr. SEVERANCE: Who is the General Freight Agent of your company?

Mr. BISSELL: On the coast?

Mr. SEVERANCE: Yes sir.

Mr. BISSELL: Mr. Barnwell—W. G. Barnwell.

Mr. SEVERANCE: What is Mr. Chambers?

Mr. BISSELL: He is Assistant Freight Traffic Manager.

Mr. SEVERANCE: Is he assistant to you?

Mr. BISSELL: Yes. He is in active charge of the detail business.

Mr. SEVERANCE: He is in active charge?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: And your work is confined largely to supervision?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: You keep yourself posted as to the traffic conditions, however, do you not?

Mr. BISSELL: Reasonably so, yes sir.

Mr. SEVERANCE: Are you connected any way with the Northwestern Pacific?

Mr. BISSELL: Yes sir, I am a director of the Northwestern Pacific.

Mr. SEVERANCE: In addition to being a director, are you an officer?

Mr. BISSELL: No sir.

Mr. SEVERANCE: Who has charge of the traffic of that system, the Northwestern Pacific?

Mr. BISSELL: Mr. Ryan, F. X. Ryan.

Mr. SEVERANCE: What was his position prior to the organization of the Northwestern Pacific?

Mr. BISSELL: He was General Freight and Passenger Agent of the California Northwestern, and also of the North Shore.

Mr. SEVERANCE: Are those the Southern Pacific lines that went into the combination, or were they the Santa Fe lines?

Mr. BISSELL: As far as it was publicly known, they were neither; they were independent lines. I don't understand——

1134 Mr. SEVERANCE (int'g): Mr. Bissell, Mr. Payson testified yesterday that there were certain lines belonging to the Southern Pacific and certain lines belonging to the Santa Fe that went into the Northwestern Pacific, and he named those lines you have spoken of?

Mr. BISSELL: He is better authority on those matters than I am.

Mr. SEVERANCE: I don't remember whether he said they were Southern Pacific or Santa Fe lines?

Mr. BISSELL: He must have said they were Southern Pacific lines, if he said either. They are the lines we always supposed were controlled by the Southern Pacific, and the lines he referred to as the Santa Fe were the lines up north, on Eel River.

Mr. SEVERANCE: Prior to the amalgamation of these lines up north, who had control of the traffic conducted over the Santa Fe line?

Mr. BISSELL: Up in the north there?

Mr. SEVERANCE: Yes sir.

Mr. BISSELL: Mr. Porter, at Eureka.

Mr. SEVERANCE: And to whom did he report?

Mr. BISSELL: He reported to Captain Payson.

Mr. SEVERANCE: Captain Payson.

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: He did not report to you?

Mr. BISSELL: No, sir.

Mr. SEVERANCE: I understood the Captain to say yesterday he did not have anything to do with the traffic, and so I was going to find out who had.

Mr. BISSELL: I think Porter ran the business without very much reporting to anybody.

Mr. SEVERANCE: What little reporting he did do was to Captain Payson?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: What has become of him now?

Mr. BISSELL: He is still there.

Mr. SEVERANCE: What is he doing?

Mr. BISSELL: Well, he is in charge of those northern lines. The Northwestern Pacific has not been in existence long enough
1135 so as to get down to any outline of the business. So far as I know, the officers continue just as they were.

Mr. SEVERANCE: I don't think I asked Captain Payson yesterday, and I will ask you as a director: Has the Northwestern Pacific started in on the construction of lines that are to tie the system together?

Mr. BISSELL: The actual construction?

Mr. SEVERANCE: Yes.

Mr. BISSELL: No, sir.

Mr. SEVERANCE: Have you let any contracts?

Mr. BISSELL: I don't know that we have. It is not a very good time of year to build railroads up in that country.

Mr. SEVERANCE: You have located a line?

Mr. BISSELL: There have been several surveys. Captain Payson could probably tell you about that.

Mr. SEVERANCE: He knows more about that?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Then you have very little to do with the line, with the exception of being a director?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: How far east does your jurisdiction extend, Mr. Bissell?

Mr. BISSELL: To Chicago.

Mr. SEVERANCE: Oh, all the way to Chicago?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: And covers what traffic?

Mr. BISSELL: All the traffic.

Mr. SEVERANCE: All the traffic?

Mr. BISSELL: Yes, sir, freight and passenger.

Mr. SEVERANCE: You are familiar with the eastern movement of fruit from Southern California, are you not?

Mr. BISSELL: Somewhat, yes sir. I have not had very active control of the detail work of that for some time. In a general way, I am familiar with the situation there.

Mr. SEVERANCE: Who has the direct control of that?

Mr. BISSELL: Mr. Chambers is closer to that.

1136 Mr. SEVERANCE: Mr. Chambers is closer to that, you say?

Mr. BISSELL: Yes, sir, to the detail of that work.

Mr. SEVERANCE: Has there been, so far as you are advised, the last two years, any change in the method of handling the fruit

crop of Southern California as between the Southern Pacific and the Santa Fe?

Mr. BISSELL: Not to my knowledge.

Mr. SEVERANCE: The traffic is divided up about the same as it was four or five years ago?

Mr. BISSELL: Well, I could not say as to that; as a general proposition, I should say yes. The traffic is so located there that it would naturally divide about equally.

Mr. SEVERANCE: Does your road make any effort to get fruit traffic that originates on the Southern Pacific lines in Southern California?

Mr. BISSELL: Yes, sir, we take business from other lines.

Mr. SEVERANCE: Do you solicit it? Do you have men actively at work trying to get business from other lines, in competition with the Santa Fe?

Mr. BISSELL: As to that I could not say. I don't think we do because the main effort we have had for the last three or four years has been to get our cars back fast enough to take care of the fruit that was offered.

Mr. SEVERANCE: Is it not a fact, Mr. Bissell, that an arrangement has existed for a number of years between the Southern Pacific and your company, by virtue of which you have each refrained from endeavoring to get business of that character originating on the line of the competing road.

Mr. BISSELL: In Southern California?

Mr. SEVERANCE: Yes.

Mr. BISSELL: No, sir.

Mr. SEVERANCE: Has there never been any such arrangement, to your knowledge?

Mr. BISSELL: Well, there was—I presume you refer to the
1137 testimony that came out on the former case and partly exploited at that time. The business is so located down there that it naturally about evenly divides itself between the two companies and we have always had all we could do to get our equipment back to take care of our own. We have taken fruit at times from the Southern Pacific, and at times they have taken fruit from our line. As a general proposition, if it were up to me, I should prefer to take the fruit that originates on our own line, as then we do not have to divide the earnings with anybody.

Mr. SEVERANCE: Mr. Bissell, the Southern Pacific and the Santa Fe lines are very close together, are they not, between San Bernardino, we will say, and Los Angeles?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: And there is a large amount of fruit that might easily be procured by one company as against the other by active solicitation. Is that not true?

Mr. BISSELL: Well, that is true in a measure, but most of that fruit is controlled—the routing of most of that fruit is controlled by the location of the packing houses? If an orange shipper had a packing house on the line of the Southern Pacific, he would not ship over our line unless there was some unusual condition of affairs.

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If the Southern Pacific had no cars, he might haul his fruit over to our line.

Mr. SEVERANCE: Do you make any effort to get fruit that belongs to packers on the Southern Pacific track by holding out the offer of efficient service, or facilities, or anything of that sort?

Mr. BISSELL: Why, we have at times done so, Mr. Severance.

Mr. SEVERANCE: How long ago did you do that?

Mr. BISSELL: I could not tell you exactly.

Mr. SEVERANCE: You do not do it now, do you?

Mr. BISSELL: I don't think so. We haven't equipment enough. We have always had a hard time to get that equipment back to take care of the business originating on our own tracks.

1138 Mr. SEVERANCE: Have you increased your equipment?

Mr. BISSELL: Yes, sir.

Mr. *Bissell:* Does the business increase faster than your increase in equipment?

Mr. BISSELL: The business has shown a general increase, and we have also had less ability to get our cars back from the east.

Mr. SEVERANCE: Why?

Mr. BISSELL: Well, on account of the weather conditions that exist there—I don't know that I could give you the detail of it, but it seems to be harder every season to get our equipment back.

Mr. SEVERANCE: Now, Mr. Bissell, have you been the last few years operating your own refrigerator cars, or not?

Mr. BISSELL: We have been operating our own cars.

Mr. SEVERANCE: For how many years have you done so? Have you answered?

Mr. BISSELL: I was trying to think how many years. I don't remember. It might be 6 or 7 years.

Mr. SEVERANCE: How many refrigerator cars have you?

Mr. BISSELL: We have at the present time approximately 6000, I believe.

Mr. SEVERANCE: And how recently have you procured these cars? You did not procure those 6000 cars at once, did you?

Mr. BISSELL: No, oh no. I think the additional equipment this year was about 600 cars.

Mr. SEVERANCE: You added 600 cars this year?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Then, as I understand it, you do not solicit business in opposition to the Southern Pacific; and the reason you give for that is that you are shy of equipment?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: Aside from that you would actively solicit that business off the tracks of the Southern Pacific, or would you

1139 prefer, as you said a moment ago, to let each line take the fruit that is naturally tributary to it?

Mr. BISSELL: It would depend a good deal on many conditions, Mr. Severance. If we were short of business, I think we would endeavor to *full* up with that business.

Mr. SEVERANCE: You think you would?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: Now, Mr. Stubbs—you are acquainted with Mr. Stubbs are you not?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: Mr. Stubbs testified at Chicago on this subject on the 8th of January 1902, and he was asked if there was any arrangement between his company, the Southern Pacific, or his companies throughout—his companies, the system that he represented—and the Santa Fe, and he answered first that the general arrangement was that they would consult and agree upon rates. He was then asked if there was anything regarding the percentage of traffic each should have, and he said this: "There is an understanding, but it is not in writing. You may say it amounts to an understanding that, so far as the orange business is concerned, we will endeavor to work an equal division of that traffic. That arises from the fact that it is about so divided in its production on our local lines in California there is about 50 per cent produced on the lines owned by the Santa Fe, and about 50 per cent produced on the Southern Pacific and so far as possible we agree that we shall not interfere with each other's local business." Now, is that agreement still in force?

Mr. BISSELL: I don't—the general policy is still in force, we would not go on to the line of the Southern Pacific and offer to take their oranges, and team them over to our line.

Mr. SEVERANCE: You have heard of railroads competing with each other, have you not, in different parts of the country?

Mr. BISSELL: In that way.

1140 Mr. SEVERANCE: Yes.

Mr. BISSELL: Yes sir—we have done it ourselves, but that was before we were held down so tightly by the law.

Mr. SEVERANCE: But you do not approve of that policy as applied to the Southern Pacific and the Santa Fe in California?

Mr. BISSELL: No sir, nor under present conditions, I don't believe there is anything in it.

Commissioner LANE: I did not hear what you said a moment ago to the effect that you had heard of competition, one road competing with another.

Mr. BISSELL: In that way, yes—taking business off the other line and teaming it over. I told him I had heard of it, and I had done it. As I understood it, he then asked me if we were doing that in Southern California, and I told him "no."

Mr. SEVERANCE: So that, as far as the orange crop that is raised in that big valley running back from Los Angeles, in which both Redlands and San Barnardino are, and in which both the Southern Pacific and your line have trackage, there is no competition for the business?

Mr. BISSELL: Well, of course it is necessary to know what you mean by that, Mr. Severance.

Mr. SEVERANCE: No effort made by your line of the Southern Pacific to procure the business. You simply take that which comes to you?

Mr. BISSELL: Yes sir, that is correct under present conditions.

Mr. SEVERANCE: There is another railroad in there now, is there not, known as the Salt Lake Line?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: What kind of an attitude do you have towards the Salt Lake line with regard to the orange business?

Mr. BISSELL: In regard to the orange business, I could not tell you much about the details of that, Mr. Severance. Mr. Chambers handled that personally.

Mr. SEVERANCE: Is he here?

1141 Mr. BISSELL: No sir, he is not here at the present time. I believe that there was quite a lot of oranges went east over the Salt Lake road last year.

Mr. SEVERANCE: Do you know, or have you been told by Mr. Chambers, about what percentage, what part of the oranges raised in that vicinity, the Southern Pacific and the Santa Fe are willing to concede to the Salt Lake road?

Mr. BISSELL: No sir.

Mr. SEVERANCE: You haven't been told?

Mr. BISSELL: No sir.

Mr. SEVERANCE: You do not know?

Mr. BISSELL: No sir.

Mr. SEVERANCE: Now Mr. Bissell, which way do the oranges move to the east, as a rule, that go over the Southern Pacific from that region? Do they go by Sunset, or go up to the Ogden?

Mr. BISSELL: I don't know of any oranges going east by Sunset. Do you mean extreme east?

Mr. SEVERANCE: Anywhere east?

Mr. BISSELL: I could not tell you about that, Mr. Severance, except I have a general understanding that in the early part of the season they move the oranges east by El Paso, and later on they move them east by Ogden, as the weather moderates.

Mr. SEVERANCE: When they go by El Paso they are taken on to Chicago by the Rock Island or the Texas Pacific?

Mr. BISSELL: I think they are divided. I don't know how that is. I know they don't go over the Santa Fe.

Mr. SEVERANCE: You know that they don't go over the Santa Fe?

Mr. BISSELL: No sir, they do not.

Mr. SEVERANCE: I suppose you don't want them to on account of the insufficiency of equipment?

Mr. BISSELL: They are not loaded in our equipment, Mr. Severance. We would be very glad to get them in Southern Pacific equipment at Deming or El Paso.

Mr. SEVERANCE: Mr. Bissell, is any effort made by the Southern Pacific to stimulate its orange traffic in that region by making

1142 quicker deliveries at Chicago and eastern points that are made over the Southern Pacific?

Mr. BISSELL: That are made over the Southern Pacific?

Mr. SEVERANCE: Yes, by giving quicker service. Do you compete with them that way?

Mr. BISSELL: You asked me if there was any effort made on the part of the Southern Pacific.

Mr. SEVERANCE: No, the Santa Fe. My voice is so bad, I don't wonder that you do not understand.

Mr. BISSELL: Why, our physical condition has been such, the condition of our equipment has been such, that it has taken every effort that we could put forth to ake care of that business for the last two years—the last three years, I guess—and we have done the best we could to handle that business, and I think this last year we have satisfied the growers down there pretty well. But we have been in such shape, as I think you well know, that we have not been able to make any special record runs across the continent.

Mr. SEVERANCE: I wanted to get at whether you had tried to give a quicker service than the Southern Pacific.

Mr. BISSELL: We have tried very hard to give them good service down there, and we have succeeded fairly well.

Mr. SEVERANCE: And what is the schedule time that you endeavor to maintain on shipments of oranges from that valley to Chicago?

Mr. BISSELL: Eight days.

Mr. SEVERANCE: Eight days?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: Do you know what time the Southern Pacific and Rock Island make?

Mr. BISSELL: I do not.

Mr. SEVERANCE: Have you ever been told as to whether they try to make the same time as you do?

Mr. BISSELL: Why, I suppose they try to get it there as quick as I can.

1143 Mr. SEVERANCE: You try to get it there in eight days?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: Is it not a fact that they try to get it there in eight days too?

Mr. BISSELL: You will have to ask them.

Mr. SEVERANCE: What is that?

Mr. BISSELL: You will have to ask them. I don't know what their schedule is.

Mr. SEVERANCE: You don't know?

Mr. BISSELL: No sir.

Mr. SEVERANCE: You don't know what it is?

Mr. BISSELL: No sir.

Mr. SEVERANCE: Have you ever had any conversation with Mr. Stubbs upon the question of the rapidity of that service?

Mr. BISSELL: Oh, I think more than likely I have, but I have had no conversation with him in regard to the time that I can recollect.

Mr. SEVERANCE: You do not remember any talk with him in which you agreed between yourselves that you would endeavor, each of you, to make eight days?

Mr. BISSELL: No sir, I have no recollection of any such talk.

Mr. SEVERANCE: Or any other number of days?

Mr. BISSELL: No sir.

Mr. SEVERANCE: Do you happen to know anything of the service over the Salt Lake road?

Mr. BISSELL: I do not.

Mr. SEVERANCE: You know nothing about that?

Mr. BISSELL: Nothing whatever.

Mr. SEVERANCE: Do you know anything about the way the Salt Lake rates are made? Are they made after consultation with you?

Mr. BISSELL: That I could not say.

Mr. SEVERANCE: You must be able to testify as to that.

Mr. BISSELL: The Salt Lake rates?

Mr. SEVERANCE: Yes. Would they not have to talk with you before they make rates?

1144 Mr. BISSELL: With reference to through car services?

Mr. SEVERANCE: I mean the Salt Lake road east. I am speaking of the combination of rates over the lines of the Salt Lake line and the lines east of Chicago.

Mr. BISSELL: I think most of the rates were made before the Salt Lake came into the business. I think so, and I think there has been very little change in the business.

Mr. SEVERANCE: Did the traffic managers have any consultation with reference to the rates to be put forward?

Mr. BISSELL: No sir.

Mr. SEVERANCE: Never did.

Mr. BISSELL: No sir.

Mr. SEVERANCE: No talk at all?

Mr. BISSELL: No sir.

Mr. SEVERANCE: Do you know who has charge of the traffic department of the Salt Lake road?

Mr. BISSELL: I understand Mr. F. A. Weir.

Mr. SEVERANCE: Used to be with one of the roads out of Chicago?

Mr. BISSELL: Yes sir, years ago he used to be with the Alton.

Mr. SEVERANCE: He lives at Los Angeles now?

Mr. BISSELL: I understand he does, yes.

Mr. SEVERANCE: You heard the testimony of Mr. Schwerin here yesterday with reference to the division to be made on Oriental traffic?

Mr. BISSELL: I heard part of it.

Mr. SEVERANCE: In which he testified that for the last six months they have been giving it by alternate ships to your road and the other road. Mr. Schwerin testified that for the last six months, the traffic arriving by the Pacific Mail line and other lines under his control, into San Francisco, were divided between your line and the Southern Pacific, first one ship to one line, and then one ship to another line. Were you consulted about that before that rule was established?

Mr. BISSELL: He testified it was the result of a talk between Mr. Luce, Mr. Chambers and himself.

1145 Mr. SEVERANCE: Mr. Chambers did not consult you about that?

Mr. BISSELL: No sir.

Mr. SEVERANCE: How many years have you occupied this position with the road? How many years have you been in charge of the traffic department in the west?

Mr. BISSELL: Well, I have occupied this present position for about eight years—eight or nine years, I have forgotten which. Before that, I——

Mr. SEVERANCE (int'g): You were with the company then, at the time the steamships were running from San Diego to the Orient?

Mr. BISSELL: Yes, sir, I have been with this company for 24 years.

Mr. SEVERANCE: I know you had been with them for a long time.

Mr. BISSELL: All the time they have been connected with the Pacific Coast traffic.

Mr. SEVERANCE: I knew you had been with them a long time, but I didn't know when you were first connected with them.

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Mr. Bissell, were you consulted by Mr. Schwerin, or any of these other gentlemen, with reference to the advisability of giving up the San Diego route, and routing your Oriental traffic by way of San Francisco?

Mr. BISSELL: No, sir.

Mr. SEVERANCE: You were not.

Mr. BISSELL: No, sir, not in that way.

Mr. SEVERANCE: Well, in what way were you consulted, if at all?

Mr. BISSELL: Why, I was never consulted by any official of any steamship company of the Pacific Mail—in regard to giving up the California and Oriental Steamship Co. We gave the California Steamship Company up because it was a failure.

Mr. SEVERANCE: Yes, I understood that. And prior to the time you gave it up, had you any conversation with Mr. Schwerin
1143 or with Mr. Stubbs with reference to doing your business with the Pacific Mail or the companies coming into San Francisco?

Mr. BISSELL: Well, I don't remember to have had any conversation or personal talk with Mr. Schwerin or Mr. Stubbs with regard to that feature of the case. I have talked it over with our own people. I knew that the Pacific Mail were anxious to do our business for us if we abandoned that field down there. At the time that steamship line was put on, we didn't have our own line in here, you understand.

Mr. SEVERANCE: I understand. How long after your line reached San Francisco, did you quit the San Diego line?

Mr. BISSELL: My recollection is that it was about a year. My recollection is that that steamship line went into existence in 1899 and that our contract with them ended in 1902. I think it was in the spring in both instances. I think the contract ended in the spring of 1902. Now, you will understand in regard to this that I have lost all the papers that I had. I looked yesterday to see if there was anything upon this, and I could not find anything.

Mr. SEVERANCE: Did you have this up with Mr. Morton, Mr. Bissell. You said you talked with your own people?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Did Mr. Morton tell you that he had had it up with Mr. Schwerin and Mr. Stubbs?

Mr. BISSELL: Mr. Morton—I could not tell you exactly what Mr.

Morton told me. I could tell you the general trend of the conversations that I had with him.

Mr. SEVERANCE: Give us that.

Mr. BISSELL: They were to the effect—the general subject was under discussion at that time, Mr. Severance. We had propositions not only from the Pacific Mail, but we had propositions from other people to go into the steamship business, and they were all of the same ilk as the California and Oriental—we were to hold the
1147 bag; the other fellow got the turkey, and we got the crow, if there was any. We finally were told by our people that there was a prospect of our ability to do business out of the port of San Francisco, which, in my judgment, is the only port in this State where the business can be done. I talked it over with Mr. Morgan several times. My recollection is that I told Mr. Morgan that if we could make a satisfactory arrangement of that kind, it was the best thing we could do.

Mr. SEVERANCE: Well, was an arrangement made, and if so, who made it?

Mr. BISSELL: I could not tell you who made it, but such an arrangement was made, that we should do business——

Mr. SEVERANCE (int'g): Everyone seemed to agree that there was some arrangement made, and that there was talk about it, but we seem to be unable to find out who made the arrangement until this matter came up about six months ago. We know who did that. But before you came here to San Francisco do you know who it was, representing your company, that made an arrangement with the Pacific Mail, and do you know what the arrangement was that this person made?

Mr. BISSELL: Yes, sir—I don't know positively, but I assume that Mr. Morton made the arrangement. The arrangement was to the effect that we were to have certain space on the Pacific Mail steamers leaving this port, and that we were to receive a portion of their inbound cargo.

Mr. SEVERANCE: What portion?

Mr. BISSELL: 25 per cent.

Mr. SEVERANCE: 25 per cent.?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: And you understood that that was the arrangement when you concluded to work through San Francisco?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Has that arrangement ever been changed as to percentages?

Mr. BISSELL: Not to my knowledge.

1148 Mr. SEVERANCE: In what way did you get that traffic? Was it switched over to you by the Southern Pacific at the docks?

Mr. BISSELL: Yes, sir; it is the only way we can get it, Mr. Severance, the way the docks are arranged here. Are you familiar with the docks here?

Mr. SEVERANCE: Yes, I understand that. It is unloaded on the tracks of the Southern Pacific and switched over to you?

Mr. BISSELL: Yes, sir. Our cars are put in on the Pacific Mail Steamship Company's dock, and loaded there on the Southern Pacific track.

Mr. SEVERANCE: Then the amount of traffic that the Pacific Mail Steamship Company agreed to give you, this 25 per cent. of their traffic, is not determined by the amount of traffic you are able to give them, but you get 25 per cent. of the traffic coming from the Orient, irrespective of the amount you give them?

Mr. BISSELL: Well, we had certain—we were assigned a certain amount of space. Of course the amount of business that we were able to give them would vary with our ability to fill that space.

Mr. SEVERANCE: Exactly.

Mr. BISSELL: We did our utmost to fill all the space we could get.

Mr. SEVERANCE: That is to say, they agreed to take a certain amount of tonnage?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: And if you furnished less, they took what you did furnish?

Mr. BISSELL: Took whatever we could furnish.

Mr. SEVERANCE: Was there ever any instance where you had more tonnage than they cared to take?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: What did you do with it in that case?

Mr. BISSELL: We had to hold it.

Mr. SEVERANCE: Up to the next boat?

Mr. BISSELL: When Mr. Schwerin chartered extra steam-
1149 ers—it was the time when there was a big run on cotton over there—he chartered extra steamers as fast as he could get hold of them, and they took that cargo.

Mr. SEVERANCE: As I understand it, no matter whether you filled that space or not, they were bound under this arrangement to give you 25 per cent. of the traffic destined for the east?

Mr. BISSELL: That is my understanding.

Mr. SEVERANCE: And it is the best of your belief that they have done that—have they?

Mr. BISSELL: Yes, I think so.

Mr. SEVERANCE: You have made no effort, have you, through solicitation of the shippers or consignees of that traffic, to secure more than 25 per cent.?

Mr. BISSELL: East bound?

Mr. SEVERANCE: Yes.

Mr. BISSELL: No, sir, we have not. That is all done on the other side, in the Orient, and we have nothing to do with it.

Mr. LOVETT: You do not mean East bound, you mean inward bound?

Mr. BISSELL: No, he asked me about inward bound.

Mr. SEVERANCE: By "east bound," I mean east bound to the United States.

Mr. BISSELL: Yes, sir; what Mr. Schwerin designated yesterday as inbound business.

Mr. SEVERANCE: Inbound business. And so far as the Southern Pacific is concerned and so far as you *you* know, the Southern Pa-

cific have made no effort to secure more than the remaining 75 per cent.?

Mr. BISSELL: So far as I know, no railroad company has ever solicited that business.

Commissioner LANE: I do not understand that this business is solicited, any of it, by the Southern Pacific and the Santa Fe, and they take 25 per cent. for the Santa Fe and 75 per cent. for the Southern Pacific. The Oriental business, for instance, is taken as a whole, is it not?

Mr. BISSELL: Yes, sir.

Commissioner LANE: And then divided?

1150 Mr. BISSELL: Yes, sir.

Commissioner LANE: And are not solicited by any railroad?

Mr. BISSELL: That is correct.

Mr. SEVERANCE: And neither the Southern Pacific nor the Santa Fe competes for it, other than to have this arrangement with the steamship line, that is true, is it?

Mr. BISSELL: That is true. The competition is between the Pacific Mail and the Suez route and the tramp steamers; it is over in the East.

Commissioner LANE: And the other lines here?

Mr. BISSELL: Yes, sir.

Commissioner LANE: Puget Sound lines?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: One other feature of that matter. Different kinds of commodities are different as to rates?

Mr. BISSELL: Are what?

Mr. SEVERANCE: Rates differ as to different commodities. For instance, you get more for silk than you do for bags, do you not?

Mr. BISSELL: Yes sir.

Mr. SEVERANCE: Does this 25 per cent. mean 25 per cent. of the tonnage or 25 per cent. of the revenue?

Mr. BISSELL: Well, it was meant, as I take it, in my understanding of it, though I never had any explanation of that, but I assumed it meant 25 per cent. of the general cargo that the Pacific Mail Company brought into this port, and if we ran short of tonnage on one class of goods, we would run over on another.

Mr. SEVERANCE: Then it is probably 25 per cent. of the revenue?

Mr. BISSELL: Yes, it would probably work out that way. We never keep any check of it on the revenue. I stated that the 25 per cent. was to be as near as we could get it.

Mr. SEVERANCE: Then if in one cargo you get a lot of low price commodities, they would make it up to you on another?

1151 Mr. BISSELL: Even up on another, yes.

Mr. SEVERANCE: How far to the east was most of this stuff moved that you got on the boats?

Mr. BISSELL: Well, there is a good deal of it goes to Chicago, and a good deal of it goes to New York. Chicago and New York are the principal ports it goes to.

Mr. SEVERANCE: Do you happen to know how that moves, the Southern Pacific part of it?

Mr. BISSELL: No sir, I do not.

Mr. SEVERANCE: Outside of these oranges in Southern California, and the Oriental traffic, is there any other traffic originating here in California, or moving to the east from California, concerning which you have an arrangement for division with the Southern Pacific?

Mr. BISSELL: I don't know of any.

Mr. SEVERANCE: Those two are the only ones you know of?

Mr. BISSELL: I don't know of anything else.

Mr. SEVERANCE: That is all.

Mr. DUNNE: That is all, Mr. Bissell.

Commissioner LANE: One other question, Mr. Bissell. Does the arrangement about the division of oranges include other fruits?

Mr. DUNNE: What was that question?

Commissioner LANE: Does the arrangement in reference to oranges include other fruits?

Mr. DUNNE: What arrangement?

Commissioner LANE: That they won't interfere with each other's domain.

Mr. DUNNE: Go on and answer that briefly.

Mr. BISSELL: What other fruits do you mean?

Commissioner LANE: Any other fruits, Mr. Bissell?

Mr. SEVERANCE: Grape and lemons, for instance.

Mr. BISSELL: It is all handled down there under the head of citrus fruits. We make no distinction between oranges, lemons and pomelos.

Commissioner LANE: Does it include anything else besides citrus fruits?

Mr. BISSELL: I do not know of anything else. The ar-
1152 rangement, I suppose, is the arrangement he refers to, what he read from Mr. Stubbs' testimony.

Commissioner LANE: You know there was such an arrangement as that, do you not?

Mr. BISSELL: I explained to Mr. Severance all I know about it.

Commissioner LANE: Does that arrangement cover anything else but citrus fruits?

Mr. BISSELL: No sir.

Commissioner LANE: Nothing else?

Mr. BISSELL: No sir.

Commissioner LANE: It does not touch any other commodity?

Mr. BISSELL: I don't want to mislead you on that, Mr. Commissioner. The statement that I made was that we never pirate on one another's preserves down there, we never do it on any other freight. We can take freight from their track and take it over to ours, but we can't do it without hauling the freight, of course.

Commissioner LANE: So you can't reach out for any business from them; that is what I understand, is it?

Mr. BISSELL: Yes sir, we try to get all the business from them we can.

Commissioner LANE: All the business of every kind excepting on citrus fruits?

Mr. BISSELL: Yes sir.

Commissioner LANE: Is that right?

Mr. BISSELL: Yes sir.

Commissioner LANE: But you have come to an understanding as regards citrus fruits. Does that touch canned fruits?

Mr. BISSELL: No sir.

Commissioner LANE: It does not touch canned fruit. You fight for canned fruit, do you?

Mr. BISSELL: The only business that we can be held to be included in what you call an arrangement down there is business for which special equipment is required, and it takes all of the equipment we have got to take care of the fruit we have to handle
1153 for our own rails. We take canned goods in any kind of equipment.

Mr. SEVERANCE: There is one other question that slipped my mind that I want to ask. Do you want to ask any further questions, gentlemen?

Mr. DUNNE: No, go ahead, Mr. Severance.

Mr. SEVERANCE: Mr. Bissell, do you remember a conversation you had with Stubbs about the time your line came into San Francisco upon the subject of this State toll? That was under discussion here day before yesterday?

Mr. BISSELL: No, I don't remember ever having discussed the subject of State toll with Mr. Stubbs.

Mr. SEVERANCE: You never had any talk with him on the subject?

Mr. BISSELL: I don't remember any such talk. You say at the time our line came in?

Mr. SEVERANCE: About the time you came in here; yes sir.

Mr. BISSELL: I have no recollection of any talk with him.

Mr. SEVERANCE: Did you not have a conversation with Mr. Stubbs in which you called his attention to the fact that the Southern Pacific was bringing a good many commodities in here by the line this side of bay, and that it would be necessary for you to absorb that charge to compete with them? Did you not urge Mr. Stubbs, to take out that charge on the business coming up this side of the bay for that reason, and did he not tell you he would take it out?

Mr. BISSELL: Take out the charge for State toll?

Mr. SEVERANCE: The extra 5 cents on the stuff that did not come across the bay?

Mr. BISSELL: No, sir; I do not remember any such conversation.

Mr. SEVERANCE: You never had a talk with Mr. Stubbs about that?

Mr. BISSELL: I have no recollection of ever having discussed the subject with Mr. Stubbs.

Mr. SEVERANCE: In any way?

1154 Mr. BISSELL: In any way.

Mr. SEVERANCE: Or at any time.

Mr. BISSELL: Or at any time.

Mr. DUNNE: Mr. Bissell, I would like to ask you a question or two about this charge situation. The area in Southern California

devoted to the production of Oranges is approximately distributed equally between the two initial lines, is it not?

Mr. BISSELL: It is.

Mr. DUNNE: There is some territory between San Bernandino and Los Angeles, referred to by Mr. Severance, where the tracks run tolerably close together?

Mr. BISSELL: Yes, sir.

Mr. DUNNE: The oranges are collected in packing houses, are they not?

Mr. BISSELL: Yes, sir.

Mr. DUNNE: Some packing houses are local to your rails, and some packing houses to the rails of the Santa Fe. Is not that correct?

Mr. BISSELL: Yes—to the Southern Pacific you mean?

Mr. DUNNE: To the Southern Pacific, I should say, yes.

Mr. BISSELL: Yes, sir.

Mr. DUNNE: Now you made the statement to Mr. Severance that the general policy (and you used the word "policy")—that the general policy still remains that you shall not go upon the rails of the Southern Pacific to take oranges out of one of their packing houses, and reciprocally, they will not scalp oranges from your packing houses. That is the general policy is it not?

Mr. BISSELL: Yes, sir.

Mr. DUNNE: I want to ask you whether, outside of that general railroad policy which obtains in that territory, there is anything between your company and the Southern Pacific in the nature of a contract and bargain that you shall not do those things?

Mr. BISSELL: There is absolutely nothing.

1155 Mr. DUNNE: Are you not at entire liberty to-morrow or the next day, to go upon their rails and scalp oranges local to their packing houses, if you so wish?

Mr. BISSELL: We are, so far as being limited with any agreement with the Southern Pacific.

Mr. DUNNE: Yes, sir. Do you understand as a railroad man, or as a layman, for that matter, that there is any law in this land that compels you to compete for that kind of business?

Mr. BISSELL: Not in that way.

Mr. SEVERANCE: Do you want the legal opinion of the witness?

Mr. DUNNE: I want to clear up this situation. I don't want any misconception about it. It was thoroughly exploited in the Orange Routing case. That is all.

Mr. SEVERANCE: Just a minute. In view of the fact your legal opinion has been asked by my friend upon a question a moment ago let me ask you this: You say there are packing houses on your tracks and packing houses on the Southern Pacific tracks. Have you felt that you were at liberty legally to put solicitors in the field and try to influence the growers to patronize the packing houses on your tracks as against the ones on the other track, and would you do that?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Do you do that?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: You do do that?

Mr. BISSELL: Yes, sir.

Mr. SEVERANCE: Right along?

Mr. BISSELL: Yes, sir, try to get them to build packing houses on our tracks.

Mr. SEVERANCE: Do you keep soliciting agents out down there to get oranges put into packing houses upon your tracks against those upon Southern Pacific tracks? Do you do that?

Mr. BISSELL: Ordinarily. Those packing houses, if I can answer this question this way——

Mr. SEVERANCE: Any way you desire.

1156 Mr. BISSELL: Ordinarily those packing houses are built by the different associations, and we never have very much success in asking a man from one association to take his oranges over and put them in a packing house that belonges to another association. But I think we do what you wanted to know about there. Whenever an association is going to put up a packing house, we try the best we know how to get them to put their packing house upon our line, so as to get the business.

Mr. SEVERANCE: Do you do that, although it may result in giving you more than 50 per cent. of the business?

Mr. BISSELL: Yes, sir. I don't understand that the business down there is divided 50 per cent. and 50 per cent. I understand that it divides about equally.

Mr. SEVERANCE: And you want it to remain that way?

Mr. BISSELL: No. I don't want it to remain that way. I would like to have a different deal on it. I would like to have more of it if I thought I could get it.

Mr. SEVERANCE: You would like to have more of it if you thought you could get it without a row?

Mr. BISSELL: Without getting into complication.

Mr. SEVERANCE: And without getting into competition?

Mr. BISSELL: I think we are competing for it, Mr. Severance.

Mr. SEVERANCE: That is all.

E. E. CALVIN, having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Calvin?

Mr. CALVIN: I live in Oakland.

Mr. SEVERANCE: And what is your position?

Mr. CALVIN: Vice President and General Manager of the Southern Pacific Company, Pacific system.

Mr. SEVERANCE: Over what extent of the line of that company does your jurisdiction reach?

1157 Mr. CALVIN: North to Ashland, east to Sparks, and southeast to the Rio Grande.

Commissioner LANE: A little bit louder, if you please.

Mr. CALVIN: Shall I state it again?

Commissioner LANE: What was the last? How far southeast do you go?

Mr. CALVIN: To the Rio Grande.

Mr. SEVERANCE: Do you mean the Rio Grande River?

Mr. CALVIN: Yes sir. It is about three miles this side of El Paso.

Mr. LOVETT: The Texas boundary line.

Mr. SEVERANCE: So that you have charge of the lines from here north to Ashland and to the east as far as Sparks, and southeast to practically El Paso?

Mr. CALVIN: That is it.

Mr. SEVERANCE: Who is the operating man that has charge of the Southern Pacific lines north of you and beyond you? Is it Mr. O'Brien?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Does Mr. O'Brien report to you?

Mr. CALVIN: No sir.

Mr. SEVERANCE: You have no relations of any kind with Mr. O'Brien?

Mr. CALVIN: No.

Mr. SEVERANCE: Who is the General Manager of the lines east of Sparks?

Mr. CALVIN: Mr. Bancroft.

Mr. SEVERANCE: Mr. Bancroft of Salt Lake City?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: He is also Vice President of the Oregon Short Line, is he not?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Your duties are confined largely to the Southern Pacific System?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: You do not have jurisdiction over any part of the Short Line or the Oregon Railroad & Navigation Company?

Mr. CALVIN: No sir.

1158 Mr. SEVERANCE: And to whom do you report, Mr. Calvin?

Mr. CALVIN: To Mr. Kruttschnitt, sir.

Mr. SEVERANCE: To Mr. Kruttschnitt?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Do you also report in any matters to Mr. Harriman direct?

Mr. CALVIN: Sometimes, in special matters.

Mr. SEVERANCE: Special matters?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: But in the ordinary routine of your business, you report to Mr. Kruttschnitt?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Does the Traffic Manager here report to you or Mr. Stubbs?

Mr. CALVIN: He reports to Mr. Stubbs, sir, as I understand it.

Mr. SEVERANCE: Are your duties wholly in connection with operation?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Do you have anything to do with the traffic at all?

Mr. CALVIN: I am not responsible for traffic.

Mr SEVERANCE: How many divisions of the road are there in

your jurisdiction? You have general superintendents, have you not?

Mr. CALVIN: Yes, sir, two.

Mr. SEVERANCE: You have two?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Over what particular territory do they have jurisdiction?

Mr. CALVIN: What we call the northern district is comprised of three divisions, all north of Santa Barbara and Fresno. The other general superintendent's territory, which is known as the southern district, comprises the lines South of these two points.

Mr. SEVERANCE: How long have you been with the company here?

Mr. CALVIN: At this place?

Mr. SEVERANCE: Yes.

1159 Mr. CALVIN: About two years.

Mr. SEVERANCE: And prior to that time where were you?

Mr. CALVIN: I was a year at Portland.

Mr. SEVERANCE: And before that?

Mr. CALVIN: 7 or 8 years at Salt Lake.

Mr. SEVERANCE: What was your position at Salt Lake?

Mr. CALVIN: General Superintendent for a short time, and afterwards Assistant General Manager.

Mr. SEVERANCE: Of the Oregon Short Line?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Then you have been connected with the Southern Pacific Company how long? Only the two years, or also the year that you were in Portland?

Mr. CALVIN: The year I was in Portland, I had charge of the Southern Pacific lines in Oregon, north of Ashland.

Mr. SEVERANCE: Did you occupy the same position at Portland that Mr. O'Brien occupies now?

Mr CALVIN: Precisely.

Mr. SEVERANCE: How is that?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: That is, you had jurisdiction over the Southern Pacific lines in Oregon north of Ashland and over the O. R. & N.?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Prior to 1901, when the Union Pacific purchased the stock of the Southern Pacific, there were no officers, were there, who had jurisdiction over any parts of the Southern Pacific system, and at the same time over the Union Pacific, Oregon Short Line, or O. R. & N.?

Mr. CALVIN: Not so far as I know.

Mr. SEVERANCE: In these days, the lines were operated independently of each other, that is, the Southern Pacific was operated independent of these other three lines?

Mr. CALVIN: So far as I know.

1160 Mr. SEVERANCE: And in those days you were an official of the Oregon Short line?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Do you know whether at that time, when you lived at Salt Lake City and were an official of the Short line, and prior to 1901, there was competition existing between the Southern Pacific and the lines running northwesterly to Portland the Short Line and the O. R. & N.?

Mr. CALVIN: No sir, I don't know as to that. I had nothing to do with traffic management.

Mr. SEVERANCE: You had nothing to do with traffic?

Mr. CALVIN: No sir.

Mr. SEVERANCE: You never had?

Mr. CALVIN: No sir.

Mr. SEVERANCE: Your duties were confined simply to operation?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Are you the head of the car clearing house system?

Mr. CALVIN: No sir.

Mr. SEVERANCE: To whom do the car service agents make reports?

Mr. CALVIN: You mean on the Southern Pacific?

Mr. SEVERANCE: Yes.

Mr. CALVIN: We have an officer with the title of Superintendent of Transportation, and that officer reports to me.

Mr. SEVERANCE: Up in Portland the other day, we found an official by the name of Meyer there who was Car Service Agent of the O. R. & N. and Southern Pacific lines in Oregon.

Mr. CALVIN: That corresponds to our office of Superintendent of Transportation.

Mr. SEVERANCE: It corresponds to that, does it?

Mr. CALVIN: Yes sir, only our office carries with it little more authority than does his, that is all.

Mr. SEVERANCE: That official reports to you, does he?

Mr. CALVIN: Yes sir.

1161 Mr. SEVERANCE: And he has to do with the distribution of cars?

Mr. CALVIN: Only in a general way, he had charge of the details of it entirely.

Mr. SEVERANCE: Who else has charge of them?

Mr. CALVIN: No one.

Mr. SEVERANCE: Have you anything to do with that?

Mr. DUNNE: I think you misunderstood him. I think he understood you to ask if he himself had charge of the distribution.

Mr. SEVERANCE: No, I asked him if this Superintendent of Transportation had. What is his name, Mr. Calvin, your Superintendent of Transportation?

Mr. CALVIN: Richardson.

Mr. SEVERANCE: He lives here in San Francisco.

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Has he charge of the distribution of cars?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: On the Southern Pacific system?

Mr. CALVIN: The territory that I cover, yes sir.

Mr. SEVERANCE: The same territory that you cover?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: He reports to you, does he not?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: And in the handling of cars, he treats all the cars of the Southern Pacific, Union Pacific, Short line, and O. R. & N. as company cars, does he not, as distinguished from outside cars?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: How long ago was that policy adopted?

Mr. CALVIN: Well, I don't recall the exact date, I think about two years ago.

Mr. SEVERANCE: By whose direction?

Mr. CALVIN: I think it was by general agreement of all the General Managers of all those lines. I know the matter was discussed in the meeting of General Managers.

1162 Mr. SEVERANCE: Where was this meeting held? Here or in Chicago?

Mr. CALVIN: In Chicago, I think.

Mr. SEVERANCE: In Mr. Kruttschmitt's office?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Was not that system established over all these allied lines under instructions from Mr. Kruttschmitt?

Mr. CALVIN: It was after conference with the General Manager.

Mr. SEVERANCE: The orders came from him?

Mr. CALVIN: Yes sir.

Mr SEVERANCE: The man in Portland, Mr. Meyer you say, reports to Mr. O'Brien, does he not?

Mr. CALVIN: I think he reports to the General Superintendent; there is only one General Superintendent of that system.

Mr. SEVERANCE: Of the whole system?

Mr. CALVIN: The lines entering at Portland.

Mr. SEVERANCE: He reports to the General Superintendent and the man here reports to you?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Where does the Union Pacific Car Agent report?

Mr. CALVIN: I could not say positively, but I assume to the General Superintendent.

Mr. SEVERANCE: What I want to get at is this: Is there not any one central place to which these reports are made, so that you know the situation of the cars of the whole system?

Mr. CALVIN: The general direction of the movement of cars on each line is in the hands of the General Manager.

Mr. SEVERANCE: I understand that. But haven't you any central bureau that is constantly in touch with these various car service agents of Superintendent of Transportation since you adopted this system of treating the cars of all these four lines as cars of one company?

Mr. CALVIN: Well, there is a sort of car clearing house
1163 that just keeps track of the mileage of the cars, but not of the distribution of them.

Mr. SEVERANCE: Where is that clearing house located?

Mr. CALVIN: In Chicago, I think.

Mr. SEVERANCE: In Mr. Kruttschmitt's office?

Mr. CALVIN: Well, I am not positive as to that. It does not come into the matter of operation, and cuts no figure in handling of the equipment.

Mr. SEVERANCE: You do not know about that?

Mr. CALVIN: It is an accounting matter.

Mr. SEVERANCE: Now, under the car service rules, you have an eastern car comes out here loaded, and it is your duty to get that car back to the initial, is it not?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: That rule is abrogated, is it not, in the case of the Union Pacific equipment. For instance, you treat that the same as Southern Pacific equipment?

Mr. CALVIN: You treat the Union Pacific equipment just the same as Southern Pacific equipment as to leading.

Mr. SEVERANCE: That is what I am talking about. *How*, is there not some means by which your department here, the one over which you have jurisdiction, keeps touch with the same department of the Union Pacific we will say, with reference to cars?

Mr. CALVIN: In the event that there is a shortage of any class of equipment, yes.

Mr. SEVERANCE: How do they do it, by correspondence?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Or are reports interchanged?

Mr. CALVIN: No sir. There is a report interchanged showing any surplus equipment that there may be on in any General Manager's territory. That is the only regular report that is made.

Mr. SEVERANCE: And to whom are these reports sent?
1164 Are they sent to a similar official of the other divisions?

Mr. CALVIN: Yes sir, sent to all of the other General Managers.

Mr. SEVERANCE: And duplicates sent to Mr. Kruttschmitt?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: What is the nature of the reports that you make to Mr. Kruttschmitt?

Mr. CALVIN: In regard to cars?

Mr. SEVERANCE: Oh, generally, Mr. Calvin. How often do you report, and concerning what matter?

Mr. CALVIN: Any matter of any importance that I want advice on.

Mr. SEVERANCE: Any matters of any importance. Well, for instance, you want additional equipment, or you want steel rails, or anything of that kind. Do you communicate that fact to Mr. Kruttschmitt.

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: What other matters, in a general way? Can you give the classes of matters concerning which you make habitual reports to Mr. Kruttschmitt?

Mr. CALVIN: Any matter affecting the policy of the property.

Mr. SEVERANCE: And do the other general managers of the Union

Pacific, and the Short Line, and the O. R. & N. do the same, so far as you know?

Mr. CALVIN: So far as I know.

Mr. SEVERANCE: That is done, is it, for the purpose of maintaining a uniform policy throughout the entire system of Harrison lines, so called.

Mr. CALVIN: Well, I don't know the reason for it.

Mr. SEVERANCE: But they do it?

Mr. CALVIN: I think so.

Mr. SEVERANCE: Mr. Lovett suggests that I ask you this, If you had a shortage of cars in your territory, and you have reason to believe that Mr. O'Brien, or Mr. Bancroft, or some of these other gentlemen occupying positions akin to yours on other divisions, have cars, how do you manage the matter?

1165 Mr. CALVIN: I take it up direct with them.

Commisioner LANE: What was that? I did not hear.

Mr. CALVIN: I take it up direct with them.

Mr. SEVERANCE: And do they send you empties?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: How is that?

Mr. CALVIN: Yes sir, if they can.

Mr. SEVERANCE: And Judge Levett suggests that if that is not successful, you probably take it up with Mr. Kruttschmitt?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Is that true?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: He is over all you gentlemen—he is the manager to whom you can all appeal?

Mr. CALVIN: Yes sir.

Mr. SEVERANCE: Whose directions you will take?

Mr. CALVIN: Yes sir.

Commissioner LANE: Would it not facilitate things in the matter of car service, Mr. Calvin, if you had in connection with your car service or your car clearance one man who was at the head of that bureau for all of the roads?

Mr. CALVIN: I think it would.

Commissioner LANE: And who would have control over the handling and disposition of the equipment?

Mr. CALVIN: Well, only as to the division of it between the different sections of the country, after considering the requirements and the importance of the traffic. I understand that is contemplated by all of the western railroads, a clearance of that sort.

Commissioner LANE: Then in that case you would not apply to the Manager of the road in Portland, but you would apply to the head of that bureau?

Mr. CALVIN: I assume so, yes sir.

Commissioner LANE: You have only applied the car clearance idea on your system up to the present time to the extent that

1166 all equipment that belongs to any of the independent roads that have been consolidated, is treated as if it belonged to any one?

Mr. CALVIN: Yes sir.
Mr. SEVERANCE: That is all.
Mr. LOVETT: That is all.

ROBERT A. GRAHAM, having been duly sworn, testified as follows:

Mr. SEVERANCE: What is your first name?
Mr. GRAHAM: Robert A.
Mr. SEVERANCE: Where do you live?
Mr. GRAHAM: I live in New York at the present time.
Mr. SEVERANCE: How long have you lived in New York?
Mr. GRAHAM: About four years.
Mr. SEVERANCE: Prior to that time, where did you live?
Mr. GRAHAM: Coos Bay, Oregon.
Mr. SEVERANCE: What was your business at Coos Bay, Oregon?
Mr. GRAHAM: I was manager of the Beaver Hill Coal Company, and of the Coos Bay Railroad, which I built.
Mr. SEVERANCE: Were you ever in any other business in Oregon than that?
Mr. GRAHAM: In 1899 I went into the Oriental Steamship business.
Mr. SEVERANCE: How long were you in that business?
Mr. GRAHAM: From 1899—from October, 1899 to the spring of 1900—no, 1900 to 1901?
Mr. SEVERANCE: That is, from the fall of 1900?
Mr. GRAHAM: Until the spring of 1901, yes sir.
Mr. SEVERANCE: What ships did you have in the Oriental business?
Mr. GRAHAM: I had the steamer "Universe," the steamer "Adata," the steamer "Eva," the steamer "Monmouthshire," and the
1167 steamer "Carmarthanshire."
Mr. SEVERANCE: Speak louder so that we can hear you, Mr. Graham. What was the tonnage of these ships?
Mr. GRAHAM: The "Universe" was 4,000 tons. The "Adata" and "Eva" were 5,200 tons each, and the other two were 4,500 tons each.
Mr. SEVERANCE: Did you own these ships?
Mr. GRAHAM: No sir.
Mr. SEVERANCE: Or have them under charter?
Mr. GRAHAM: I had them under charter.
Mr. SEVERANCE: From whom were they chartered?
Mr. GRAHAM: From the owners, who lived in Europe. There were some of them in Glasgow, and some in London, and one in Hamburg.
Mr. SEVERANCE: How long had you had those ships under charter?
Mr. GRAHAM: Prior to going into this business.
Mr. SEVERANCE: Yes, prior to going into the Oriental business from Portland.
Mr. GRAHAM: I had the steamer "Universe" almost a year, and steamer "Eva" only a month or so, and the other three I got for this Oriental business.

Mr. SEVERANCE: In connection with what corporation were you operating those Oriental boats?

Mr. GRAHAM: The corporation was the Oregon & Oriental Steamship Company.

Mr. SEVERANCE: I say, in connection with what company were you operating them?

Mr. GRAHAM: With the Oregon Railway & Navigation Company.

Mr. SEVERANCE: With whom did you make your arrangements?

Mr. GRAHAM: With Ben Campbell.

Mr. SEVERANCE: What was his position?

Mr. GRAHAM: Traffic manager.

Mr. SEVERANCE: Prior to the time that you went into that business had other ships been operated in connection with the O. R. & N.?

1168 Mr. GRAHAM: Yes sir. I succeeded to the Dodwell Company.

Mr. SEVERANCE: Were you operating under a written contract, or was the contract not signed?

Mr. GRAHAM: The contract was never signed.

Mr. SEVERANCE: Was it prepared?

Mr. GRAHAM: It was prepared and reduced to writing, but it was not signed.

Mr. SEVERANCE: How many trips did those boats make?

Mr. GRAHAM: We had a sailing—the "Universe" sailed in September, 1900—no, The "Eva" sailed in September, the end of September or beginning of October, 1900, which was the first shipment, the first boat out; the "Universe" sailed in November and the "Adata" sailed in December, the "Eva" sailed again about the end of January, and the "Adata" sailed in—I don't remember; I think it was in the next month.

Mr. SEVERANCE: That is you mean sailed from Portland to the Orient?

Mr. GRAHAM: Yes sir, and return.

Mr. SEVERANCE: Did those ships bring back cargoes from the Orient?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: What arrangement did you have for soliciting freight in the Orient?

Mr. GRAHAM: We had one general agent in the Orient whom we sent out there, and we had local agents in each community—commercial houses out there.

Mr. SEVERANCE: Who was the agent, the general agent?

Mr. GRAHAM: Mr. J. V. Creighton.

Mr. SEVERANCE: Prior to his going into your employ, what was his business?

Mr. GRAHAM: He came from the Northern Pacific to me; he was assistant to the traffic manager.

Mr. SEVERANCE: At Tacoma?

Mr. GRAHAM: No sir, he was located at Spokane.

Mr. SEVERANCE: At Spokane?

1169 Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: He went out to the Orient as your representative?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: Under your arrangement with the O. R. & N. whose business was it to solicit business in the Orient?

Mr. GRAHAM: Our business.

Mr. SEVERANCE: What success did you have in procuring cargoes for your steamers in the Orient?

Mr. GRAHAM: We had good success.

Mr. SEVERANCE: Were you operating that in harmony or in competition with the Pacific Mail and the other San Francisco lines?

Mr. GRAHAM: We were in competition with every transpacific line along the coast.

Mr. SEVERANCE: What was the arrangement between the Oregon Railroad & Navigation Company and yourself with reference to the routing of the traffic to the east, that is, to the east in the United States, that you might bring over from the Orient?

Mr. GRAHAM: We routed it on through bills of lading. The bill of lading required us to route it from China, say, through via the Oregon Railway & Navigation Company.

Mr. SEVERANCE: And what connection east of that?

Mr. GRAHAM: Their connections.

Mr. SEVERANCE: And their connections?

Mr. GRAHAM: Their connections.

Mr. SEVERANCE: That was exclusive, was it?

Mr. GRAHAM: That was exclusive; we could not do anything different under our contract.

Mr. SEVERANCE: What arrangement did you have in relation to soliciting traffic in the United States to be shipped to the Orient?

Mr. GRAHAM: The Oregon Railway & Navigation Company undertook to solicit traffic for us with all the machinery that it had, and the agents at its disposal, and we were excluded from having an agency in the United States except in New York, where we
1170 might have one if we wanted it, or we could have one in Victoria, British Columbia. I think those were the only two places where we were permitted to solicit ourselves on this side. Other than that they were to solicit for us.

Mr. SEVERANCE: What lines of boats, if any, were going out of Portland that succeeded your boats?

Mr. GRAHAM: The Portland & Asiatic Steamship Company.

Mr. SEVERANCE: How did you happen to quit that business?

Mr. GRAHAM: They notified me—the Oregon Railway & Navigation Company wrote me a letter and notified me to quit—after the 10th of April they refused to give me any further traffic, or extend to me the use of their docks or wharves, and if I brought any further traffic to Portland, I should be charged the full local rate for it, to its destination.

Mr. SEVERANCE: That was because they had organized their own company?

Mr. GRAHAM: Yes sir.

Commissioner LANE: What date was that?

Mr. GRAHAM: They wrote me a letter on the 10th of March.

Commissioner LANE: On the 10th of March of what year?

Mr. GRAHAM: 1901: It was to take effect in 30 days.

Commissioner LANE: Have you a copy of that letter?

Mr. GRAHAM: I haven't it here, but I can furnish it at New York. It is there with our other papers in connection with the litigation under that contract.

Commissioner LANE: Please state the purport of that letter, what it contains?

Mr. GRAHAM: I may say in connection with that that they found as an excuse, they gave as an excuse for cancelling that contract, that I had got local rates to the coast here, which I did, from
1171 China, and they said in view of the fact that I had got those rates to the coast, that they would withdraw from me any further privileges of their wharves and terminals at Portland, Oregon, and that they would refuse to deliver me any more freight from transcontinental points to our steamers, and if I brought any further freight to Portland, I should have to pay wharfage and the local charges there, and pay through the full local rates to the destination of the freight, to whatever point the freight was destined.

Mr. SEVERANCE: While you were engaged in that business——

Commissioner LANE (int'g): Who signed that letter?

Mr. GRAHAM: Benjamin Campbell, as Traffic Manager of the Oregon Railway & Navigation Company.

Mr. SEVERANCE: Will you undertake to furnish that letter to the Commissioner.

Mr. GRAHAM: Yes, sir.

Mr. SEVERANCE: All right. We will be glad to have you do it. During the time that you were engaged in this business in connection with the O. R. & N., did you take in the Orient any freight for San Francisco?

Mr. GRAHAM: Yes sir, and Los Angeles.

Mr. SEVERANCE: How is that?

Mr. GRAHAM: And Los Angeles.

Mr. SEVERANCE: And Los Angeles. What arrangement did you have with the O. R. & N. or any one else, for the delivery of this freight after it reached Portland?

Mr. GRAHAM: The Oregon Railway & Navigation Company undertook to deliver it by their steamers to San Francisco for a dollar a ton, and to Los Angeles by their steamers and by the Pacific Coast Steamship Company's Steamers for one dollar and a half a ton.

Mr. SEVERANCE: That is, trans-shipped at San Francisco?

Mr. GRAHAM: Trans-shipped, yes sir. We absorbed the rate of $1 a ton to San Francisco, and $1.50 a ton to Los Angeles, the
1172 same thing which would apply to any freight that originated in San Francisco that would offer to go to the Orient by way of our steamers.

Mr. SEVERANCE: That is, you would transport it from Los Angeles to Portland, that is, the O. R. & N. would transport it from Los Angeles to Portland by the steamers of the Pacific Coast Steamship

Company and their own steamers for $1.50 a ton, and they would transport freight from San Francisco by their own steamers for you for $1 a ton?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: And you had to absorb that charge of $1.50 in one case, and $1, in the other?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: That was done in competition with these boats leaving from San Francisco?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: Now, Mr. Graham——

Mr. GRAHAM (int'g): Well, there was a—it was understood, though it was not a written contract, that where any considerable portion of freight involving a good many hundred tons were offered us in San Francisco for the Orient, that we would send one of our steamers here for it. The O. R. & N. did not undertake to carry cargo up there for us in big quantities; thousands of tons, for example, and in one instance, where we were offered here about 1,500 or 1,600 tons of cargo, principally salt meat and salt, and bicycles in cases, as I remember it, and some canned goods, amounting to some 1,500 tons, we brought the steamer "Universe" in here and loaded at this port, and then sent her to Portland, Oregon, and finished the cargo in the Columbia River.

Mr. SEVERANCE: What was the nature of the commodities that you transported from this county to the Orient?

Mr. GRAHAM: From this country to the Orient?

Mr. SEVERANCE: Yes.

Mr. GRAHAM: Flour, canned goods, packing house products.

1173 Mr. SEVERANCE: From where?

Mr. GRAHAM: From Chicago.

Mr. SEVERANCE: From Chicago? What else?

Mr. GRAHAM: We get this cargo, as I explained to you, from San Francisco of salt beef and salt, and merchandise such as bicycles in cases, and stuff of that kind. Then from Portland we got considerable quantities of hardware and some structural steel.

Mr. SEVERANCE: Did that come from the east?

Mr. GRAHAM: That came from the east on cars.

Mr. SEVERANCE: Over the O. R. & N.?

Mr. GRAHAM: Yes, sir, and was delivered to us at Portland.

Mr. SEVERANCE: And from the Orient to this country, what classes of commodities did you bring in?

Mr. GRAHAM: Jute and mats. The jute came from the East Indies sections, and the mats we got at Yokahama and Hongkong; and we brought tea and curios, and Chinese provisions, largely, too.

Mr. SEVERANCE: What was the point of destination of that stuff?

Mr. GRAHAM: It was all over the United States and Canada, mostly east of Chicago.

Mr. SEVERANCE: How is that?

Mr. GRAHAM: Mostly east of Chicago. Some of it went to Toronto and Montreal, and some went to New York and New Orleans and Baltimore and to Boston and Philadelphia.

Mr. SEVERANCE: Do you know Mr. Stubbs?

Mr. GRAHAM: Yes, sir.

Mr. SEVERANCE: How long have you known Mr. Stubbs?

Mr. GRAHAM: I think I have known him since about 1890 or 1891.

Mr. SEVERANCE: Did you ever have any conversation with Mr. Stubbs concerning this boat line to Portland?

Mr. GRAHAM: Yes, sir.

Mr. SEVERANCE: When was it?

Mr. GRAHAM: About—it was in the fall of 1900.

1174 Mr. SEVERANCE: Where was that conversation?

Mr. GRAHAM: In Mr. Stubbs' office in New York.

Mr. SEVERANCE: In New York?

Mr. GRAHAM: Yes, sir—in San Francisco, I mean.

Mr. SEVERANCE: What was the conversation?

Mr. GRAHAM: I have forgotten just how it started, but the gist of it was that if we were going to be in the Oriental business, and going to have steamers here, plying between this coast and the Orient, he would like me to come to San Francisco with them, to bring the traffic to the Southern Pacific, and he offered me an arrangement whereby we could get the cargo and the boat together at the Long Wharf in Oakland; it could not be brought together at this side, it was considered; we had some considerable discussion on that subject, but it didn't end in anything definite.

Mr. SEVERANCE: Had you at that time started in at Portland?

Mr. GRAHAM: I had started in at Portland, yes sir, but the Portland people were delaying about signing the contract, and, as I remember it, it was just at a time when they had filed Articles of Incorporation in Oregon for their Portland & Asiatic Steamship Company, and they tried to persuade me that the object of the Articles of Incorporation of the Portland & Asiatic Steamship Company was not to run me off the line or to put me out of business, but to have a fortnightly sailing out of Portland and the Columbia River instead of one every month, as I was giving them—my contract required me to have 5 steamers of 4,000 tons capacity at least, and to give them a monthly service.

Mr. SEVERANCE: By the way, it appears by the testimony of Mr. Schwerin, and also by the testimony of Mr. Fred Campbell, that these ships going out of Portland have been operated at a loss. How did you come out with your boats?

Mr. GRAHAM: Ours were not operated at a loss—we had a profit on every steamer that we sent and brought back.

1175 Mr. SEVERANCE: Now, at the time that Mr. Stubbs had this talk with you, and wanted you to run in connection with the Southern Pacific, the Southern Pacific was a competing line with these other competing lines with which you were affiliated later?

Mr. GRAHAM: Yes, sir, that was not later than the end of December, 1900.

Mr. SEVERANCE: What did you do with the ships after they notified you you had to quit?

Mr. GRAHAM: We worked some of them for a while out of New York, and others of them were worked by the owners until the charters expired, and the difference was charged to me, the loss in the charter, and they finally expired, and I got rid of them that way; some of them I got rid of right away. Those ships were chartered—this contract was supposed to run for three years. The first steamer, The "Universe," that I chartered, was not chartered with this contract in view. Neither was the "Eva." The "Universe" was chartered for two years, and the "Eva" for one year, which was easy to get rid of. But the "Adata" was chartered specially to carry out the contract with the Oregon Railway & Navigation Company, and so were the "Monmouthshire" and the "Carmarthenshire." The "Adata's" charter was for 18 months with the privilege of 18 more, and so were the other two in the same way—to run three years.

Mr. SEVERANCE: This freight that you took to the Orient like packing house products from Chicago, and other freight of that character, was solicited to you by whom?

Mr. CALVIN: By the Oregon Railway & Navigation Company, as far as I know, for the Union Pacific System, as it was put up to me. We had our correspondence in a measure with Munroe, of Chicago, and the Omaha agent of the Union Pacific was a pretty rustler. But a lot of business was given to us out of that territory by the Chicago, Milwaukee and St. Paul road, in connection with the Union Pacific at Omaha.

Commissioner LANE: You will not conclude with this witness within a very few minutes, will you?

1176 Mr. SEVERANCE: I have already finished this branch of the subject, but I cannot finish with him to-night. I want to ask him about the construction of that Coon Bay road; he built that. He is the man that had that peculiar loud noise, or something that Mr. Spreckels spoke about yesterday.

Commissioner LANE: I think we had probably better adjourn and go on tomorrow morning, Mr. Dunne, your toll case comes up to-morrow morning. Do you know how long that will take?

Mr. DUNNE: I don't think it will take a great while.

Commissioner LANE: We might put it over until afternoon.

Mr. SEVERANCE: Could I be permitted to finish our case in the morning?

Mr. LOVETT: We would like very much to go on with this to-morrow. I understand that both Mr. Severance and myself want to get away to-morrow evening.

Commissioner LANE: Very well. Then the present inquiry will go over until 10 o'clock, to be resumed at that time.

Mr. DUNNE: And the toll case will go over until 2 o'clock?

Commissioner LANE: The toll case will go over until 2 o'clock, yes.

SAN FRANCISCO, CALIFORNIA,
THURSDAY, *January* 31, 1907—10 a. m.

Present: Commissioner Franklin K. Lane.

Appearances.

C. A. Severance, Esq., for the Interstate Commerce Commission.
Peter F. Dunne, Esq., and R. S. Lovett, Esq., for the Railroad Companies.

Commissioner LANE: The state toll case will not be taken up this afternoon, gentlemen, but will be taken up tomorrow morning at 10 o'clock.

1177 Mr. DUNNE: If your Honor please, I have an engagement for tomorrow morning at 10 o'clock.

Commissioner LANE: Will 11 o'clock suit you, Mr. Dunne?

Mr. DUNNE: 2 o'clock would suit me better. Tomorrow is our Law and Motion Day. You do not expect to occupy much time, do you, Mr. Mann?

Mr. MANN: Not very much. I think not over an hour. Not very much time, no.

Commissioner LANE: Very well. Then we will take it up at 2 o'clock tomorrow afternoon.

Mr. MANN: It may be after a consultation here, I may ask during the morning session to make some motion with respect to the toll case, and I suppose counsel will be here during the forenoon. Will your Honor instruct all witnesses under subpœna to be present here tomorrow afternoon at 2 o'clock?

Commissioner LANE: The witnesses that are subpœnaed in the state toll case, the jobbers' and manufacturers' case, will be here tomorrow afternoon at 2 o'clock. Proceed with the inquiry, gentlemen.

R. A. GRAHAM, examination resumed.

Mr. SEVERANCE: Mr. Graham, can you give the names of the agents of your line of boats in the Orient?

Mr. GRAHAM: Yes sir. The commercial house of Arnold-Kerberg were the agents in China and on the coast, and the house of Strong & Company were the agents in Japan.

Mr. SEVERANCE: You have a general agent there, Mr. Creighton?

Mr. GRAHAM: Mr. Creighton was the general agent, yes sir.

Mr. SEVERANCE: Were your agents any of them at the same time the agents of the Pacific Mail and allied lines?

Mr. GRAHAM: No sir, not that I ever knew of.

1178 Mr. SEVERANCE: How many trips did these various ships of yours make, Mr. Graham?

Mr. GRAHAM: Outward?

Mr. SEVERANCE: Well, outward or inward, either one. Just name them separately. Take the "Universe."

Mr. GRAHAM: The "Universe" made two outward trips. The "Eva" made two outward trips. The "Adata" made one outward trip. That was all.

Mr. SEVERANCE: And the "Monmouthshire"?

Mr. GRAHAM: The "Monmouthshire" came on at the other side, and she never made an outward trip. She made one inward trip.

Mr. SEVERANCE: When goods were brought from the Orient to go east from Portland, who routed the goods?

Mr. GRAHAM: Sir.

Mr. SEVERANCE: When goods were brought over to Portland by your steamers from the Orient and were then transported to eastern points in the United States, who routed the goods?

Mr. GRAHAM: The Oregon Railway & Navigation Company.

Mr. SEVERANCE: You had nothing to do with that?

Mr. GRAHAM: No sir.

Mr. SEVERANCE: They had the exclusive right to route the goods?

Mr. GRAHAM: Yes sir.

Commissioner LANE: Was that a matter of agreement, or was that simply that the goods originated on their lines?

Mr. SEVERANCE: I am speaking of the goods coming from the Orient to this country, your Honor.

Commissioner LANE: The O. R. & N. on the other side routed the goods?

Mr. GRAHAM: No sir. We were required under our contract to give through bills of lading via the Oregon Railway & Navigation Company lines; they were specified in the through bills of lading, and when they came to Portland, the Oregon Railway & Navigation Company insisted upon specifying and sending them over
1179 the lines that they connected with after they went east upon their line.

Commissioner LANE: So really you routed the goods, but under an agreement with the O. R. & N. that they should go over that line?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: Let us see if I understand this.

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: Did you fix the routing after they left the rails of the O. R. & N.?

Mr. GRAHAM: No sir. The only routing we fixed was before they left their point of origin in China or Japan.

Mr. SEVERANCE: And that routing was by your ships, thence by the O. R. & N.?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: And the subsequent connections to the east were fixed by the O. R. & N.?

Mr. GRAHAM: Yes, sir. The through bills of lading did not specify what the connections would be, but the O. R. & N. regulated that themselves.

Mr. SEVERANCE: In carrying out that arrangement, did you have any differences with the O. R. & N. as to connections east of Omaha?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: What were they?

Mr. GRAHAM: We wanted to give some of the business for distribution in the east to the Chicago, Milwaukee & St. Paul Railroad, be-

cause the Chicago, Milwaukee & St. Paul was very industrious with their agents in giving us traffic in their territory, and we wanted to reciprocate and encourage them. But Campbell, in an interview I had with him, told me that he would not permit that; that he had nothing to do with the routing of the goods, and he would not let them go over the Chicago, Milwaukee & St. Paul.

Mr. SEVERANCE: What road did he send them over?

Mr. GRAHAM: The Northwestern and Illinois Central.

Mr. SEVERANCE: From Omaha?

1180 Mr. GRAHAM: From Omaha.

Mr. SEVERANCE: You stated yesterday that your contract with the O. R. & N. was reduced to writing, but was never signed?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: I show you a printed copy of the paper marked "Appendix A", commencing on page 14 and running down to page 22 of the Amended Libel and Interrogatories in the case of Robert A. Graham against the Oregon Railroad & Navigation Company, pending in the United States District Court for the Southern District of New York, and I will ask you whether that is a copy of this contract which you say was agreed to but never signed?

Mr. GRAHAM: It is, yes sir.

Mr. SEVERANCE: I will offer this in evidence. Judge Lovett consents that I may use this copy instead of the original?

Mr LOVETT: Subject to any corrections, if there should be any.

Mr. SEVERANCE: Subject to any corrections, certainly.

Commissioner LANE: Will you introduce it and mark it as an exhibit, or will you just read it into the record?

Mr. SEVERANCE: It is too long to read, in my state of voice I think it had better be simply copied into the record. I will hand it to the stenographer when I get through with it and he can copy it into the record at this point.

The matter offered is as follows:

"APPENDIX A.

"Memorandum of agreement made and entered into at Portland, Oregon, United States of America, this 1st day of October, 1909, between the Oregon Railroad and Navigation Company, first party, and R. A. Graham, second party.

1181 "That whereas the second party desires to establish a line of steamships between Hong Kong and the ports of China and Japan, and the city of Portland, Oregon, United States of America, said steamships to be suitable for the intended trade between the ports of China and Japan and other Asiatic ports, and Points in the United States of America and Canada and Europe; and

"Whereas, the first party is engaged in operating a railroad in the northern portion of the United States of America, and is desirous of forming an alliance for the purpose of controlling passenger and freight traffic and other business between the above mentioned points.

"Now, therefore, it is hereby mutually covenanted and agreed between the parties hereto as folows:

"1. *Establishment of steamship line.*

"(A) The second party shall procure, establish and commence to run a monthly line of steamships between Hong Kong and the ports of China and Japan, and the port of Portland, Oregon, within one month from the date hereof. Said steamships shall be capable of carrying four thousand (4000) tons of measurement cargo.

"(B) The second party shall have the right, should there be insufficient traffic offering during the slack season (January to April inclusive) to run one steamship every two months in place of monthly.

"(C) If the traffic offered shall increase so that it is practicable to run more steamers than provided for by this agreement, either by shortening schedule time or running extra steamers, the second party shall supply them.

"(D) The second party shall have the right, should it be deemed advisable or become expedient, in order to meet competition, to call at Honolulu, and at Victoria, B. C., on the voyage to and from Portland, Oregon, and also to send its steamships on to San Francisco after leaving Portland on the inward voyage, returning to Portland before leaving on the outward trip.

"2. *Divisions of through rates on overland cargo.*

1182 "(a) The through rate by steamship and rail shall be divided equally between the parties hereto, provided that:

"(B) The first party shall receive a minimum of seventy-five (75) cents per hundred (100) pounds to and from points east of Chicago, which are ordinarily termed "Eastern Common points and which include in the main: New York, Troy, Albany, Schenectady, Buffalo (N. Y.), Boston, Fitchburg, Gloucester, Lawrence, Salem, Springfield, Worcester (Mass.), Hartford, New Haven (Conn.), Baltimore (Md.), Philadelphia, Harrisburg, Pittsburg (Penn.), Cleveland, Cincinnati, Toledo (Ohio), Indianapolis (Ind.), Detroit, Port Huron (Mich.), Paterson (N. J.), Concord, Manchester, Nashua (N. H.), Providence (R. I.), New Orleans (La.), Memphis (Tenn.), Toronto, Brockville, Kingston, Ottawa, Cornwall, Hamilton, London, Prescott (Ontario), Montreal, Quebec (Que.).

"(C) The first party shall receive a minimum of fifty (50) cents per hundred (100) pounds to and from points ordinarily termed Western Common points, and which include in the main: Chicago, (Ill.), Minneapolis, St. Paul, Duluth (Minn.), Omaha (Neb.); Council Bluffs, Sioux City, Dubuque, Keokuk (Iowa), Leavenworth, Atchison (Kansas), Kansas City, St. Joseph, St. Louis (Mo.), Milwaukee (Wis.), Winnipeg (Man.):

"(D) Any reduction in the through rate from the above basis shall be borne by the second party until the minimum accruing to the steamships shall be thirty-five (35) cents per hundred (100) pounds. Should it become necessary or advisable to accept through rates lower than upon above basis such lower rates shall first be agreed upon between the two parties hereto, and after deducting from the agreed through rate such arbitraries as are demanded by the connections of the first party, the balance of the through rate shall be

pro rated in the proportion of: To the first party fifty (50) cents, and to the second party, thirty-five (35) cents.

"(E) Should it become necessary, in order to meet the
1183 competition of the Canadian Pacific Railway and Steamship Line, or other competing lines, in the transportation of raw cotton or cotton piece goods (Domestics), destined to Asiatic ports, the first party is hereby authorized to reduce the minimum accruing to the second party to a basis of twenty-five (25) cents per hundred pounds to meet such competition.

"(F) On raw silk and silk piece goods and other valuable cargo, requiring equal to passenger train service, there shall first be deducted from the through rate one dollar ($1.00) per hundred pounds, to be allowed the first party for such expedited service, and the remainder of the through rate to be divided as provided in Article Second and paragraphs A. and B.

"4. *Traffic (cargo and passenger) between Asiatic and Pacific coast ports.*

"(A) All traffic between the Pacific Coast and Asiatic ports shall be for the sole benefit of the second party.

"(B) The second party, wherever possible, shall forward such cargo by the railroad of the first party, or by the railroad or steamship lines controlled by the first party, at a rate to be agreed on, which shall not exceed twenty-five (25) per cent. of the through rate per steamship freight list, and with a minimum to the first party or its connections of one dollar ($1.00) gold per ton per steamship freight list.

"(C) The first party shall assist the second party in obtaining low rates between Portland and other Pacific Coast points on cargo handled at Portland to or from connecting lines.

"(D) On cargo from which the first party receives no benefit, the second party will pay to the first party the actual cost of labor service at Portland, which shall not exceed twenty-five (25) cents per ton.

"5. *Asiatic Cargo to Western Local Points.*

"(A) For cargo in not less than carload lots of 24,000 lbs., gross weight or tons measurement (25) of forty (40) cubic feet, from Asiatic ports to points on the line of the first party between Portland and Omaha, the second party may issue through bills of
1184 lading at the current rate of freight on similar goods to parallel points on competing lines.

"(B) For cargo in less than carload lots to the local points above mentioned, the second party shall, not issue bills of lading beyond Portland, and the first party shall have the right to charge thereon its local rate from Portland to destination.

"6. *Agencies.*

"(A) The second party shall have the exclusive right to appoint agents in Asiatic ports, who shall be duly authorized to act as agents for both parties hereto, and who shall have power to issue bills of lading and passenger tickets and to make and name rates on all traffic to points in the United States, Canada and Europe, subject to clauses two and five (2) and (5).

"(B) The second party shall have the right, should it be deemed

advisable or necessary, to appoint, at its own expense, agents in Portland, Oregon, or Victoria, B. C., for the management of the steamships at the port of call, and to procure traffic from the Pacific coast, and for the purpose of assisting and advising the first party in all matters pertaining to the steamship service.

"(C) The second party shall have the right, should it be deemed advisable or necessary, to appoint an agent at its own expense, in New York, United States of America, whose duties shall be to assist in procuring traffic for the steamship of the second party, and who shall be under the control of the first party, as regards rates.

"(D) The first shall have the exclusive right, with the exception above (Paragraphs "B" and "C") to appoint agents in all points in the United States, Canada and Europe, and the second party hereby authorizes the first party and its appointed agents to act as agents for the second party and to issue bills of lading and passenger tickets, and to make and name rates on all traffic for the Asiatic points served by the steamships of the second party, subject to clause two (2).

1185 "7. *Commission to agents as remuneration for procuring traffic.*

"The first party shall pay the agents of the second party a commission of five (5) per cent. on its earnings on all Asiatic traffic procured by them, and the second party shall pay the first party for its agents a consideration of five (5) per cent. on its earnings on all traffic for Asiatic ports obtained by the agents of the first party.

"8. *Tallying of cargo.*

"(A) on arrival of the steamships at Portland, the cargo shall be carefully tallied out by the officers of the steamships in conjunction with the officials of the first party—all damaged packages shall be set aside and a full and correct list thereof made, and for claims on such damaged packages the second party shall and hereby agrees to be responsible. The first party shall give to the steamship a receipt for all cargo received at Portland and as regards cargo to be carried over the lines of the first party, the responsibility of the second party shall cease, on correct delivery at Portland.

"(B) On cargo destined for Asiatic ports and delivered to the steamships at Portland, a careful tally shall be kept by the officers of the steamship in conjunction with the officials of the first party. All damaged packages shall be set aside and a full and correct list thereof made—and for claims on such damaged packages the first party shall and hereby agrees to be responsible. The steamship officers shall give a receipt for all cargo taken on board at Portland which shall absolve the first party from all further responsibility.

"9. *Quick dispatch of vessels—coals, etc.,—return cargoes.*

"The first party agrees to do all it can to assist the second party in obtaining quick dispatch in discharging and loading its steamships at Portland, to assist in making contracts for coal provisions and labor required by its vessels; and authorize and permit

1186 its agents everywhere (saving as specified in clause 6, paragraph "B" and "C") to actively solicit all and any traffic

that may be required for the return voyages of the steamships to Japan and China.

"10. *Wharfage.*

"(A) First party agrees to provide wharfage at Portland free of expense to the second party on all traffic passing over the railroads of the first party.

"(B) On the cargo to or from Portland locally and Asiatic points the first party may make a charge to the shippers or consignees of twenty-five cents per ton per steamship's freight list.

"11. *Cost of Advertising, Telegraphing, Stationery.*

"The cost of stationery (printing forms, etc.) and of advertising and telegraphing in and from China and Japan shall be the expense of the second party, and the cost for like services in and from the United States shall be borne by the first party, provided such advertising and telegraphing is done with its consent.

"12. *Accounts.*

"(A) The first party shall render to the agent of the second party at Portland within two weeks after the departure of the steamship from Portland, or sooner, if possible, an account showing the earnings of the steamship inwards and outwards on that voyage and the balance shall be paid at once by the party owing each round trip (inwards & outwards) shall be kept separate: accounts for passengers traffic shall be settled through the general office at Portland as promptly as possible.

"(B) An account for commissions due to the agents of the parties hereto under clause 7, shall be made by the first party as promptly as practically after the steamers' departure from Portland, and the same shall be paid at once by the party owing.

"(C) All accounts shall be rendered in triplicate.

"14. *Alliance with Other Lines.*

"During the period of this agreement, the second party shall not enter into alliance with — other transcontinental railway
1187 company, and the first party shall not form an alliance with any other Asiatic Steamship line to or from Portland.

"15. *Detention of Steamers.*

"Unavoidable delay arising from breakdown or loss of the steamships, or from excessive bad weather, shall not be deemed a breach of this contract.

"16. *Transfer of Contract.*

"Either party shall have authority to transfer this contract to another responsible firm or company, with the consent of the other party.

"17. *Duration of Agreement.*

"(A) This agreement shall be binding on both parties for the term of three (3) years from the date hereof; but the second party shall have the option of withdrawing its steamships and of terminating this agreement at the end of the second year, or at the end of each succeeding second year of the above period, provided the second party gives to the first party one year's notice in writing of its intention to withdraw its steamships and to terminate this agreement.

"(B) The first party may call for arbitration to determine its

right to cancel contract upon giving one year's notice of its desire to do so, provided that the line is not kept up to the standard that will permit of its being fairly marked in composition with other trans-Pacific lines.

"18. *Interstate Commerce Law.*

"Nothing in this agreement shall be permitted to conflict with the provisions of the Interstate Commerce Act, a law passed by the Government of the United States. It is, therefore, agreed and understood that this agreement shall be at all times subservient to the requirements of that law, and shall be modified arbitrarily to conform with its provisions, should it become necessary to do so.

"19. *Settlement by Arbitration.*

"Any dispute arising out of that term of this agreement shall be settled by arbitration. One arbitrator to be selected by each party and the two so selected to choose a third, the decision
1188 of a majority of the arbitrators to be final and conclusive by the parties hereto.

"In witness thereof, these presents have been executed by the parties hereto."

Mr. SEVERANCE: Under what circumstances was this contract prepared, Mr. Graham?

Mr. GRAHAM: This is a contract—the original of this contract was a contract that Mr. Campbell told me was prepared between the Dodwell Steamship Company and the Northern Pacific Railroad Company, and that as he had the copies of it, our contract would be identically the same as that, except as to where it referred to the Dodwell People, it would refer to us instead. And he furnished me with a copy with the interlineations on the original—handed it to us—handed it to me rather.

Mr. SEVERANCE: I suppose the Oregon Navigation Company was substituted for the Northern Pacific?

Mr. GRAHAM: The Oregon Railway & Navigation Company was substituted for the Northern Pacific, and I was substituted for the Dodwell people.

Mr. SEVERANCE: And the Portland for Tacoma?

Mr. GRAHAM: And Portland for Tacoma, yes.

Mr. SEVERANCE: But so far as the substance of the contract is concerned, it was to follow the Dodwell contract?

Mr. GRAHAM: That was the intention, and that was the way the contract was carried out during the working of the contractor the 6 or 7 months we were operating; we were continually operating under this contract as to the division named in the contract, and the conditions of this contract as to commissions of agents and the division of freights.

Mr. SEVERANCE: Did you during this time in any particular carry on your business in any manner other than as specified in this contract?

Mr. GRAHAM: No sir; except in where it was changed verbally to suit the coming down here to San Francisco by the way
1189 of the Oregon Railway & Navigation Company's steamers. That was not specified in the contract, but it was verbally

agreed that the rates—that they would work this line in our interests down here to connect with us up there, and the rate would be a dollar a ton, which was the case.

Mr. SEVERANCE: And what was the amount you actually paid, Mr. Graham?

Mr. GRAHAM: That was the amount we acutally paid, yes.

Mr. SEVERANCE: I would like to call the attention of the Commissioner to two or three of the provisions of this contract it having been identified. For instance, Subdivision 14 of the contract, under the head of "Alliance with other lines." It reads "during the period of this agreement, the second party" that is Mr. Graham—"Shall not enter into an alliance with any other transcontinental railway, and the first party"—that is the Oregon Railway & Navigation Company—"Shall not form an alliance with any other Asiatic steamship line to or from Portland."

Commissioner LANE: What is the exact date of that?

Mr. SEVERANCE: I beg pardon.

Commissioner LANE: What is the exact date of that contract?

Mr. GRAHAM: October 1st, 1900.

Mr. SEVERANCE: October 1st, 1900, yes.

Mr. LOVETT: What is the date of that document?

Mr. SEVERANCE: What is that?

Mr. LOVETT: What is the date of the contract that he says is the basis of it?

Mr. SEVERANCE: Do you remember the date of the Dodwell form that was used as the basis of this contract?

Mr. GRAHAM: No sir. I think it was about 3 or 4 or 5 years earlier than this.

Mr. LOVETT: I thought the date was given there.

Mr. SEVERANCE: This is the date of this contract, October 1, 1900.

Mr. LOVETT: Oh.

1190 Mr. GRAHAM: The original contract as agreed on between Campbell and me and the Dodwell interests, with reference to the Dodwell lines erased, is on file in the Federal Court in New York.

Mr. SEVERANCE: There is another provision here that I call your Honor's attention to. It is the 4th subdivision, under the head of "Traffic (Cargo and Passenger) between Asiatic and Pacific Coast ports." It reads "A. All traffic between the Pacific Coast and Asiatic ports shall be for the sole benefit of the second party"—that is Mr. Graham. "B. The second party, wherever possible, shall forward such cargo by the railroad of the first party, or by the railroad or steamship lines controlled by the first party, at rates to be agreed on, which shall not exceed 25 per cent. of the through rate per steamship freight list, and with a minimum to the first party of its connections of $1 gold per ton per steamship freight list." That was the minimum as applied to Portland and San Francisco, was it not?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: And in subdivision 6, under the head of "Agen-

cies," there is "The second party shall have the exclusive right"—and that is Mr. Graham. "To appoint agents in Asiatic ports, who shall be duly authorized to act as agents for both parties hereto, and who shall have power to issue bills of lading to points in the United States, Canada and Europe, Subject to clauses two and five." Clause 2, your Honor, provides, certain minimum at different points—a great many different points. And clause 5 provides as follows: "for cargo in not less than carload lots of 94,000 lbs., gross weight or tons measurement of forty cubic feet, from Asiatic ports to points on the line of the first party between Portland and Omaha, the second party may issue through bills of lading at the current rate of freight goods to parallel points on competing lines."

Commissioner LANE: What is that last?"

Mr. SEVERANCE: I think I will permit your Honor to read it, my voice is so very bad to-day.

1191 (Mr. Severance hands the document to Commissioner Lane, and the latter examines the same.)

Mr. SEVERANCE: Subdivision 10 of the contract, under the head of "Wharfage" says, "First party agrees to provide wharfage at Portland free of expense to the second party on all traffic passing over the railroads of the first party." That was the right that you say was withdrawn by Mr. Campbell in this letter, Mr. Graham?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: And subdivision B of the same general subdivision 10, says, "On the cargo to or from Portland locally and Asiatic ports, the first party may make a charge"—that is the Oregon Railway and Navigation Company may "to the shippers or consignees of 25 cents per ton per steamships' freight list." Then there is a provision with reference to the advertising business, and cost of telegraphing and stationery which is subdivision 11, reading "the cost of stationery (printing forms, etc.,) of advertising and telegraphing in and from China and Japan shall be the expense of the second party"—Mr. Graham—"and the cost for like services in and from the United States shall be borne by the first party"—the O. R. & N. "provided such advertising and telegraphing is done with its consent." Then there is a provision which may interest your Honor, subdivision 18, under the head of "Interstate Commerce Law," which reads "Nothing in this agreement shall be permitted to conflict with the provisions of the Interstate Commerce Act, a law passed by the Government of the United States. It is, therefore, agreed and understood that this agreement shall be at all times subservient to the requirements of that law, and shall be modified arbitrarily to conform with its provisions, should it become necessary to do so." Now, Mr. Graham, you have been having some litigation with O. R. & N. resulting out of this matter, have you not?

Mr. GRAHAM: Yes sir. It is pending in New York in the admiralty court.

1192 Mr. SEVERANCE: And it is in that suit that this contract as an exhibit was attached to the Libel?

Mr. GRAHAM: Yes sir. That was with a copy of the papers in the case.

Mr. SEVERANCE: Now, just a few questions about the Coos Bay Railroad. Mr. Spreckels spoke of you as a man who made a noise like an honest man in connection with that road?

Mr. GRAHAM: He never did, though, himself.

Mr. SEVERANCE: Will you state the history of that road, that property up there, and what you had to do with it, as briefly as you can?

Mr. GRAHAM: Yes sir: About 1890, a corporation was formed up there at Coos Bay, consisting of the people of Coos County and Douglas County, to build a railroad from Coos Bay to Roseburg, Oregon. Roseburg is on the Shasta line of the Southern Pacific, about 200 miles south of San Francisco—of Portland, I should say. They organized this Coos Bay, Roseburg & Eastern Railroad and Navigation Company, and looked around for a contractor to build the road, and the contract was offered to me to build it. Their facilities for paying it were a subsidy that they were raising among themselves in Coos County and in Douglas County of about $250,000, and then they proposed to issue bonds, and give the bonds and stock and subsidy to some contractor who would build the road. The proposition was offered to me.

Mr. SEVERANCE: Were you living at Coos Bay then?

Mr. GRAHAM: No sir. I was living at San Diego, building street car lines down there at the time, and building other lines—the Coronado Railroad—I was a railroad contractor, and living at San Diego. I looked into it and I thought I would take the contract. Mr. John D. Spreckels & Brothers Company at that time were very heavily interested in Coronado and San Diego, and I knew them very well. I met J. D. Spreckels down there at Coronado Hotel about that time, and presented this plan to him. He said he thought it looked a good thing, and wanted to know what the conditions were or
1193 what was my proposition. I told him that I would do the work and give him an interest, if he wanted it, in any way he wanted it. He asked what did I want done first. I said "I will go ahead and grade, if you will furnish us with 30 miles of rails, and when the bonds are sold and this subsidy is paid, you will get paid for the rails." He said "All right," and he further suggested, which I knew, which I was trying to get him into suggest as well as I could, that he wanted to take the laboring oar in selling these bonds, which he thought he could do. We hadn't talked more than half an hour about —, when he telegraphed to his house here from the Coronado Hotel to buy 30 miles of rails, and send them out to Coos Bay, which was done. We went on and graded the road in the meantime, the rails arrived here, and there was difficulty about rights of way up there—among other things that these people in that section of the country are to do was to give us a free right of way, and they were unable to provide the right of way without a lot of litigation, and the construction was somewhat delayed, and when the rails arrived here on 4 different vessels from New York, we only needed about 10 miles of them right away quick—that was all the right of way we had and

all the grade we had built. And we took out of this cargo, various cargoes, 10 miles of rails and used them at Coos Bay, the balance Spreckels sold to various people here who wanted them very badly at that time, so that the 10 miles was the original length of rails.

Mr. SEVERANCE: What means of transportation existed then between San Francisco and Coos Bay?

Mr. GRAHAM: There were not anything but steamers—little steamers running up and down. Nick Luning & Company owned a coal mine up there, and they had two or three small steamers, which afterwards were acquired by Goodal, Perkins & Company; and then there was the lumber vessels that were carrying lumber back and forth.

Mr. SEVERANCE: Go ahead.

1194 Mr. GRAHAM: After the 10 miles was laid, we had to take a rest to get the right of way, and the further construction of the road—I think this construction work in the beginning was done in the fall of 1890, and there was not anything else done after the autumn of 1890, when this 10 miles was laid, until about August of 1899, when, after a further conference between Spreckels and me, we decided to go to a point called Myrtle Point, where the road is now. And at that period, they furnished the rails to complete the road to Myrtle Point, and about $90,000 in cash to do the work, and they took as security—they had given us the bonds on 25 miles of road (the distance from Marshfield to Myrtle Point is about 25.7 miles) and they furnished the rails for up there, and took the bonds and a mortgage on a big lot of real estate, and a town site that was at Marshfield, Oregon, on Coos Bay, as further security, and 10,001 shares of stock out of 2,000.

Mr. SEVERANCE: Out of 20,000?

Mr. GRAHAM: Out of 20,000, I mean, yes sir. That finished the road to Myrtle Point about 1893, the autumn of 1893.

Mr. SEVERANCE: How much did that road cost?

Mr. GRAHAM: To Myrtle Point?

Mr. SEVERANCE: The whole road.

Mr. GRAHAM: The main line to Myrtle Point, which is almost 26 miles, cost about $260,000. The spur into Beaver Hill Mine, which is three miles, cost about $50,000. The bunkers at Marshfield for the coal about $25,000 to $30,000.

Mr SEVERANCE: What did you say the main line cost—two hundred and what thousand?

Mr. GRAHAM: About $260,000.

Mr. SEVERANCE: $260,000 and $60,000 more, that would be $320,000. Go ahead.

Mr. GRAHAM: And the machine shops and terminals and rolling stock and equipment cost about $50,000.

Mr. SEVERANCE: That makes $370,000 for the road?

Mr. GRAHAM: Somewhere about that, yes, sir.

1195 Mr. SEVERANCE: When were the boats put on, the Spreckels boats?

Mr. GRAHAM: The Beaver Hill mine was opened in 1894, Spreckels owning a half interest in it, and I owning a half interest

in it, and the capital stock was half a million dollars, and the stock was equally divided. The land for the Beaver Hill Company cost $65,000.

Mr. SEVERANCE: That is the cost of the land without being developed?

Mr. GRAHAM: Without being touched.

Mr. SEVERANCE: What did it cost to develop that?

Mr. GRAHAM: The miners' houses were built, about $70,000 or $80,000, and the machinery, as I remember it, cost about $180,000.

Mr. SEVERANCE: Did that do the development work?

Mr. GRAHAM: No, the development work was very much more—something like $200,000, I think, for development work.

Mr. SEVERANCE: So that the development work and the cost of the property and the building of those houses brought it up to something over $400,000?

Mr. GRAHAM: Yes sir. Now, the steamer "Czarina" was put on the route between here and Coos Bay about the autumn of '96, 1896.

Mr. SEVERANCE: There was two boats. Is that the freighter, or is that the passenger boat?

Mr. GRAHAM: That is the freight boat. The "Breakwater" was put on, I think a couple or three years ago, and I knew nothing about that—I was not interested in the country at that time.

Mr. SEVERANCE: Do you know what the "Czarina" cost?

Mr. GRAHAM: The Spreckels people wanted to sell her to the Beaver Hill Coal Company at the time she came around here, and they told me she cost about $30,000 in the east, and that she had cost $30,000 to refit her here, boilers and all, and I think they wanted to put her into the Beaver Hill Coal Company at $75,000, and I said she was not worth it, and I would not agree to it, and they
1196 said "All right," they would keep her and run her on their own account. So the Beaver Hill Coal Company made a contract with them to pay them $1.75 a ton, I think—$1.75 or $1.80 to carry the coal down here from the Beaver Hill Coal Company, and they kept the steamer on their own account. She never belonged to the Beaver Hill Coal Company.

Mr. SEVERANCE: How long were you connected with the Beaver Hill Coal Company?

Mr. GRAHAM: From the time the Beaver Hill Coal mine was opened in 1894 until December, 1897—or the beginning of 1898.

Mr. SEVERANCE: Mr. Spreckels testified here day before yesterday that that coal mine and the steamship line were both operated without profit or at a loss. How was it during your connection with it? Was it just the same?

Mr. GRAHAM: No sir. The steamship line was a very profitable thing, as I understood at the time. The "Czarina" seemed to be making a good deal of money—they said she was. The Beaver Hill Coal Company never was out of the stage of development, all the time I was connected with it, and never paid.

Mr. SEVERANCE: How recently have you seen that property?

Mr. GRAHAM: Oh, I haven't seen it for five years.

Mr. SEVERANCE: It never paid as long as you were with it?

Mr. GRAHAM: No sir, it never paid—and has never paid since, as I understand it.

Commissioner LANE: I don't exactly understand the purport of this testimony.

Mr. SEVERANCE: I want to prove, as I did by Mr. Spreckels—I want to prove what this property cost, the character of the property, as to whether it is a paying property or not, and whether there is any reason in the character of the property itself why Mr. Harriman should have paid Mr. Spreckels some $300,000 at least, as a bonus, to get rid of those ships and the little railroad up
1197 there, at the time that he was building lines in connection with the Southern Pacific to Coos Bay. That is the purpose of it.

Commissioner LANE: I suppose you can get at that by one or two very direct questions.

Mr. SEVERANCE: Very well, your Honor. That is all upon that. Did you ever have an option from Mr. Spreckels for the whole of that property?

Mr. GRAHAM: Yes, sir.

Mr. SEVERANCE: When?

Mr. GRAHAM: In 1899.

Mr. SEVERANCE: At what figure?

Mr. GRAHAM: $550,000 without the steamers.

Mr. SEVERANCE: Without the steamers, you say, did that include everything, Mr. Graham?

Mr. GRAHAM: Except the steamers.

Mr. SEVERANCE: Everything except the steamers?

Mr. GRAHAM: Yes, sir.

Commissioner LANE: When did you have that option?

Mr. GRAHAM: I think it was dated in June, 1899, and expired in six months—something like that.

Commissioner LANE: What was the time of the sale to Mr. Harriman? Was it last year?

Mr. SEVERANCE: This last summer. And during all this time Mr. Spreckels testified that these properties had been run at a loss.

Commissioner LANE: Did the property increase in value during that time, that interim of 6 years?

Mr. GRAHAM: No sir, it did not.

Commissioner Lane: Was not railroad property more valuable in Oregon than it was in 1900?

Mr. GRAHAM: Oh, I should think it was of very much less value, because there was a great deal of bridges on it, and they are all 7 or 8 years older. The development of the country has not proceeded very fast.

Commissioner LANE: That is not according to the modern theory of capitalization, is it?

Mr. LOVETT: The option, you say, was for $550,000?

Mr. GRAHAM: Yes, sir.

1198 Mr. LOVETT: And did not include the steamers?

Mr. GRAHAM: No, sir.

Mr. LOVETT: Did it include the "Breakwater?"

Mr. GRAHAM: No, sir, not the steamers—neither of the steamers. The "Breakwater" was not on this coast at the time.

Mr. LOVETT: Do you know what the condition of the property is at this time?

Mr. GRAHAM: Not from my own personal knowedge, no.

Mr. LOVETT: When were you on it last?

Mr. GRAHAM: Not for five years.

Mr. LOVETT: You have not seen the property for five years?

Mr. GRAHAM: No, sir.

Mr. LOVETT: You don't know whether it has been improved in that time or not?

Mr. GRAHAM: Only from general discussion from that country, which I hear very often. I know all the people up there, and the directors of the road that live there.

Mr. LOVETT: But you have no personal knowledge of the condition of it during that five years?

Mr. GRAHAM: No, sir. I have kept track of it by inquiry, and by getting reports from up there.

Mr. LOVETT: Mr. Spreckels testified yesterday that the property had cost him considerably in excess of a million dollars. You don't believe that is true, do you?

Mr. GRAHAM: I know that is not correctly true. He figures commissions on every dollar that he furnished up there.

Mr. LOVETT: How do you know he does?

Mr. GRAHAM: Because I know I was charged with the commissions. Every time he rendered a statement, and he furnished $10,000, upon this statement and the one he rendered last month, he charged a certain commission, which was his right under the contract, for the way along.

1199 Mr. LOVETT: Did you have a lawsuit with Spreckels about it?

Mr. GRAHAM: Yes, sir, I did.

Mr. LOVETT: And did you also have a lawsuit with the O. R. & N. Company?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: Have you ever had any important business transaction about which you have not had law suits, Mr. Graham?

Mr. GRAHAM: Yes sir, a good many. But I never ran away from a lawsuit in my life.

Mr. LOVETT: You run into them, do you not, instead of running away from them?

Mr. GRAHAM: I seem to have a faculty of getting in, whenever there is an opportunity.

Mr. LOVETT: Will you please just state what your arrangement or contract with the O. R. & N. Company was?

Mr. GRAHAM: In what respect?

Mr. LOVETT: In all respects?

Mr. GRAHAM: Other than what is there?

Mr. LOVETT: You testified yesterday that the establishment of

this line of steamers was the result of an arrangement or contract which you made with the O. R. & N.?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: Will you please state just what your agreement with the O. R. & N. was?

Mr. GRAHAM: How it led to it—what led up to it?

Mr. LOVETT: No, what the agreement was?

Mr. GRAHAM: The agreement was that I should put on a line of steamers from Portland to the Orient, and get all the traffic we could over there, and they would get all the traffic they could on this side for me to take over there, and we would divide the proceeds as provided in that contract.

Mr. LOVETT: As provided in this contract?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: Was that all of the agreement?

1200 Mr. GRAHAM: That was the gist of it. I don't remember of any thing of any great importance other than that—that I didn't cover I was to run a line of steamers, a monthly service, the steamers to be of the capacity of at least 4,000, not less than 4,000 tons each, and other than that we would have to go through the contract to get at the conditions of it.

Mr. LOVETT: Go through what contract?

Mr. GRAHAM: That one there.

Mr. LOVETT: You mean the document, "Appendix A," attached to your amended bill of Libel in the United States Court in New York?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: Does that express all the agreement between you and the O. R. & N.?

Mr. GRAHAM: Yes sir, I think it does, except that question of coming down the coast here in connection with this little line of steamers from Portland here.

Mr. LOVETT: There is nothing with reference to that in this agreement is there?

Mr. GRAHAM: Only further that it was understood that the rate would be a dollar a ton locally on their steamers.

Mr. LOVETT: Is there anything in this contract about the running of boats to San Francisco?

Mr. GRAHAM: No sir.

Mr. LOVETT: Or about the handling of traffic to San Francisco?

Mr. GRAHAM: No sir.

Mr. LOVETT: You testified yesterday that there was some understanding with reference to that.

Mr. GRAHAM: There was a verbal understanding that where we could get freight in considerable sized quantities, that as long as we did not make San Francisco the last port of call, we could bring our steamers here to Frisco and get this considerable freight, or deliver freight here.

Mr. LOVETT: That was an oral agreement between you?

1201 Mr. GRAHAM: That was an oral agreement between us, yes sir.

Mr. LOVETT: What other oral agreements were there?

Mr. GRAHAM: I don't recall anything specially.

Mr. LOVETT: Did you ever testify before with reference to that contract?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: Where?

Mr. GRAHAM: In New York, a year ago last November.

Mr. LOVETT: About how long?

Mr. GRAHAM: How long what, sir?

Mr. LOVETT: How many days?

Mr. GRAHAM: Testifying?

Mr. LOVETT: Yes sir.

Mr. GRAHAM: As I remember it, about two.

Mr. LOVETT: Did you mention this oral agreement about San Francisco that you have just spoken of?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: You testified to it then as you do now?

Mr. GRAHAM: As I remember it, yes sir.

Mr. LOVETT: What was the result—you testified just now that that suit brought against the O. R. & N. Company was still pending?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: It has been decided, has it not?

Mr. GRAHAM: Yes sir, the trial court decided it, but it has been appealed.

Mr. LOVETT: Decided it against you, didn't they?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: The Court decided you never had any contract with the O. R. & N.

Mr. GRAHAM: No sir; I think not. The court rather took the position that he didn't think it was one of admiralty, and he was not sure of it, and as I understood his decision, he didn't go into any other decision, because he didn't think it was in the admiralty court.

Mr. LOVETT: Will you testify that that is the ground upon which the court based its decision?

Mr. GRAHAM: No sir, I won't, because I haven't read the
1202 decision, I only know what my lawyers told me.

Mr. LOVETT: Haven't you read the opinion?

Mr. GRAHAM: No sir. I have never seen the decision either.

Mr. LOVETT: You have never read the opinion that the court in New York filed in your case?

Mr. GRAHAM: I don't recall of ever reading it, no. I never saw it printed.

Mr. LOVETT: Did you ever see it typewritten?

Mr. GRAHAM: I think I have seen a copy of it, and the lawyers explained it to me, and we discussed it somewhat, but I don't believe I ever read it.

Mr. LOVETT: You draw a substantial distinction between a printed and typewritten opinion, do you?

Mr. GRAHAM: I would not draw any great distinction, no.

Mr. LOVETT: And you testify that you never read that opinion?

Mr. GRAHAM: I don't recall ever having read it. I won't say I didn't read it.

Mr. LOVETT: And your understanding is that the Court did not pass upon the merits of the case at all, but held it was not a case of admiralty jurisdiction?

Mr. GRAHAM: That is my understanding, and that is what Mr. Kerlin our admiralty lawyer, tells me.

Mr. LOVETT: Do you not happen to recall that the defendant raised that question, and that the court decided it against the defendant?

Mr. GRAHAM: How is that.

Mr. LOVETT: I say you do not happen to remember that that question was raised by the defendant, and the court decided it against the defendant?

Mr. GRAHAM: In the demurrers?

Mr. LOVETT: I don't know where or how, but you do not remember whether the court decided that against the railroad company?

Mr. GRAHAM: I remember in the early proceedings of the litigation, that the defendant, the Oregon Railway & Navigation Company did raise the question that the case was not one of admiralty,
1203 and therefore, should not be tried there, but the court held that it was.

Mr. LOVETT: Yes. And heard the testimony?

Mr. GRAHAM: And heard the testimony.

Mr. LOVETT: And decided the case.

Mr. GRAHAM: And decided the case.

Mr. LOVETT: Have you any objection, Mr. Graham, to a printed copy of your record in the appeal of that case being filed as part of their record in this case—in connection with the record in this case?

Mr. GRAHAM: I don't think it is printed. I don't think it is ready yet. But if it is ready, I haven't the slightest objection to its being filed.

Mr. LOVETT: If I can secure a copy of it and file it as part of your testimony you have no objection to its being filed with the Commission?

Mr. GRAHAM: No sir, not at all.

Mr. LOVETT: This what you call the written contract, this "Appendix A" to your amended libel in this suit was never signed was it?

Mr. GRAHAM: No sir.

Mr. LOVETT: Where did the original, from which this copy was taken, come from? Where did you get it?

Mr. GRAHAM: From Ben Campbell.

Mr. LOVETT: You testified just now that the contract between the Northern Pacific and some steamship company was to be made the basis of your contract with the O. B. & N.?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: Was this copied from that?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: By whom?

Mr. GRAHAM: That particular copy there?

Mr. LOVETT: The copy that was used by your lawyer in preparing this?

Mr. GRAHAM: The original as produced by Ben Campbell was gone over by Campbell and myself in Campbell's office, and
1204 them afterwards copied and compared to next say between Campbell, and Creighton (who was going to China and took a copy with him) and me.

Mr. LOVETT: And that is the document from which the copy, "Appendix A" was made?

Mr. GRAHAM: That is the document, the original which Campbell and I went over together is the copy which — was made from.

Mr. LOVETT: The one that was retained by you?

Mr. GRAHAM: No, sir, the one that was handed me by Campbell, and erased and scratched up jointly between Campbell and myself.

Mr. LOVETT: Campbell handed you a contract between the Northern Pacific and some Steamship Company?

Mr. GRAHAM: Yes sir, between the Northern Pacific and the Dodwell Steamship Company.

Mr. LOVETT: And that you took to a stenographer and had adapted to the needs of your own case?

Mr. GRAHAM: After the erasures and changes were made in it by Campbell and myself.

Mr. LOVETT: And this copy attached to that libel was made from that revised draft?

Mr. GRAHAM: From that revised copy.

Mr. LOVETT: And this expresses all of the agreement between you and the O. R. & N except the oral agreement with reference to the steamers to San Francisco?

Mr. GRAHAM: I think so, yes sir.

Mr. LOVETT: When did your first steamer, operated by you under that contract, sail?

Mr. GRAHAM: From Portland?

Mr. LOVETT: When?

Mr. GRAHAM: About the first week in October.

Mr. LOVETT: What year?

Mr. GRAHAM: 1900.

Mr. LOVETT: What was the name of that steamer?

Mr. GRAHAM: The "Eva."

Mr. LOVETT: From what did you charter her?

Mr. GRAHAM: From Jebson, of Hamburg.

Mr. LOVETT: For how long a time?

1205 Mr. GRAHAM: One year.

Mr. LOVETT: From what date?

Mr. GRAHAM: June, 1900, I think.

Mr. LOVETT: To what ports did she go?

Mr. GRAHAM: After leaving Portland?

Mr. LOVETT: Yes sir.

Mr. GRAHAM: Vladivostock, Port Arthur, Shanghai, Hongkong, and Japanese ports.

Mr. LOVETT: When did she return to Portland?

Mr. GRAHAM: In four months—October, November,—sometime early in February—the end of January or the beginning of February.

Mr. LOVETT: And sailed from Portland when again?

Mr. GRAHAM: About a week afterwards.

Mr. LOVETT: That is, sometime in February, 1901?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: And for what ports—the same ports again?

Mr. GRAHAM: No sir; she did not go to Vladivostock. She went direct to Japanese ports and then to Hongkong.

Mr. LOVETT: Did she return to Portland?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: Now, the next steamer in the order of original sailing?

Mr. GRAHAM: The "Universe."

Mr. LOVETT: And when did that ship sail?

Mr. GRAHAM: November.

Mr. LOVETT: 1900?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: From whom did you charter her?

Mr. GRAHAM: Rode & McNair, of Glasgow.

Mr. LOVETT: When?

Mr. GRAHAM: She came to work for me in May, 1900.

Mr. LOVETT: That does not quite answer the question. When did you charter her?

Mr. GRAHAM: I think the charter was dated October, 1899.

Mr. LOVETT: For how long?

1206 Mr. GRAHAM: Two years, with the privilege of one more.

Commissioner LANE: What was the date of that contract?

Mr. GRAHAM: The charter?

Commissioner LANE: This contract here?

Mr. GRAHAM: October 1st, 1900.

Commissioner LANE: You got her a year before that, then?

Mr. GRAHAM: Yes, sir. She was not chartered with this contract in view, and neither was the "Eva."

Mr. LOVETT: She first sailed under this arrangement, from Portland, in November, 1900?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: For what ports—the same as the other?

Mr. GRAHAM: Yes, sir.

Mr. LOVETT: And when did she return to Portland?

Mr. GRAHAM: She returned to Portland in February.

Mr. LOVETT: What time in February?

Mr. GRAHAM: As I remember it, quite early in February.

Mr. LOVETT: Is she a faster ship than the first one?

Mr. GRAHAM: No, sir. She is not as fast as the first one, but she did not go to Hongkong.

Mr. LOVETT: And she got back about the same time?

Mr. GRAHAM: A little bit afterwards—a couple of weeks afterwards. I think the "Eva" got back late in January, and the "Universe," I think, got back about the middle of February.

Mr. LOVETT: When did the "Universe" sail again?

Mr. GRAHAM: Right away—within a week or so.

Mr. LOVETT: And for the same ports?

Mr. GRAHAM: Yes, sir,—she went south to Japan, and to Hongkong.

Mr. LOVETT: When you say a week or so, what do you mean—the end of February?

Mr. GRAHAM: After she came into port. She was in port probably a week in Portland.

Mr. LOVETT: And about the month?

1207 Mr. GRAHAM: February.

Mr. LOVETT: That was about what time? I should like to have you fix the date, as nearly as possible?

Mr. GRAHAM: Oh, I think she sailed about the end of February, but I am not certain as to the date—I could not fix the date definitely.

Mr. LOVETT: Did she ever return to Portland?

Mr. GRAHAM: No sir, not to me.

Mr. LOVETT: Then the next ship was what?

Mr. GRAHAM: The "Adata."

Mr. LOVETT: When did she first sail from Portland?

Mr. GRAHAM: About the middle of December.

Mr. LOVETT: About the middle of December?

Mr. GRAHAM: Yes sir, or about the end of December.

Mr. LOVETT: The middle or end of December, 1900?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: From whom did you charter her?

Mr. GRAHAM: Weir, of Glasgow.

Mr. LOVETT: When?

Mr. GRAHAM: In the month of December, 1900—1899—no, the month of December, 1900.

Mr. LOVETT: After you made this agreement?

Mr. GRAHAM: After I made this agreement. She was the first steamer chartered to carry out this agreement.

Mr. LOVETT: For how long a period did you charter her?

Mr. GRAHAM: 18 months, with the privilege of 18 months more.

Mr. LOVETT: And she sailed from Portland the middle or latter part of December?

Mr. GRAHAM: She commenced to load about the 3rd of December—she came in there, as I remember about the 3rd of December, when she came out on charter party for me first, and she commenced to load immediately, and as soon as she was loaded, she went out.

Mr. LOVETT: And for what ports?

Mr. GRAHAM: Yokohoma, Kobe, Nagasaki, Hongkong — or Shanghai and Hongkong.

Mr. LOVETT: When did she return to port?

1208 Mr. GRAHAM: In March.

Mr. LOVETT: In March; what time in March?

Mr. GRAHAM: About the 12th or 13th or 14th of March, along there—the middle of March.

Mr. LOVETT: And when did she sail?

Mr. GRAHAM: She never sailed again.

Mr. LOVETT: She never sailed again?

Mr. GRAHAM: Not for me.

Mr. LOVETT: What became of the balance of the contract?

Mr. GRAHAM: The owners took her and worked her on account of the charter until the time has expired—until it was up—took what the ship could make to reimburse them, and charged me up with the balance.

Mr. LOVETT: What was the balance? Do you remember?

Mr. GRAHAM: No sir, I don't remember. It was a whole lot of money.

Mr. LOVETT: Did you pay it?

Mr. GRAHAM: No sir. I expect to pay it when I get this money out of Harriman for this contract.

Mr. LOVETT: When you get that?

Mr. GRAHAM: Yes sir, they are in on it.

Mr. LOVETT: Did you charter any other steamers?

Mr. GRAHAM: Yes sir, the "Monmouthshire" and the "Carmarthinshire."

Mr. LOVETT: When did you charter them?

Mr. GRAHAM: I chartered the "Monmouthshire"—no, I chartered the "Carmarthenshire" early in November of 1900.

Mr. LOVETT: From whom?

Mr. GRAHAM: From Jenkins, of London.

Mr. LOVETT: For how long?

Mr. GRAHAM: 18 months, with the privilege of 18 months more.

Mr. LOVETT: Did she ever sail from Portland?

Mr. GRAHAM: No sir. She came here at the same month and at the same time the "Universe" was sailing for Portland, and they were both here at the same time, and there were not cargoes for both of them, sailing so closely, and I agreed with Campbell that
1209 we would send the "Carmarthenshire" away for a little while, and I got a load of lumber for her from Puget Sound to Australia, with the understanding that she would come back into the line in spring and when she discharged her lumber in Australia she loaded coal at Sydney for Manila, to go on the line there. She got to Manila at the time he had—after he had given notice of this contract expiring or to be cancelled, and she never came on to the line.

Mr. LOVETT: And the name of the other ship?

Mr. GRAHAM: The "Monmouthshire."

Mr. LOVETT: When was that chartered? At the same time as the other?

Mr. GRAHAM: She was chartered about the same time, to go on the line in January.

Mr. LOVETT: She never made the trip?

Mr. GRAHAM: She came on at Hongkong and loaded for Portland.

Mr. LOVETT: When?

Mr. GRAHAM: And arrived in Portland about the 10th of March—about the—did I say "Adata" arrived in Portland about the 10th or 11th of March on her return? I think I want to change that,

to make her arrival about the 12th or 13th of April, and the "Monmouthshire" arrived about the same time.

Mr. LOVETT: About the 12th or 13th of April?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: She didn't sail any more under this arrangement?

Mr. GRAHAM: No sir, she didn't sail any more.

Mr. LOVETT: You said you were notified, received a letter from Mr. Campbell of the O. R. & N. terminating that arrangement?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: What was the date of that letter?

Mr. GRAHAM: About the 9th or 10th of March.

Mr. LOVETT: Can't you give it exactly?

Mr. GRAHAM: Sir?

Mr. LOVETT: Can't you give the exact date?

1210 Mr. GRAHAM: Either the 9th or 10th.

Mr. LOVETT: Either the 9th or 10th of March.

Mr. GRAHAM: Yes sir.

Mr. LOVETT: Terminating the arrangement at what time?

Mr. GRAHAM: The 10th of April—in 30 days. I think it specified the 10th of April, and I think it specified 30 days.

Mr. LOVETT: Where is that letter?

Mr. GRAHAM: Part of the records in this case in New York.

Mr. LOVETT: You haven't the letter with you?

Mr. GRAHAM: No sir.

Mr. SEVERANCE: He has agreed to furnish it. He agreed yesterday he would furnish it.

Mr. LOVETT: Will you let me see it?

Mr. SEVERANCE: He was asked yesterday if he would furnish it, and he said he would.

Mr. LOVETT: You were asked yesterday to furnish it?

Mr. GRAHAM: I suppose I can furnish it. If I can't I can furnish a copy of it. I suppose I can get a copy of it. It is a part of the records there in New York, in the case in New York.

Mr. SEVERANCE: You will send us a copy of it?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: Will you consent, Mr. Lovett, that a copy of it may go into this record.

Mr. LOVETT: Yes, if I see it before it goes into the record. What Campbell is that?

Mr. GRAHAM: Benjamin Campbell.

Mr. LOVETT: Connected with the O. R. & N.?

Mr. GRAHAM: Yes sir. He testified that he was 4th Vice President and Traffic Manager of the Great Northern.

Mr. LOVETT: You heard him testify at Seattle?

Mr. GRAHAM: No sir.

Mr. LOVETT: Were you not at Seattle?

Mr. GRAHAM: No sir.

Mr. LOVETT: You were at Portland, were you not, during the hearing there?

1211 Mr. GRAHAM: No sir, I was not at the proceedings. I have been in Portland recently, but I was not there when you were having your proceedings.

Mr. LOVETT: I believe you testified yesterday that the operation of your ships was profitable?

Mr. GRAHAM: They were profitable at the first, until after the Oregon Railway & Navigation Company hired a man at $15,000 a year and sent him to China to represent the Portland & Asiatic Steamship Company, and issued circulars to every agent that the Portland & Asiatic Steamship Company was being organized, and that the Portland & Asiatic were the only people he had authorized to issue through bills of lading, or to use the Oregon Railway & Navigation Company from that time on.

Mr. LOVETT: When was that?

Mr. GRAHAM: These notices were printed and dated in Portland, Oregon, either the end of December, 1900, or the beginning of January, 1901, but not circulated there. They were carried to China by Cameron and circulated in China during the month of February.

Mr. LOVETT: By whom were those circulars signed?

Mr. GRAHAM: They were signed by A. L. Moore and by Benjamin Campbell of the Oregon Railway & Navigation Company.

Mr. LOVETT: And dated in December, 1900?

Mr. GRAHAM: I think it was the end of December, it may have been the 1st of January that it bore date, but it was right within that period.

Mr. LOVETT: But they said nothing to you about it until you got this letter in March following?

Mr. GRAHAM: No sir, they didn't say anything to me about it, but I had got some of the circulars back, and I showed it to them, and at first they then told me that Campbell had exceeded his authority, they didn't mean that at all, and for me to keep on as I was doing. But I only kept on a very short while until they wrote me this letter.

Mr. LOVETT: They were circulating these letters secretly in China and Japan against you?

1212 Mr. GRAHAM: I don't think there was much secret about it. But they didn't notify me they were going to do it. They circulated them very freely there and very openly, and delivered as much other information as they could with the circulars that they were going to be "it" as soon as the "Indrapura" came on, and they advised the merchants to hold their freight until their vessels did come on, not to give it to our line, as we would have no connections after a month or so at Portland. And they also had gone about, the Oregon Railway & Navigation Company, with all the machinery they had at their disposa. d openly canvassed for freight in Portland and Oregon, and induced Wilcox and others to hold their shipments free from me until their ships came on after April.

Mr. LOVETT: And when did they do that?

Mr. GRAHAM: They did that during the month of March and the month of April. So it made it impossible for me to get a cargo back.

Mr. LOVETT: After they had notified you?

Mr. GRAHAM: Yes sir.

Mr. Graham: Did they solicit freight and advise the holding of cargo before they notified you?

Mr. GRAHAM: Not to my knowledge.

Mr. LOVETT: But the time they circulated those letters in the Orient was December in 1900?

Mr. GRAHAM: No sir. These circulars had the appearance of having been printed in Portland, and were dated at Portland in December of 1900, or January, 1901, early in January, because Cameron sailed in January for China, and they said nothing to me about those circulars, and I didn't know anything about those circulars until Cameron had got to China and distributed them, and then the circulars were sent back to me by our agents from China, so that I didn't receive those circulars, I think, until early in March, or the end of February.

Mr. LOVETT: Could you not be positive whether they were dated in December or in January?

1213 Mr. GRAHAM: No sir, I won't be positive whether they were dated the 31st of December, or the first week of January.

Mr. LOVETT: Late in December, or the first of January. If they were dated in January, it was the early part of January?

Mr. GRAHAM: I will furnish you one, or two or three of them, if you would like. We have got lots of them in New York.

Mr. LOVETT: But it was either in December or early in January that they were dated?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: When did Cameron sail?

Mr. GRAHAM: Cameron sailed—the last time I saw Cameron was about Christmas of 1900, and he told me he was going to sail by the Canadian line in the first week of January, and I assumed that he did.

Mr. LOVETT: And took those circulars with him?

Mr. GRAHAM: And took those circulars with him.

Mr. LOVETT: And up to the time they began working against you, in March or April, the operation of your steamers was very profitable to you?

Mr. GRAHAM: Not March or April, no. The first steamers that left China after the circulation of those reports and those circulars, began to come very light, and those steamers came in at a great loss.

Mr. LOVETT: But up to that time they had been profitable?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: What steamer had left prior to that time?

Mr. GRAHAM: Had left China?

Mr. LOVETT: Yes, from which you made this big profit?

Mr. GRAHAM: The "Eva" and the "Universe."

Mr. LOVETT: And both of those steamers had come with good profits?

Mr. GRAHAM: The "Eva" came in with about 1800 tons of cargo.

Mr. LOVETT: That does not mean anything to me.

Mr. GRAHAM: That was very profitable, yes, 1800 tons,

1214 considering that she had gone out to China with 5200 tons of flour at from $6 to $9 a ton—made a very profitable trip.

Mr. LOVETT: $6 to $9 a ton?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: And the next steamer was equally profitable?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: About what profit did you make on her?

Mr. GRAHAM: She made about——

Mr. LOVETT (int'g): Considering the round trip; not just one way, but from the time she sailed from Portland until the time she got back there?

Mr. GRAHAM: She made about $3,000 on the round trip.

Mr. LOVETT: Which one?

Mr. GRAHAM: The "Universe."

Mr. LOVETT: How much did you make on the other one?

Mr. GRAHAM: About $5,000.

Mr. LOVETT: For the round trip?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: And what other profits did you make?

Mr. GRAHAM: Those were the only two that had got away from China without interruption.

Mr. LOVETT: And the others were unprofitable?

Mr. GRAHAM: They were unprofitable, yes.

Mr. LOVETT: What do you mean by a profit of from $3,000 to $5,000? Do you mean that that is the net profit over all?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: Charter, insurance, and every expense?

Mr. GRAHAM: Every expense deducted, sir.

Mr. LOVETT: You do not know whether it is $3,000 or $5,000. You say "from $3,000 to $5,000."

Mr. GRAHAM: I say the "Eva" made somewhat over $5,000, and the "Universe" somewhat over $3,000.

Mr. LOVETT: The "Universe" was the lowest. Did they have a full return cargo?

1215 Mr. GRAHAM: The "Universe."

Mr. LOVETT: Those two. Did they have a full cargo on the return?

Mr. GRAHAM: They could have carried more, but they had a very fair cargo. The "Eva" could carry 5,000 tons dead weight, but she only had something over 1800 tons dead weight, though her capacity was pretty nearly filled up, because a lot of that stuff was tea and mats that doesn't weigh much. It carried a good price, though.

Mr. LOVETT: How many tons of paying freight did she have coming back?

Mr. GRAHAM: 1800 tons about.

Mr. LOVETT: And she could have carried how many?

Mr. GRAHAM: I should think she could have carried 2400 or 2500 tons of that same kind of bulky stuff.

Mr. LOVETT: Four or five hundred, did you say?

Mr. GRAHAM: 2400 or 2500 tons.

Mr. LOVETT: That would have been her capacity?

Mr. GRAHAM: That would have been her capacity for that kind of stuff; she would not have held any more.

Mr. LOVETT: How many tons did the other steamer that you speak of that made a profit carry on the return trip?

Mr. GRAHAM: The "Universe?"

Mr. LOVETT: Yes.

Mr. GRAHAM: She brought in about 1400 tons.

Mr. LOVETT: How many tons could she have carried?

Mr. GRAHAM: I think she could have stowed away of that same stuff, that same kind of stuff, probably 1800 or 1900 tons.

Mr. LOVETT: What was that same stuff?

Mr. GRAHAM: Mats and tea.

Mr. GRAHAM: Yes; and Chinese provisions and curios.

Mr. LOVETT: Well.

Mr. GRAHAM: Well, that was about the bulk of it?

1216 Mr. LOVETT: That was about the cargo you say, was that about all the cargo?

Mr. GRAHAM: All the stuff they brought.

Mr. LOVETT: Yes.

Mr. GRAHAM: Why, one of them had I think it was the "Universe" had two carloads of chutna-, from India.

Mr. LOVETT: What?

Mr. GRAHAM: Chutna-, this stuff they use in making pickles, and the other had some jute from India.

Mr. LOVETT: What else?

Mr. GRAHAM: I think that was all, I don't remember anything else?

Mr. LOVETT: What kind of a cargo would you expect to get? You spoke about this unusually bulky stuff. What kind of a cargo would you expect to get?

Mr. GRAHAM: Why, I think that was about the average kind of cargo that was available at that part of the world all the year around. At some times we would have got a little more tea which would have less bulk and more weight.

Mr. LOVETT: There was nothing in the cargo you had?

Mr. GRAHAM: Well, no sir, I don't think so.

Mr. LOVETT: On those particular ships?

Mr. GRAHAM: I don't think so.

Mr. SEVERANCE: Were those ships, the "Monmouthshire" and the "Carmarthanshire" chartered by you for the sole purpose of carrying out this contract?

Mr. GRAHAM: Yes sir, and so was the "Adata."

Mr. SEVERANCE: And the "Adata" also?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: What was your purpose in Chartering the other ships, the "Universe" and "Eva"?

Mr. GRAHAM: The "Universe" was a very light draught boat and a big carrier, and I chartered her with the intention of carrying lumber from Gore Bay to China. As to the "Eva" there was a good deal of—she was a very nice ship for this coast, and I chartered her for the same purpose—not expecting to run into

1217 Coos Bay, but expecting to carry lumber from Puget Sound.

Mr. SEVERANCE: And how long before this arrangement with Mr. Campbell had you chartered those two boats?

Mr. GRAHAM: I chartered the "Universe" in London in 1899. She was to go on the next spring, and did go on in May, and went into the coal trade here, for a little while, and then went to work for the United States Government, to handle, and I took her off of that trade to put her into this contract.

Mr. SEVERANCE: But the last three boats?

Mr. GRAHAM: Were chartered solely for this purpose.

Mr. SEVERANCE: Were chartered solely for the purpose of this Portland Oriental line?

Mr. GRAHAM: Yes sir.

Mr. SEVERANCE: I think that is all.

Mr. LOVETT: I do want to ask Mr. Graham one or two additional questions, your Honor. Had you ever operated a line of steamships before this?

Mr. GRAHAM: No sir, only carrying coal, up and down the coast, or lumber from Coos Bay.

Mr. LOVETT: You had never had any experience in the trans-Pacific steamship business?

Mr. GRAHAM: No sir.

Mr. LOVETT: And your experience as a ship owner or manager had been confined to the carriage of coal, you say, up and down the coast here, to Coos Bay?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: On those little steamers?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: What steamers did you operate between here and Coos Bay?

Mr. GRAHAM: I was the manager of the Beaver Hill Company and the Coos Bay Railroad, which was operating on Spreckels behalf "Czarina" and then we had the "Homer" and we had other steamers chartered at times.

1218 Mr. LOVETT: I thought you testified that Spreckels operated that?

Mr. GRAHAM: He did operate it, but we were the agents up there.

Mr. LOVETT: The only experience you had prior to this was your connection with the Coos Bay Railroad?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: Have you ever been in the Steamship business before?

Mr. GRAHAM: No sir.

Mr. LOVETT: That is your only experience?

Mr. GRAHAM: Yes sir.

Mr. LOVETT: And you are satisfied with that?

Mr. GRAHAM: Where I have got to deal with transcontinental railroads, yes. If I could go where I didn't have to go, up against a transcontinental railroad, I would like it very much.

Mr. LOVETT: You can find places where you can do that.

Mr. GRAHAM: You can't operate a China line without a transcontinental connection.

Mr. LOVETT: You have got to have the support of a transcontinental railroad?

Mr. GRAHAM: You have got to have a connection to distribute the cargo.

Mr. LOVETT: Otherwise it wouldn't be profitable?

Mr. GRAHAM: No sir.

Mr. LOVETT: That is all.

H. A. JONES, having been duly sworn, testified as follows:

Mr. SEVERANCE: You live in San Francisco, Mr. Jones?

Mr. JONES: Yes sir.

Mr. SEVERANCE: You will have to pardon my cold and voice.

Mr. JONES: Certainly.

Mr. SEVERANCE: And what is your position?

Mr. JONES: I am Freight Traffic Manager of the South-
1219 ern Pacific Company's operated lines, or lines operated for the Southern Pacific Company.

Mr. SEVERANCE: You will have to speak a little louder.

Mr. JONES: Did you hear me.

Commissioner LANE: I did not. Speak a little louder, Mr. Jones.

Mr. SEVERANCE: What did you say, again, your position is?

Mr. JONES: I am Freight Traffic Manager for the lines operated for the Southern Pacific Company.

Mr. SEVERANCE: How long have you occupied that position?

Mr. JONES: Since the 1st of September, 1906.

Mr. SEVERANCE: And whom did you succeed?

Mr. JONES: Mr. William Sproule.

Mr. SEVERANCE: He resigned from the service, did he not, to take a position with another corporation?

Mr. JONES: Yes sir.

Mr. SEVERANCE: Prior to your incumbency of this office, what was your position, or what was your business?

Mr. JONES: I was Traffic Manager of the G. H. & S. A. Railroad Company and——

Mr. SEVERANCE (int'g): In Texas?

Mr. JONES: Yes sir, in Texas, and what is known as the Central Lines.

Mr. SEVERANCE: Are they part of the Southern Pacific system?

Mr. JONES: Sir?

Mr. SEVERANCE: Are those lines part of the Southern Pacific system?

Mr. JONES: No sir, they are operated by themselves.

Mr. SEVERANCE: Well, I understand with regard to the Texas laws, they have to be operated by themselves—the stock of those companies is owned by the Southern Pacific, however.

Mr. JONES: They are connections of the Southern Pacific lines, yes sir.

1220 Mr. SEVERANCE: Either Judge Lovett or Mr. Harriman is the President of it?

Mr. JONES: Judge Lovett is President of one of them, and Mr. Harriman is President of another.

Mr. SEVERANCE: So that your personal relations with the officials

did not change very much when you came from Texas out here, although you were working for a different corporation?

Mr. JONES: Yes sir, there was considerable change in my relations.

Mr. SEVERANCE: Has your experience here on the coast been confined wholly to a period between last September and the present?

Mr. JONES: My experience has been——

Mr. SEVERANCE (int'g): On the coast, Mr. Jones.

Mr. JONES: I had never lived on the coast here.

Mr. SEVERANCE: Who was your superior officer in traffic matters?

Mr. JONES: Mr. J. C. Stubbs.

Mr. SEVERANCE: And Mr. Stubbs was the man for whom you worked?

Mr. JONES: Yes sir.

Mr. SEVERANCE: What territory is embraced within your jurisdiction?

Mr. JONES: The line from the Rio Grande to San Francisco, and San Francisco to Portland, and from San Francisco to Ogden.

Mr. SEVERANCE: Then your jurisdiction extends as far as Port-land, does it?

Mr. JONES: Yes sir.

Mr. SEVERANCE: It does not stop at Ashland?

Mr. JONES: No sir.

Mr. SEVERANCE: You know Mr. Miller, of Portland, do you not?

Mr. JONES: Yes sir.

Mr. SEVERANCE: And Mr. Miller, at present, is the General Freight Agent of the lines in Oregon?

Mr. JONES: He is, sir. He is General Freight Agent of those lines.

1221 Mr. SEVERANCE: He is a subordinate of yours then, is he?

Mr. JONES: Yes sir, so far as those lines are concerned.

Mr. SEVERANCE: And reports to you?

Mr. JONES: Yes sir.

Mr. SEVERANCE: He is at the same time General Freight Agent —I think that is the correct title—of the Oregon Railroad and Navigation Company?

Mr. JONES: He is.

Mr. SEVERANCE: And to whom does he report in that capacity?

Mr. JONES: Well, I could not answer that positively; I do not know.

Mr. SEVERANCE: He does not report to you?

Mr. JONES: No sir.

Mr. SEVERANCE: Is there any competition in business out of Portland between the company with which you are affiliated and in connection with business concerning which Mr. Miller reports to you, and the traffic over the O. R. & N.

Mr. JONES: No sir.

Mr. SEVERANCE: No competition at all?

Mr. JONES: No sir.

Mr. SEVERANCE: There used to be, I believe, but that is before your day?

Mr. JONES: I don't know whether there was or not.

Mr. SEVERANCE: You simply know there is no competition in business now?

Mr. JONES: There is none now, no.

Mr. SEVERANCE: And you do not move any business from the east to Portland by way of Sacramento?

Mr. JONES: Not that I know of.

Mr. SEVERANCE: That is, that comes here through the Ogden gateway?

Mr. JONES: No sir.

Mr. SEVERANCE: And you personally do not know that that traffic, or part of that traffic, formerly moved that way?

1222 Mr. JONES: No sir, I do not.

Mr. SEVERANCE: Before you came to this country?

Mr. JONES: No sir.

Mr. SEVERANCE: Do you have any one under your supervision, under your charge—I do not mean "charge" or "supervision" either, but is there any official under you here who occupies a similar relation to the lines in California to that which Mr. Miller does in Portland?

Mr. JONES: Mr. G. W. Luce.

Mr. SEVERANCE: Mr. Luce?

Mr. JONES: Yes sir.

Mr. SEVERANCE: And over what extent of the line does Mr. Luce's jurisdiction extend?

Mr. JONES: Over all of the lines except east of Sparks and north of Ashland.

Mr. SEVERANCE: You haven't anything to do with the traffic east of Sparks, have you?

Mr. JONES: Yes sir.

Mr. SEVERANCE: Oh, you have?

Mr. JONES: Yes sir.

Mr. SEVERANCE: And to what point?

Mr. JONES: To Ogden.

Mr. SEVERANCE: Ogden. Who is your subordinate east of Sparks, to Ogden?

Mr. JONES: Mr. Reeves.

Mr. SEVERANCE: Where does he live?

Mr. JONES: He lives in Salt Lake.

Mr. SEVERANCE: What relation, if any, does Mr. Bancroft have to that part of the system?

Mr. JONES: Well, he is Manager, I believe.

Mr. SEVERANCE: He is in the operating department?

Mr. JONES: Yes sir, he is in the operating department.

Mr. SEVERANCE: Mr. Jones, are you also an official of the Northwestern Pacific?

Mr. JONES: No sir.

Mr. SEVERANCE: You have nothing to do with that line?

Mr. JONES: Nothing to do with it.

1223 Mr. SEVERANCE: It appears by the testimony here that from time to time rates are increased or lowered between here and Portland. Under whose authority is that done? Under whose immediate direction is that done?

Mr. JONES: Well, in fixing rates, we have a basis that the rate clerk has adopted for that, a basis—either a differential, higher or lower than certain rates, or a mileage basis, or a rate to the terminal and a rate back. In a change of rates, if a line were to change a rate today, the rate clerk would naturally change his rate, unless he had instructions otherwise. That is how rates are generally made.

Mr. SEVERANCE: I am familiar with that fact, but I want to apply it to this particular case.

Mr. JONES: I could go on and say that I suppose that in any change it would be natural, if either line changed the rates, for the other to either raise or lower their rates accordingly on that basis.

Mr. SEVERANCE: Now, take the line of road over which you preside, so far as traffic is concerned, between here and Portland.

Mr. JONES: Yes sir.

Mr. SEVERANCE: Mr. Schwerin testified yesterday that he had recently raised the rates by boat between these two points, San Francisco and Portland?

Mr. JONES: Yes sir.

Mr. SEVERANCE: And he said that he presumed that the rail rates would go up, as they ordinarily do. Is that the fact—dependent upon the boat rates?

Mr. JONES: That would be the natural result, on account of the basis I have mentioned: Unless the rate clerk had orders otherwise, he would advance the rate.

Mr. SEVERANCE: I assume that, as a matter of fact, where there are two lines such as the boat line between here and Portland, and the rail line between here and Portland, and there has by some agreement been established a differential between the two, if either

1224 party to that arrangement changes the rate, the other party, as a matter of course, changes the rate, so as to maintain the same differential?

Mr. JONES: That would be the natural result.

Mr. SEVERANCE: That would be the natural result?

Mr. JONES: Yes, that would be the natural result?

Mr. SEVERANCE: So that if, as Mr. Schwerin testified yesterday, he found it necessary or advisable to advance the boat rate because the stevedores and long-shoremen and the officers on his ships were demanding and receiving higher wages than they had theretofore received, your rail rates would go up automatically because of that fact, would they?—because of his advance?

Mr. JONES: Yes sir.

Mr. SEVERANCE: Now, Mr. Jones, do you think that that is a fair proposition to the public, that because Mr. Schwerin has to charge higher rates because of increased cost of service, that your rail rates should go up without any corresponding increase in your expense.

Mr. JONES: Why, yes, I don't see anything unfair about it.

Mr. SEVERANCE: You think it is fair. I just wanted your idea about it. Now, there is no other way to move traffic between here and Portland other than by the boat lines, some of them, or your line. Is that true?

Mr. JONES: That is all.

Mr. SEVERANCE: It is not at all feasible to carry it away around the other way by rail?

Mr. JONES: No, not around by Ogden.

Mr. SEVERANCE: It could be carried around by rail the other way to Portland from here?

Mr. JONES: Of course, they could do it, but it is not probable that they would do it.

Mr. SEVERANCE: I mean, it would be physically possible?

Mr. JONES: Yes, but it would not be a sensible way.

Mr. LOVETT: Any more than it would be sensible to carry it to Portland by way of Sacramento.

1225 Mr. SEVERANCE: It is a little more extreme case, Mr. Lovett, than to take freight to Portland by way of Sacramento. Who is the rate clerk that fixes those rates? Do you know?

Mr. JONES: We have several. I don't know who has direct charge of those particular rates. We have 6 or 8 of those rate clerks. They are divided up, you know, into different portions of the line.

Mr. SEVERANCE: Then, as I take it, Mr. Jones, the making of rates between here and Portland is something that involves no discretion on the part of the Manager of the Traffic Department at all, but it is laid down as a general rule, and the rate clerk, any one of six or eight of them, wherever they happen to have jurisdiction, shoves the rate up and down automatically?

Mr. JONES: Unless he is instructed otherwise, that is the understanding. You see, these rates are put in for the purpose of moving any traffic that may be tendered us. We have found by experience that it is better to have rates in force than to have our agents telegraphing us all the time for rates. Therefore, they are fixed, as far as possible, and the basis is fixed.

Mr. SEVERANCE: You are obliged under the Interstate Commerce Act to have the rates fixed as well. It is not an act of grace on your part.

Mr. JONES: I was just saying that was our experience, that it is a better way to handle it. We had it in long before the Interstate Commerce Act.

Mr. SEVERANCE: It is quite essential that you do that now under the Interstate Commerce Act.

Mr. JONES: If I understand the law we need not put the rates in at all.

Mr. SEVERANCE: Need not fix any rates?

Mr. JONES: No sir.

Mr. SEVERANCE: That is it. You do have rates on all classes of traffic?

Mr. JONES: Yes sir, you will find rates on all classes of traffic.

Mr. SEVERANCE: And those rates of course you collect.

1226 You collect the published rates, and change them in the manner provided by law?

Mr. JONES: Yes sir—try to do that.

Mr. SEVERANCE: It appeared by the testimony given in Portland the other day by Mr. Kelley, of the Booth-Kelley Lumber Company, that you had a rule as to shipments from Oregon points to the Bay of San Francisco, which he said was peculiar to this line, namely, that rough, green, common lumber bore a certain rate, which I believe he said was $3.10 a ton—a thousand feet, I mean—and that ties, which are the same class of timber exactly, except that they are 8 feet instead of being longer, bear a rate of $5 a thousand. Now, were those two rates put in under your direction?

Mr. JONES: No sir.

Mr. SEVERANCE: Do you know anything about those rates?

Mr. JONES: I do not.

Mr. SEVERANCE: Can you give me any idea who the person is that established that curious difference between ties that might be needed down here and ordinary lumber?

Mr. JONES: I don't know how long it has been, and I could only tell by examining the tariff?

Mr. SEVERANCE: You know nothing about that?

Mr. JONES: No sir.

Mr. SEVERANCE: That was done before you were in your present position? At any rate, it was not done under your direction?

Mr. JONES: That was not done under my jurisdiction or direction, no sir.

Mr. SEVERANCE: You have a pretty good knowledge of rate making, I assume; that is, the general principles governing rate making and classification?

Mr. JONES: Yes sir.

Mr. SEVERANCE: Is not that a very unusual classification to make?

Mr. JONES: Why, no. There are a great many lines that won't quote a rate on ties at all.

1227 Mr. SEVERANCE: Will you explain to me any reason why ties which are made out of rough, green, common timber, or lumber, should bear a higher rate than the same kind of timber or lumber where it is 16 feet long, we will say, instead of 8 feet long? Can you give me any reason for it?

Mr. JONES: Well, there may be a reason for it.

Mr. SEVERANCE: I say, can you suggest any reason, in the nature of things?

Mr. JONES: It would depend on the conditions and circumstances surrounding it.

Mr. SEVERANCE: What? What circumstances?

Mr. JONES: Well, there might be conditions and circumstances that would control the movement of ties. For instance, a road might want the ties for its own use.

Mr. SEVERANCE: That is what I want to get at. That is, the railroad might make that kind of rate so as to prevent some other railroad getting ties from a particular region?

Mr. JONES: No, sir, it does not prevent them, because there is a rate on them.

Mr. SEVERANCE: It makes it more expensive?

Mr. JONES: Yes, it makes it more expensive.

Mr. SEVERANCE: And you think that would be a fair and reasonable thing to do, to confine a manufacturer of lumber, to your own road, we will say, as a consumer, instead of giving him access to other markets?

Mr. JONES: I don't think that would confine him to our line.

Mr. SEVERANCE: Your line and lines in the immediate vicinity of course?

Mr. JONES: I don't see how that would confine him.

Mr. SEVERANCE: Take this concrete case we have presented here. You put in a certain rate on ties?

Mr. JONES: Yes sir.

Mr. SEVERANCE: And that road is run through a certain class of timber. Now, you say that might be done because the road might want the ties for its own use. You consider that a perfectly legitimate way to deal with the patrons of your road, to put a——

1228 Mr. JONES (int'g): I don't say we did that.

Mr. SEVERANCE: No, I am not saying you did that. You were giving that as a reason which might justify the existence of the rate in question, as I understood—which might justify a railroad in doing that?

Mr. JONES: Lots of railroads do that.

Mr. SEVERANCE: Lots of railroads do that. I want to ask you if you think that is a fair way for a public service corporation to deal with a manufacturer along its lines?

Mr. JONES: I think it is a fair thing for anybody to take care of himself first.

Mr. SEVERANCE: Very well. That is what I want to get at. Then you think in all cases it is perfectly fair for the Southern Pacific to take care of itself first without reference to the public or to other railroads?

Mr. JONES: I did not say that.

Mr. SEVERANCE: But is not that the natural result of your statement?

Mr. JONES: It is not possible, in my opinion, for a road to prevent anybody from buying ties wherever they want to. They might not buy them on that particular line, but they can buy them somewhere else.

Mr. SEVERANCE: Suppose the manufacturer, Mr. Jones, is located on that particular line, but that he might be ambitious to sell to a number of different people, possibly?

Mr. JONES: Yes sir.

Mr. SEVERANCE: You think if your line, if your road, wants ties, it is perfectly legitimate to make a rate which would confine that manufacturer's market to your road, do you?

Mr. JONES: I do not. I don't think they would do it.

Mr. SEVERANCE: What did you mean by your previous answer?

Mr. JONES: Well, I said I thought they ought to take care of themselves, but I do not think they ought to make a rate so he could not move them.

Mr. SEVERANCE: Well, but you would make a rate so it
1229 would be unprofitable for him to move to some other point other than to sell them to you?

Mr. JONES: That is a matter I cannot judge of, whether it would be profitable or unprofitable.

Mr. SEVERANCE: At any rate, you see no objection to making a rate which would discriminate in favor of yourself as against somebody else who might want to buy?

Mr. JONES: I would not state that generally without knowing the circumstances and surroundings.

Mr. SEVERANCE: But you did state. You did not know the circumstances that gave rise to this curious rate up there?

Mr. JONES: No sir.

Mr. SEVERANCE: You stated that, and you suggested this as one reason?

Mr. JONES: No sir, I think you ask me the reason; I didn't suggest it.

Mr. SEVERANCE: You said that might be a reason?

Mr. JONES: Might be a reason, yes.

Mr. SEVERANCE: The cost of the service rendered is one of the bases upon which rates are fixed, is it not?

Mr. JONES: Yes sir.

Mr. SEVERANCE: Is it any more expensive for you to handle ties of a certain size than it is to handle 16 foot lumber?

Mr. JONES: No sir, and it is no more expensive to handle a car of gold than it is to handle a car of lumber.

Commissioner LANE: A little louder, please.

Mr. JONES: I say it is no more expensive to handle a car of gold than it is to handle a car of lumber.

Mr. SEVERANCE: That is not a direct answer, I think, Mr. Jones.

Mr. JONES: I say no.

Mr. SEVERANCE: You say "no"?

Mr. JONES: I do.

Mr. SEVERANCE: Is it not a fact that you can use your equipment to better advantage in handling ties, than you can in handling longer timber or lumber?

1230 Mr. JONES: Why, I should think not. We don't load or unload them.

Mr. SEVERANCE: I know, but can you not get a heavier load with ties than you can with certain kinds of long timbers or lumber?

Mr. JONES: No, sir, not if the car is properly loaded.

Mr. SEVERANCE: You can't?

Mr. JONES: No sir.

Mr. SEVERANCE: There are a good many kinds of timber for which you cannot use box cars?

Mr. JONES: Yes, sir. But you can load them on flats.

Mr. SEVERANCE: But you can load the ties in box cars?

Mr. JONES: Yes sir.

Mr. SEVERANCE: And fill the car full?

Mr. JONES: Yes sir.

Mr. SEVERANCE: So if you have to have box cars——

Mr. JONES (int'g): You can't load long timbers in box cars. I beg your pardon.

Mr. SEVERANCE: No, I know you can't and I am just getting at that very thing. So if you have lots of box cars handy for traffic, it is more to your advantage to ship ties than long timbers?

Mr. JONES: That is a condition that has not existed for a good many years.

Mr. SEVERANCE: That would be the case if you happened to have more of them?

Mr. JONES: If you happened to, yes.

Mr. SEVERANCE: I think you testified a moment ago that you can give no reason, in so far as freight rates are based upon the cost of service, why railroad ties should have a higher rate than rough lumber?

Mr. JONES: That is not the only thing makes freight rates, as I complained.

Mr. SEVERANCE: We have got two things that make freight rate that is, first, the railroad taking to itself some advantage, as in the case of the railroad itself taking the ties; and second, the cost of service. The first, you say, might effect the rate. The second
1231 would not, because there would be no difference. Now it is recognized that the value of the commodity transported is an element in making up the rate.

Mr. JONES: It is very often taken into account.

Mr. SEVERANCE: And reasonably so, as you suggested about the car of gold and the car of lumber. How, a carload of the same weight is not as valuable, is it, as a car load of lumber?

Mr. JONES: Well, no, I say "no"; I don't know that because different lumber is of different value. It would all probably take the same rate. I can't tell between the value of lumber—I don't know what it is.

Mr. SEVERANCE: You would not say, would you, that ties which can be made out of short stuff that may be left over, are more valuable than longer timbers?

Mr. JONES: There are different kinds of ties. Some are worth more than others?

Mr. SEVERANCE: I understand that.

Mr. JONES: And some of the ties are worth more than the lumber this year.

Mr. SEVERANCE: Yes, that might be—more than some lumber.

Mr. JONES: Yes sir.

Mr. SEVERANCE: But you would not say that the difference between $3.10 and $5, a difference of nearly 50 per cent., an increase of nearly 50 per cent.—you would not say that that could be accounted for on account of the extra value of ties?

Mr. JONES: We don't take the value into consideration in making rates on lumber.

Mr. SEVERANCE: Oh, you don't?

Mr. JONES: No sir.

Mr. SEVERANCE: Then you don't take the cost of service into consideration, and you don't take the value into consideration?

Mr. JONES: We do take the cost of service into consideration in making rates.

Mr. SEVERANCE: You have admitted there would be no extra expense?

Mr. JONES: I don't think you could figure the difference
1232 between handling a car of ties and handling a car of anything else.

Mr. SEVERANCE: Then, can you give me any reason that could have actuated that difference in those rates except the one you have first suggested, namely, that the Southern Pacific might want to get the ties for its own tracks?

Mr. LOVETT: I didn't understand him to say that.

Mr. JONES: I did not say that.

Mr. SEVERANCE: I understood you to say that.

Mr. JONES: No, you asked me the question.

Mr. SEVERANCE: Well, you can give me any other possible explanation except that possible explanation? Put it like that.

Mr. JONES: Well, I stated, I think, that circumstances and conditions made rates generally. But I don't know of any condition or circumstances, not being acquainted with this transaction; I don't know what would influence it.

Mr. SEVERANCE: You would be unable to tell?

Mr. JONES: I could not tell.

Mr. SEVERANCE: Now, in making through rates to the East, for instance, do you figure in that, or is that under the charge of Mr. Stubbs?

Mr. JONES: Making rates to the East?

Mr. SEVERANCE: Through rates, that is?

Mr. JONES: We make them in this office.

Mr. SEVERANCE: You make them here?

Mr. JONES: Yes, sir.

Mr. SEVERANCE: And you make them after conference with the other roads, do you not?

Mr. JONES: Why, you can't make any rates without consulting your connections.

Mr. SEVERANCE: I don't mean your connections; I mean your competitors, if you have any?

Mr. JONES: Why, yes, we consult them very often about rates.

Mr. SEVERANCE: That is universal, is it not?

Mr. JONES: Yes, sir, universal with all lines.

Mr. SEVERANCE: As to the rates on the Pacific Coast.
1233 Take the rates from California. You never change any rates on any commodity from California points for the East, except after a consultation and agreement with the Santa Fe people, do you?

Mr. JONES: Yes, sir, we do change rates without conference with the Santa Fe people.

Mr. SEVERANCE: Will you name some rate you have changed without consulting them first?

Mr. JONES: No, sir, I could not name any particular rate, nor can I name any that we did consult them on.

Mr. SEVERANCE: Can you think of any instance since you have been here, Mr. Jones when the Southern Pacific Railroad has changed a rate to the East without first consulting the Santa Fe?

Mr. JONES: I don't remember that we have changed any since I have been here.

Mr. SEVERANCE: Then you don't know?

Mr. JONES: I don't know that there has ever been or not.

Mr. SEVERANCE: As far as you recall, there has been no change?

Mr. JONES: As far as I know.

Mr. SEVERANCE: Have there been any changes made in rates between here and points South that are reached by the Santa Fe and by the Southern Pacific?

Mr. JONES: From here to the South?

Mr. SEVERANCE: Yes, to Arizona, for instance, we will say?

Mr. JONES: I don't know whether there have, or not.

Mr. SEVERANCE: You don't know of any changes?

Mr. JONES: No, sir.

Mr. SEVERANCE: You don't keep track of the rates Mr. Jones?

Mr. JONES: I have not been able to keep up with the detail—no, sir.

Mr. SEVERANCE: So, as to what the rates are, or as to whether any rates have been changed since you were here, you don't know?

Mr. JONES: No, sir; unless there is something unusual about it, my attention would not be called to it.

1234 Mr. SEVERANCE: What are your duties, Mr. Jones?

Mr. JONES: Well, I have general supervision of the traffic, of the freight traffic of the lines, and I am consulted as to the policy and about handling the business generally.

Mr. SEVERANCE: You don't have anything to do with the amount of traffic. That is in the hands of the operating department?

Mr. JONES: No, sir, I don't move it.

Mr. SEVERANCE: And you don't know of any rates that have been changed since you have been here?

Mr. JONES: No sir, I don't know of any that have been changed.

Mr. SEVERANCE: You don't have anything to do with furnishing cars, do you?

Mr. JONES: No sir.

Mr. SEVERANCE: Then what do you do?

Mr. JONES: Well, I have been trying to tell you what I am doing. Of course, I am supposed to be consulted about the policy of handling freight, that is, the making of rates and the interchange of business with other lines.

Mr. SEVERANCE: But, you say, Mr. Jones, that as far as you know, there have not been any rates made.

Mr. JONES: There have been no changes made that I know of.

Mr. SEVERANCE: Do you know of any that have been made as a new proposition since you have been here?

Mr. JONES: I don't remember of any.

Mr. SEVERANCE: You don't remember any?

Mr. JONES: No, sir.

Mr. SEVERANCE: Then if you don't have anything to do with

the distribution of cars, or the movement of the trains, and as far as you know there have been no rates made, and no changes in rates made, you have been having a very easy time of it here since last September, have you not?

Mr. JONES: No, sir, I have been having a very busy time?

1235 Mr. SEVERANCE: Can you give any other functions given to you to perform except as you have stated?

Mr. JONES: No, sir.

Mr. SEVERANCE: Have you ever had any consultation with the Santa Fe officials with reference to the movement of any kind of traffic, or the division of traffic?

Mr. JONES: No sir, not that I know of.

Mr. SEVERANCE: You were never consulted with reference to the amount of traffic your company should receive from the Pacific Mail and other steamship lines?

Mr. JONES: No, sir.

Mr. SEVERANCE: That was not brought to your knowledge?

Mr. JONES: No, sir.

Mr. SEVERANCE: Or as to any efforts you should make to solicit traffic from the Orient?

Mr. JONES: No, sir.

Mr. SEVERANCE: Was the matter of soliciting traffic in the orange country ever brought to your attention?

Mr. JONES: No, sir.

Mr. SEVERANCE: That is all, Mr. Jones.

Commissioner LANE: Any questions, gentlemen?

Mr. LOVETT: We have no questions.

Mr. SEVERANCE: That is all, Mr. Jones.

Commissioner LANE: Have you any further witnesses, Mr. Severance?

Mr. SEVERANCE: No further witnesses.

Commissioner LANE: Do you wish to offer any evidence, gentlemen?

Mr. DUNNE: I think not, your Honor.

Mr. LOVETT: No.

Commissioner LANE: Then this hearing will be adjourned until next Thursday morning at 10 o'clock in the courtroom of the Supreme Court, in the City of Los Angeles.

1236 COURT ROOM OF THE SUPREME COURT OF CALIFORNIA, LOS ANGELES, CALIFORNIA,
THURSDAY, *February* 7, 1907—10 a. m.

Commissioner LANE: Gentlemen, we will continue our investigation into the subject generally known as the Harriman Inquiry this morning, looking into the intercorporate relations of the Union Pacific, The Oregon Railroad and Navigation Company, the Oregon Short Line and the Southern Pacific Systems.

Mr. Severance will act as the attorney for the Commission, and Mr. P. F. Dunne represents the Southern Pacific Company.

Are there any other attorneys who wish to be placed of record here in this matter?

Mr. W. R. KELLY: I appear for the San Pedro line.

Mr. T. J. NORTON: Witnesses for the Atchison, Topeka & Santa Fe have been subpœnaed. I represent the Santa Fe, and in case they should be examined——

Commissioner LANE (interrupting): In case they should be examined, you desire to represent them, Mr. Norton?

Mr. NORTON: Yes sir.

Commissioner LANE: You may call your first witness, Mr. Severance.

Mr. SEVERANCE: We will call Mr. J. Ross Clark.

J. Ross CLARK, called as a witness, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Clark, where do you live?

Mr. CLARK: In Los Angeles.

Mr. SEVERANCE: How long have you lived in Los Angeles?

Mr. CLARK: Since 1892.

Mr. SEVERANCE: What is your business?

Mr. CLARK: I am connected with the Salt Lake Railroad—the San Pedro, Los Angeles and Salt Lake Railroad, known as the Salt Lake road.

Mr. SEVERANCE: What is your official connection with that road.

1237 Mr. CLARK: I am a Director and Second Vice-President.

Mr. SEVERANCE: Prior to the construction of the Salt Lake Road, Mr. Clark, what was your business?

Mr. CLARK: I was interested in various things in Montana; banking, mining, smelting, etc.

Mr. SEVERANCE: And also locally interested in various matters here in Los Angeles?

Mr. CLARK: Yes sir. In the manufacture of sugar from beets.

Mr. SEVERANCE: You had made your home in Los Angeles prior to that time, from 1892 down?

Mr. CLARK: From 1892 down, yes sir.

Mr. SEVERANCE: And you were interested, I suppose, in development of this section?

Mr. CLARK: I have been.

Mr. SEVERANCE: Now, Mr. Clark, what year was the Salt Lake road—we will use that expression as a short expression for the road—what year was that road incorporated?

Mr. CLARK: March, 1901.

Mr. SEVERANCE: Prior to that time had you been interested in any railroad in and about Los Angeles?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What was the name of the road?

Mr. CLARK: The Los Angeles Terminal Railway.

Mr. SEVERANCE: And for how many years had you been interested in that property?

Mr. CLARK: We became interested in that, I think, in July, 1900.

Mr. SEVERANCE: In 1900?

Mr. CLARK: In 1900.

Mr. SEVERANCE: When was that road constructed, Mr. Clark, if you know?

Mr. CLARK: The Los Angeles Terminal?

Mr. SEVERANCE: Yes.

Mr. CLARK: I don't know.

Mr. SEVERANCE: It had been in existence during the entire period of your residence here?

Mr. CLARK: Yes sir.

1238 Mr. SEVERANCE: Where did it run?

Mr. CLARK: From Los Angeles to East San Pedro, and from Los Angeles to Pasadena, and from Los Angeles to Glendale.

Mr. SEVERANCE: Was that a steam road or an electric road?

Mr. CLARK: It was a steam road.

Mr. SEVERANCE: Can you tell from your recollection about the mileage of the road?

Mr. CLARK: I would say in round numbers about 48 or 50 miles.

Mr. SEVERANCE: The main line of that road ran from Los Angeles to San Pedro, didn't it?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How many miles is that?

Mr. CLARK: 27 miles.

Mr. SEVERANCE: Did that road at the time you became interested in it have any terminals at San Pedro?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Can you in a general way give us the extent of those terminals?

Mr. CLARK: They had land holdings there amounting to something like twelve or fifteen hundred acres of land on the east side of the inner harbor.

Mr. SEVERANCE: Was the road the owner of a considerable harbor frontage?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What proportion of the entire frontage on the inner harbor in San Pedro would you say was owned by the San Pedro Company—the Terminal Company?

Mr. CLARK: I should think about 50 per cent.

Mr. SEVERANCE: What other corporations, if you know, owned the balance of the harbor frontage there?

Mr. CLARK: I do not think that there is any corporation owned anything on the east side; on the west side I understand that the Southern Pacific and different interests, lumber interests——

Mr. SEVERANCE (interrupting): Lumber interests?

Mr. CLARK: Lumber interests, yes sir.

1239 Mr. SEVERANCE: Well, what percentage of the total frontage would you say was owned by the Southern Pacific?

Mr. CLARK: I couldn't say.

Mr. SEVERANCE: Do you mean to testify as to the present time or as to the time you acquired the Terminal Company, Mr. Clark?

Mr. CLARK: Well, at the time—I don't know that the conditions are very different now.

Mr. SEVERANCE: Judge Kelly suggested that possibly you did not understand which it was I was asking the question about. Could

you give me an estimate of about the percentage of frontage owned by the Southern Pacific?

Mr. CLARK: I cannot.

Mr. SEVERANCE: You cannot?

Mr. CLARK: No sir.

Mr. SEVERANCE: Who were the other gentlemen, if you know, that became interested in the Terminal Company at the time you became interested?

Mr. CLARK: The Terminal Company at that time was owned by St. Louis people. Mr. R. C. Kerens and his associates.

Mr. SEVERANCE: I understand the company was owned by these gentlemen, and did you buy from them an interest?

Mr. CLARK: We bought a half interest, yes sir.

Mr. SEVERANCE: I beg your pardon?

Mr. CLARK: We bought one-half interest.

Mr. SEVERANCE: And who were associated with you?

Mr. CLARK: By brother and myself, was all.

Mr. SEVERANCE: That is Senator W. A. Clark?

Mr. CLARK: W. A. Clark.

Mr. SEVERANCE: Was that after that purchase in May, 1900—did you say it was?

Mr. CLARK: About July, 1900.

Mr. SEVERANCE: After that purchase, Senator Clark and yourself owned one-half interest, and Mr. Kerens and his St. Louis associates the other half.

Mr. CLARK: That is correct.

1240 Mr. SEVERANCE: Now, Mr. Clark, what purposes did you have in view in acquiring an interest in this property—was it with the view of extending the line at the time you bought it?

Mr. CLARK: Why, I think that was the ultimate—it was the intention to make something more out of it than a local proposition.

Mr. SEVERANCE: Now, Mr. Clark, when did you gentlemen first conceive the idea of the building of the Salt Lake line?

Mr. CLARK: It was some time after the purchase of this interest here; I do not remember exactly.

Mr. SEVERANCE: During that year?

Mr. CLARK: I do not think it was definitely determined during that year.

Mr. SEVERANCE: Well, was it definitely determined during the next year?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: It was definitely determined before you incorporated the company?

Mr. CLARK: Before we incorporated the company, yes sir.

Mr. SEVERANCE: Now, who were the gentlemen that you associated with yourself in the larger enterprise of building the Salt Lake Road, prior to its incorporation?

Mr. CLARK: The same people who owned the other half of the Terminal property.

Mr. SEVERANCE: The same gentlemen?

Mr. CLARK: The same gentlemen.

Mr. SEVERANCE: Was not Mr. Kerens of Salt Lake also interested with you?

Mr. CLARK: Not at that time. Mr. Kerens came in later, after we had purchased; some time after we had purchased the one-half interest.

Mr. SEVERANCE: But I am speaking about the situation at the time you incorporated the Salt Lake Road; was Mr. Kerens of Salt Lake interested then?

Mr. CLARK: I think so.

Mr. SEVERANCE: Then, at the time you incorporated the
1241 Salt Lake Company, in 1901, it was in the control of the same gentlemen that had been interested with you in the Terminal Company?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Namely, the St. Louis people, your brother and yourself, and possibly Mr. Kerens of Salt Lake?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: If he was not in then, he was in very shortly afterwards?

Mr. CLARK: That is correct.

Mr. SEVERANCE: After incorporating this company, what steps, if any, did you take toward the construction or the laying out of the line?

Mr. CLARK: We very soon after that time started our surveys. About the first thing we did was to re-construct the line between here and San Pedro; widen the banks; put on heavy rail and ballast that, and we commenced the construction of the line from here to Riverside.

Mr. SEVERANCE: Now, you speak of putting surveyors in the field; over what part of the line did you put surveyors in the field?

Mr. CLARK: Our first surveying started from here, about three miles below town, Hobart Junction, to the east, and sometimes soon after that we had surveyors in the field in Utah.

Mr. SEVERANCE: Did they work from Salt Lake west?

Mr. CLARK: From Salt Lake west.

Mr. SEVERANCE: Did these surveyors complete their work to the extent of—at least in a tentative way—of establishing a through line from here to Salt Lake?

Mr. CLARK: I do not think the line at that time was completed clear through. We commenced surveying, if I remember correctly, at Salt Lake, and ran a line out to Lynn Junction—what is known as——

Mr. SEVERANCE (interrupting): How far is that from Salt Lake?

Mr. CLARK: About 116 miles.

1242 Mr. SEVERANCE: In this direction?

Mr. CLARK: In this direction, west.

Mr. SEVERANCE: Well, then, where did they go next?

Mr. CLARK: I think they were transferred some time after that—skipped quite a piece of territory and were transferred down to what is known as the Meadow Valley Wash.

Mr. SEVERANCE: What is this Meadow Valley Wash?

Mr. CLARK: It is a canyon; it is in the State of Nevada.

Mr. SEVERANCE: Well, did your surveyors survey a line through that canyon?

Mr. CLARK: They did.

Mr. SEVERANCE: What happened then when the surveyors got down to the Meadow Valley Wash?

Mr. CLARK: We had considerable trouble there with our opponents.

Mr. SEVERANCE: Who were your opponents?

Mr. CLARK: The Oregon Short Line.

Mr. SEVERANCE: What was the nature of the trouble that you had with your opponent, the Oregon Short Line, in the Meadow Valley Wash?

Mr. CLARK: The first trouble was, there was an old grade built from Uvada and Caliente, and a partial grade built from Caliente——

Mr. SEVERANCE (interrupting): I cannot hear you.

Mr. CLARK: There was constructed a grade at that time that had never been used from Uvada—that is the Utah State line to Caliente.

Mr. SEVERANCE: How far is that?

Mr. CLARK: About 42 miles.

Mr. SEVERANCE: Did that run through this canyon?

Mr. CLARK: Through part of it; not altogether. Then there was a partially constructed grade from Caliente to Pioche, which had been built a good many years prior.

Mr. SEVERANCE: Can you tell about how long prior those two grades had been made?

Mr. CLARK: I am informed they were built in 1889 or 1890.

1243 Mr. SEVERANCE: Some eleven or twelve years before?

Mr. CLARK: Prior.

Mr. SEVERANCE: Did they connect up with any line of railroad at any point?

Mr. CLARK: Yes; they connected with the Utah and Pacific at Uvada. That Uvada and Pacific was constructed from Milford to the Utah State line.

Mr. SEVERANCE: But nothing has been done with these from the time they were partially constructed in 1889 and 1890 down to the time you appeared on the scene?

Mr. CLARK: Nothing.

Mr. SEVERANCE: You say that you had trouble in the Meadow Valley Wash with your opponent, the Oregon Short Line. I wish you would state pretty fully just the nature of that trouble.

Mr. CLARK: Well, these grades had been lying there for a great many years; had not been occupied; had been sold for taxes, and we presumed they had been abandoned, and we undertook to take possession of them; bought up the tax title in one case, and finally the matter got into court. The court ruled against us, and we abandoned that part.

Mr. SEVERANCE: Then what did you do?

Mr. CLARK: Well, we proceeded then to survey from Caliente west, down through the continuation of the Meadow Valley Wash, which is rather a rough canyon, most of it, and there we got into trouble again.

Mr. SEVERANCE: What was the trouble that time?

Mr. CLARK: It was a question of survey and getting our maps approved.

Mr. SEVERANCE: Well, with whom did you have that trouble?

Mr. CLARK: With the Oregon Short Line.

Mr. SEVERANCE: The same old friends that you had trouble with before?

Mr. CLARK: I am not sure it was the Oregon Short Line Company; it may have been another company; I think they were probably working there under the Utah, Nevada and California company.

1244 Mr. SEVERANCE: Was it a sub-company of the Oregon Short Line?

Mr. CLARK: I understood so.

Mr. SEVERANCE: What was the nature of the trouble you had with them?

Mr. CLARK: It was merely in getting our maps approved.

Mr. SEVERANCE: Where?

Mr. CLARK: In the United States Land Office.

Mr. SEVERANCE: How did you come out with that?

Mr. CLARK: Not very successful.

Mr. SEVERANCE: Was the matter finally determined, or was it in litigation?

Mr. CLARK: It got into court, and never was finally determined.

Mr. SEVERANCE: Yes, that is what I meant. It got into court, and litigation was pending concerning it.

Mr. CLARK: Litigation was pending.

Mr. SEVERANCE: Now, Mr. Clark, at the time you started these surveys and did this work that you have spoken of, what was the intention of yourself and your associates as to building an independent line from Los Angeles and San Pedro through to Salt Lake City?

Mr. CLARK: I do not know exactly what you mean by "an independent line," but so far as I know it was the plan of our people to build a line.

Mr. SEVERANCE: Build a line of their own?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: To be controlled by themselves?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How long a time was consumed in this litigation, through the various parts of the litigation you have mentioned?

Mr. CLARK: I cannot say definitely, but a good many months.

Mr. SEVERANCE: During the time that you were conducting this litigation, were you continuing your work of surveying in other places?

1245 Mr. CLARK: I am not positive about that; I am not sure.

Mr. SEVERANCE: At the time that you put your surveying crews into this canyon, was there any other surveying crew put in there?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Or shortly afterwards?

Mr. CLARK: I think they were probably in there before that.

Mr. SEVERANCE: In there before you were?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: But they were put in there after you had surveyed out from Salt Lake?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: Did these surveying crews have any trouble with each other?

Mr. CLARK: I don't remember if they did.

Mr. SEVERANCE: You don't remember about that?

Mr. CLARK: No, sir.

Commissioner LANE: Was this canyon the only practicable route?

Mr. CLARK: Coming from Salt Lake to Los Angeles, I would say it was.

Commissioner LANE: You regarded it as necessary that you should have the use of that canyon?

Mr. CLARK: Absolutely; yes, sir.

Mr. SEVERANCE: That is, some part of it?

Mr. CLARK: At some points. It was the controlling points of the route from Salt Lake to the west.

Commissioner LANE: If the Oregon Short Line had been able to control that canyon, could you have built your line through?

Mr. CLARK: I don't think it would ever have been built.

Commissioner LANE: Do you know who instituted the litigation against you primarily?

Mr. CLARK: It was done, I think, in the name of the Utah, Nevada and California Railroad Company.

Commissioner LANE: What kind of a corporation was that?

1246 Mr. CLARK: It was incorporated for the purpose of constructing railroads.

Commissioner LANE: Did you have any interest in it?

Mr. CLARK: None whatever.

Commissioner LANE: Who did? Who controlled it?

Mr. CLARK: So far as I know, the Oregon Short Line.

Commissioner LANE: They claimed that they had an exclusive right to the use of that canyon?

Mr. CLARK: I don't know that they made that claim, but they were on the ground first, evidently; made their surveys; filed their maps, before we did.

Commissioner LANE: Then you recognized that they had some rights there?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: When did these surveying crews of the Oregon Short Line come in there, with reference to the time that your crews arrived?

Mr. CLARK: Not a great while prior to ours, I don't think.

Mr. SEVERANCE: Well, was it a matter of weeks?

Mr. CLARK: Well, I would say, probably two or three weeks; ten days to two weeks. I am not positive about that.

Mr. SEVERANCE: Now, Mr. Clark, had the fact that you were surveying this line and intended to build this road through from Los Angeles to Salt Lake been a matter of public notoriety for some months before that?

Mr. CLARK: I think so.

Mr. SEVERANCE: It had been publicly stated here, and through the press generally, that you were about to construct this line?

Mr. CLARK: I think the papers both here and in Salt Lake had something to say about it.

Mr. SEVERANCE: Now it appears by the evidence already taken in this case that certain contracts were entered into between—in the first instance, between William A. Clark, designated as Clark, Trustee, for his own account and upon the account of his
1247 associates on the one hand, and E. H. Harriman, designated as Harriman, Trustee, as trustee for the Oregon Short Line Railroad Company. The first contract being dated the 9th of July, 1902. You are familiar with that contract?

Mr. CLARK: I know something of it, yes sir.

Mr. SEVERANCE: You were one of the associates for whom Senator Clark acted in making that contract?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How long prior to the making of that contract did negotiations commence that resulted in that contract?

Mr. CLARK: I cannot tell that.

Mr. SEVERANCE: Well, was it several months or a few weeks, or a day, or two days?

Mr. CLARK: I think it was at least six or eight months; six months at least prior to that.

Mr. SEVERANCE: Who initiated those negotiations?

Mr. CLARK: I cannot tell that.

Mr. SEVERANCE: You do not know whether it was Mr. Harriman or your brother?

Mr. CLARK: I do not.

Mr. SEVERANCE: From time to time during that period were the various matters that were finally embodied in the contract a matter of discussion between your brother and his associates?

Mr. CLARK: I think so.

Mr. SEVERANCE: Including yourself?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Up to the time that you had this litigation and up to the time that these negotiations were commenced, Mr. Harriman or his companies had no interest whatever in the Salt Lake road, did they?

Mr. CLARK: None whatever.

Mr. SEVERANCE: At the time of the making of this contract of the 9th of July, 1902, had you built some of the road?

Mr. CLARK: We had.

Mr. SEVERANCE: How much?

Mr. CLARK: I think the line was pretty well completed
1248 between here and Riverside; it must have been just about completed.

Mr. SEVERANCE: Had you made a survey from Riverside on, this end?

Mr. CLARK: Yes. We made a survey from Cajon Pass, and I think at the time that contract was gotten up our surveyors were out on the desert.

Mr. SEVERANCE: That is, you had surveyed on up from Riverside, through San Bernardino, and through the Cajon Pass at that time?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And you had made that survey for the purpose of establishing your line of road there?

Mr. CLARK: That was the ultimate end.

Mr. SEVERANCE: I see by this contract between your brother as trustee, and Mr. Harriman as trustee, that at the time your brother and his associates were the owners of approximately seventy per cent. of the capital stock of the California Improvement Company and of the capital stock of the Empire Construction Company. What was the California Improvement Company?

Mr. CLARK: The California Improvement Company was, I think, an Illinois corporation, incorporated under the laws of the State of Illinois, and it was, so far as I know, a holding company. It was controlled by the St. Louis people.

Mr. SEVERANCE: And what did it hold?.

Mr. CLARK: It held the interest of the Los Angeles Terminal Railway Company.

Mr. SEVERANCE: Then the California Improvement Company was nominally the stockholder of the Terminal Company?

Mr. CLARK: That is correct.

Mr. SEVERANCE: And you gentlemen who bought into the Terminal Company, as you say, were owners of the stock of the California Improvement Company?

Mr. CLARK: We bought the California Improvement Company shares.

1249 Mr. SEVERANCE: Who owned the other thirty per cent. of that stock?

Mr. CLARK: That was scattered between—held by different people in St. Louis and that vicinity.

Mr. SEVERANCE: It was not held by anybody affiliated with the Oregon Short Line or any of those people?

Mr. CLARK: No sir.

Mr. SEVERANCE: Then it further appears in this contract—it is recited that Senator Clark and his associates were the owners of approximately seventy per cent. of the capital stock of the Empire Construction Company. What was that company?

Mr. CLARK: That was a Utah corporation, organized by my brother and his associates. The same people that were interested in the California Improvement Company were stockholders—practically the same people, perhaps with few exceptions—in the Empire Construction Company.

Mr. SEVERANCE: And was that company the owner of the stock of the Salt Lake road?

Mr. CLARK: No sir.

Mr. SEVERANCE: What did it own?

Mr. CLARK: It didn't own anything except it had a paid up capital at one time.

Mr. SEVERANCE: What was it incorporated for?

Mr. CLARK: The object was, I think, at that time, to use it so

that the construction work should probably be done through that company.

Mr. SEVERANCE: It was the company that was to take the contract to build the road, and through which the securities were to be put up?

Mr. CLARK: That was the idea.

Mr. SEVERANCE: Who owned the balance of the stock in that company?

Mr. CLARK: That was held by different people in St. Louis.

Mr. SEVERANCE: That stock was distributed in the same way as the stock of the California Improvement Company?

1250 Mr. CLARK: Practically the same way.

Mr. SEVERANCE: What was the Los Angeles Terminal Land Company?

Mr. CLARK: That was—I am not sure whether it was a California corporation or not.

Mr. SEVERANCE: I know, but what did it own?

Mr. CLARK: It held landed interests.

Mr. SEVERANCE: Whereabouts, in the city?

Mr. CLARK: It had some pieces inside the city limits, but the large holdings were at East San Pedro.

Mr. SEVERANCE: And that was the company then that owned the lands which you intended to use as the terminals for the Salt Lake road?

Mr. CLARK: Yes sir. That stock was held, also, by the California Improvement Company.

Mr. SEVERANCE: Yes, so it is recited in the contract here. It is also recited in this contract that there are now in the treasury of the California Company 25,000 shares of the capital stock of the San Pedro Company—meaning by that, I think, the railroad. Yes, that is right. Aggregating $2,500,000, which stock was issued and held by William A. Clark, and R. C. Kerens, and it is for the stockholders of the California Company. Was that all the stock of the San Pedro Company then issued?

Mr. CLARK: That was all the stock.

Mr. SEVERANCE: How is that?

Mr. CLARK: 25,000 shares?

Mr. SEVERANCE: Yes.

Mr. CLARK: That was all the stock.

Mr. SEVERANCE: That was all the stock?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: Now, after the Los Angeles Terminal Company had acquired these terminals in Los Angeles and San Pedro, what did it do with them?

Mr. CLARK: The Los Angeles Terminal Company?

Mr. SEVERANCE: Yes, those lands were conveyed, were they not, to the Salt Lake road?

Mr. CLARK: All the holdings of the Los Angeles Terminal Railroad Company and the Los Angeles Terminal Land Com-

1251 pany were transferred to the Salt Lake Route.

Mr. SEVERANCE: Now, at the time you projected this Salt

Lake Road, you intended its eastern terminus to be at Salt Lake City, did you not?

Mr. CLARK: Salt Lake City, yes sir.

Mr. SEVERANCE: With what roads did you expect to interchange freight at that place?

Mr. CLARK: Both the Oregon Short Line and Denver & Rio Grande.

Mr. SEVERANCE: They both reach——

Mr. CLARK (interrupting): They both reach Salt Lake.

Mr. SEVERANCE: You say that you do not know who initiated those negotiations that eventuated in this contract? Where were these negotiations carried on?

Mr. CLARK: Why, partly in California and partly in New York.

Mr. SEVERANCE: Who represented Mr. Harriman in the negotiations when they were carried on in California?

Mr. CLARK: Mr. Stubbs, I think, is the only man that I ever talked to about them in California.

Mr. SEVERANCE: Mr. J. C. Stubbs?

Mr. CLARK: Mr. J. C Stubbs.

Mr. SEVERANCE: The gentleman sitting here in the room (indicating)?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: And who represented the other interests when the negotiations were carried on in the East—Mr. Harriman personally?

Mr. CLARK: Judge Cornish, I think, largely.

Mr. SEVERANCE: And Judge Cornish is the Vice-President of the various Harriman lines, is he not?

Mr. CLARK: I understand so.

Mr. SEVERANCE: Did you ever have a meeting with Mr. Harriman in the course of these negotiations yourself?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: This contract, or the arrangement be-
1252 tween you finally resulted in Mr. Harriman acquiring one-half of the stock of the Salt Lake road, didn't it?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: Now, in this contract I find this, in Section 6: It is the contract of July 9th, 1902, which is introduced in evidence in New York, and is marked "Exhibit No. 53, Alexander Millar." Section 6 reads as follows: "Upon the completion of the sale and "production of the said undivided one-half of the capital stock of "said companies, now owned by said Clark, trustee, will, whenever "requested by said Harriman, trustee, cause one-half the member-"ship of the directorate of each of the several companies to be "vacated, and will cause directors to be nominated and named by "the said Harriman, trustee, and be elected to the directorate to fill "such vacancies in each and every of said companies, but that said "Harriman, trustee, appreciating the advantage to be obtained by "preserving the independent character of the San Pedro Company, "and to that end disturbing as little as may be the present or-"ganization of said company until the through line of said San

"Pedro Company in this agreement mentioned is completed and in "operation, will not exercise the right herein given him to name "one-half of the said boards of directors unless he shall deem the "exercise of such right necessary to the protection of the interests "which he represents."

At whose suggestion was that provision put into the contract?

Mr. CLARK: I do not remember.

Mr. SEVERANCE: Well what acton did Mr. Harriman take under that? Did he continue to appreciate the advantage of preserving the independent character of the San Pedro Company and to that end refrained from disturbing the organization until he had the line built, or did you vacate part of the members of the directorate and put in Harriman men?

Mr. CLARK: I do not remember the date that the Board
1253 was divided. It was some time—I am not sure whether it was before the completion of the line or afterwards.

Mr. SEVERANCE: What reason was advanced for that provision?

Mr. CLARK: I do not know.

Mr. SEVERANCE: You don't know about that?

Mr. CLARK: No sir.

Mr. SEVERANCE: Mr. Harriman personally never told you why he thought it would be an advantage to allow the independence of the San Pedro line to remain undisturbed on the surface?

Mr. CLARK: He did not.

Mr. SEVERANCE: Did any representative of his tell you that?

Mr. CLARK: Not that I remember.

Mr. SEVERANCE: How is that?

Mr. CLARK: Not that I remember.

Mr. SEVERANCE: Did any of your associates report at a meeting why Mr. Harriman wanted that provision in the contract?

Mr. CLARK: They did not.

Mr. SEVERANCE: Do you know who drew this contract?

Mr. CLARK: I do not know. There are several people who had a hand in it—Judge Cornish, and I think Judge Kelly had something to do with it, Mr. Gibbon, Mr. Stubbs and myself.

Mr. SEVERANCE: Well, Mr. Kelly at that time was counsel for the Union Pacific, was he not?

Mr. CLARK: He was.

Mr. SEVERANCE: And he was consulted with reference to this matter, was he?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: Here in Los Angeles?

Mr. CLARK: No.

Mr. SEVERANCE: In the East?

Mr. CLARK: Yes, in the East.

Mr. SEVERANCE: Mr. Gibbon was your counsel?

1254 Mr. CLARK: Mr. Gibbon was our counsel.

Mr. SEVERANCE: Now, you have stated that you completed surveys out through the Cajon Pass and into the desert; you had done so at the time this arrangement was made?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: What caused the abandonment of the line beyond Riverside? That is, what caused you to abandon the scheme of conducting a separate line of road beyond Riverside?

Mr. CLARK: Constructing a line of road over the mountains?

Mr. SEVERANCE: Yes, you use certain Santa Fe track and certain Southern Pacific track?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: You use Southern Pacific as far as——

Mr. CLARK (interrupting): From Riverside junction to Colton, and the Santa Fe track from Colton to Daggett.

Mr. SEVERANCE: Didn't you build a little line in between there?

Mr. CLARK: No sir.

Mr. SEVERANCE: What was the occasion for abandoning the construction of your line?

Mr. CLARK: I think a matter of economy. In the first place, it is a very heavy construction, would be very heavy over the Cajon Pass; it would take a good deal of time to do it, cost a great deal of money, and we were anxious to get the line open as soon as possible; and we made trackage arrangements with the Santa Fe Company.

Mr. SEVERANCE: There was no physical difficulty about constructing a line from Riverside to Colton, was there?

Mr. CLARK: No sir.

Mr. SEVERANCE: Why was that abandoned?

Mr. CLARK: Well, I presume it was a matter of economy.

Mr. SEVERANCE: A matter of economy?

1255 Mr. CLARK: A line from Riverside to Colton can be built, but it is a very expensive country to run through; you run through orange orchards and——

Mr. SEVERANCE (interrupting): At whose suggestion was that construction abandoned?

Mr. CLARK: I do not remember.

Mr. SEVERANCE: Do you remember at whose suggestion the construction of the line through the Cajon Pass was abandoned?

Mr. CLARK: No, I do not.

Mr. SEVERANCE: Mr. Clark, did the Oregon Short Line have any contract, so far as you know, with the Santa Fe before you abandoned your line, by which the Short Line was given the right to use the Santa Fe tracks from Colton through, over the Cajon Pass?

Mr. CLARK: Not to my knowledge.

Mr. SEVERANCE: You never knew anything about that?

Mr. CLARK: No sir.

Mr. SEVERANCE: I notice in this contract of July 9th Article 3 of which reads as follows: "Section 1. The said Harriman, as "trustee, further covenants and agrees that he will negotiate with "the Southern Pacific Company and if possible obtain from said "Company the right for the San Pedro Company to use the tracks "of the Southern Pacific Company from the point of its junction "with the tracks of the Southern California Company at or near "Colton, to the point of junction with the tracks of the San Pedro "Company at or near Riverside."

Did Mr. Harriman conduct those negotiations with the Southern Pacific and your brother?

Mr. CLARK: I think he had something to do with them.

Mr. SEVERANCE: Was he President of the Southern Pacific at that time?

Mr. CLARK: I think so.

Mr. SEVERANCE: So that he covenanted here that he would negotiate with himself and secure that track, if possible, and he was successful?

Mr. CLARK: Yes sir.

1256 Mr. SEVERANCE: Judge Kelly corrects me. He says he was chairman of the executive committee.

Mr. KELLY: I want to correct Mr. Clark. Mr. Harriman was not the president of the company at that time; he was chairman of the executive committee. Mr. Hayes was president of the company at that time.

Mr. SEVERANCE: By Section 2, Mr. Harriman also agrees to "negotiate with the Southern Pacific Railroad Company and, if "possible, obtain from said company the right for the San Pedro "Company to use the tracks of the Southern California Company "from the point of its junction with the tracks of the Southern "Pacific Company at or near Colton, to the point of junction of "its tracks with the tracks of the Santa Fe Pacific Company at or "near Barstow."

That is, it is a sub-company of the Santa Fe?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Did Mr. Harriman conduct those negotiations?

Mr. CLARK: I don't think so.

Mr. SEVERANCE: You don't think so?

Mr. CLARK: No sir.

Mr. SEVERANCE: Who did?

Mr. CLARK: They were taken up by my brother with Mr. Ripley; Mr. A. G. Wells had something to do with it, and myself.

Mr. SEVERANCE: And the negotiations were carried through between yourself and your brother and Mr. Ripley?

Mr. CLARK: Yes sir. I do not think Mr. Harriman ever had anything to do with that.

Mr. SEVERANCE: He had nothing to do with that?

Mr. CLARK: Not so far as I know.

Mr. SEVERANCE: Did you carry out the rental that is specified here, which is "a rental not exceeding four per cent. per annum on one-half the valuation of the property of the Southern California Company so used, and a share of the costs of maintenance thereof, including the taxes in proportion to the use of said tracks and property on a wheelage basis"?

1257 Mr. CLARK: The interest rate there is not correct; we are paying more interest; I think we are paying four and one-half per cent.

Mr. SEVERANCE: Aside from that?

Mr. CLARK: Aside from that, it is practically that.

Mr. SEVERANCE: Do you pay your share of the cost of maintenance?

Mr. CLARK: On a wheelage basis.

Mr. SEVERANCE: And you pay a rental of four and one-half per cent. on the cost——

Mr. CLARK (interrupting): Four and a half per cent. on the value of the road, as agreed upon.

Mr. SEVERANCE: And you have also a similar arrangement, have you not, with the Santa Fe Pacific Company between Barstow and——

Mr. CLARK (interrupting): Barstow and Daggett; and I think those companies probably were turned over to the Santa Fe, and I believe are controlled simply by one company.

Mr. SEVERANCE: I think that is true.

Here is a provision, sub-division D of Article 4 of this contract, that I would like to ask you about, Mr. Clark. This article here is the one wherein it is provided that the San Pedro Company and the Short Line Company shall enter into an agreement for a term of ninety-nine years, which agreement was afterwards made; and subdivision D of that article of this contract reads as follows: "Said agreement shall further provide that should conditions de-"velop hereafter"—this, referring to the agreement made between the Short Line and San Pedro Company—"which require the con-"struction of branch lines connecting with the said San Pedro Com-"pany's road south of Salt Lake City, the construction of such lines "shall be subject to agreement before the commencement thereof; "providing, however, that if either party objects to the construction "the other may build said branches and connect the same with the "main line of said San Pedro Company and be entitled to an inter-
"change of traffic with it upon reasonable terms, it being
1258 "understood that said branch lines shall not directly or indi-
"rectly invade the territory of the Short Line Company north "of Salt Lake City, nor be built for the purpose of diverting business "naturally tributary to the Short Line Company's road north of Salt "Lake City."

Now, at whose instance was that provision put into the contract, that the San Pedro Company should not at any time build branch lines which would invade what is called the territory of the Short Line?

Mr. CLARK: I do not remember now. It is a good while ago since those contracts were worked out.

Mr. SEVERANCE: Do you remember whether Mr. Harriman suggested that provision?

Mr. CLARK: No, I do not. I should judge from the provision that it must have come from their people.

Mr. SEVERANCE: From their people, yes.

Commissioner LANE: Were you consulted about that contract?

Mr. CLARK: I beg pardon?

Commissioner LANE: Were you consulted about that contract by any one before it was entered into?

Mr. CLARK: Yes, I had something to do with it.

Commissioner LANE: With whom did you talk about it?

Mr. CLARK: Most of my talk was with Mr. Stubbs and Judge Cornish, I think, more than with anybody else; Mr. Gibbon and myself talked with Judge Cornish and Mr. Stubbs. Judge Kelly, I think, had something to do with it, but I do not remember how much. He was stationed at Omaha and I think was in New York once or twice—I am not sure—pending the working out of this agreement.

Commissioner LANE: Did you talk with Mr. Harriman about it yourself?

Mr. CLARK: I think so.

Commissioner LANE: You did? You talked with your brother, the Senator, about it, did you?

1259 Mr. CLARK: Yes sir.

Commissioner LANE: Upon whose representation was it that you agreed to the making of that contract?

Mr. CLARK: I don't know as I exactly understand your question, Mr. Lane.

Commissioner LANE: Who was it induced you to consent to the making of that contract? You were interested with your brother in it?

Mr. CLARK: Yes sir.

Commissioner LANE: And you were consulted about it?

Mr. CLARK: Yes sir.

Commissioner LANE: You were familiar with its provisions before it was entered into?

Mr. CLARK: Yes sir.

Commissioner LANE: Was your interest as considerable as your brother's in the matter?

Mr. CLARK: No sir, it was smaller.

Commissioner LANE: Was his interest controlling?

Mr. CLARK: Yes sir.

Commissioner LANE: Did he ask your consent to the making of that contract?

Mr. CLARK: He did.

Commissioner LANE: Was his judgment accepted by you as final on the matter, or did he ask your consent specifically?

Mr. CLARK: I think it was mutual.

Commissioner LANE: It was mutual?

Mr. CLARK: Yes sir.

Commissioner LANE: The representations that were made to you, you regarded as sufficient, and you acted on your own judgment in the making of the contract?

Mr. CLARK: I did.

Mr. SEVERANCE: Now, then, the section proceeds: "On the other "hand, it is agreed and understood that the Short Line shall not "build branch lines which will invade the territory of the San "Pedro Company south of Salt Lake City or divert business which "would be naturally tributary to the San Pedro Company's road "south of Salt Lake City."

1260 Do you recall at whose instance that provision was put in the contract?

Mr. CLARK: No, sir, I do not. I should judge it came from some of our people.

Mr. SEVERANCE: Your people?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: That is, your purpose was then to draw a line on the part of Salt Lake City?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: You were expected to stay on one side of the fence and the Short Line on the other side, and neither was to come on the other side for ninety-nine years.

Mr. CLARK: If they prevented our interests from going in one direction, we certainly wanted to protect our interests in the other.

Mr. SEVERANCE: Now, I will call your attention to Section 5 of this contract which reads as follows: "Said agreement shall also con- "tain the following provision: 'It is agreed that the interchange of "'traffic by and between the San Pedro road on the one hand and "'the Short Line Company and the Union Pacific on the other hand, "'as against any competitor of said Short Line Company or said "'Union Pacific Company, shall be preferential, but not exclusive, "'except as hereinafter provided, in favor of said Union Pacific Com- "'pany; and, in like manner, that the interchange of traffic by and "'between said Short Line Company and said Union Pacific Com- "'pany on the other hand, and the San Pedro Company on the other "'hand as against any competitor of the said San Pedro Company "'shall be preferential, but not exclusive, except as hereinafter pro- "'vided, in favor of the San Pedro Company.'"

Now, there is a provision later on which I will call your attention to in that connection, being section 7, two sections after this, which reads as follows: "Said agreement shall also contain the following "provision: 'Nothing contained herein shall be construed as limit-

"'ing the rights or privileges of the Union Pacific Railroad

1261 "'Company or of the Southern Pacific Company or of the

"'Short Line Company in respect to interchange of traffic "'each with the other.'"

At whose instance were those provisions put in, that you should deal preferentially with the Union Pacific as against competitors, and that they should deal preferentially with you, as against competitors, except that "Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company" in its dealings with the Southern Pacific Company or the Short Line Company?

Mr. CLARK: I do not remember now.

Mr. SEVERANCE: Do you remember who suggested those provisions?

Mr. CLARK: I do not.

Mr. SEVERANCE: You understood those provisions at the time, Mr. Clark?

Mr. CLARK: I think so.

Mr. SEVERANCE: Did you realize the position that that left the railroad in, fully?

Mr. CLARK: I do not know that I did.

Mr. SEVERANCE: As regards dealing with other Trans-continental lines like the Rio Grande?

Mr. CLARK: That section says it was preferential but not exclusive.

Commissioner LANE: Did your brother urge you to consent to that?

Mr. CLARK: I do not think so.

Commissioner LANE: Do you know whether Mr. Stubbs or any one else acting for the Union Pacific did?

Mr. CLARK: I do not remember of any urging on either side.

Commissioner LANE: With whom did you consider that paragraph?

Mr. CLARK: Well, I do not remember now. It was Judge Cornish or Mr. Stubbs. I don't remember.

Mr. SEVERANCE: Pursuant to this contract, your road after-
1262 wards made some trackage agreements, did it not; made some formal traffic agreements, written contracts?

Mr. CLARK: Yes, I think so.

Mr. SEVERANCE: I will come to those in a minute.

I will now call your attention to Section 12 of this contract, Mr. Clark, which reads as follows:

"Said agreement shall also contain the following provision: 'Said "'San Pedro Company hereby covenants and agrees that it will not "'now nor hereafter interchange traffic with any carrier connecting "'with it at a point in Utah south of Salt Lake City, or in Nevada, "'upon more favorable terms as to character or quality of service, "'nor at any lower rate of charge or lower divisions of rates, nor in "'any respect whatever than those governing the interchange of the "'same or similar traffic with the Short Line Company at Salt Lake "'City.'"

At whose instance was that provision put in the contract?

Mr. CLARK: I do not remember.

Mr. SEVERANCE: It was not yours, was it?

Mr. CLARK: Probably not; I cannot say, however.

Mr. SEVERANCE: Did you understand at the time what that provision meant?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: It disabled you from dealing with any other competitor of the Short Line or the Union Pacific on better terms than you had with those roads?

Mr. CLARK: It did not prevent us from dealing with anybody else; it prevented us from dealing with anybody else on better terms than we would grant them.

Mr. SEVERANCE: That is it exactly. And that was to last ninety-nine years?

Mr. CLARK: I do not remember the date without referring to the contract.

Mr. SEVERANCE: Turning to "Exhibit No. 42, Alexander Millar,"

which is a traffic agreement between the Southern Pacific
1263 Company and the San Pedro, Los Angeles and Salt Lake Railroad Company, made pursuant to this contract——

Commissioner LANE: (interrupting): What is the date of that?

Mr. SEVERANCE: That is dated June 18, 1903.

I want to ask you some questions about that. In the first place, there were introduced in evidence in New York that agreement, also the traffic agreement with the Oregon Short Line, the San Pedro line and the Union Pacific Line, and the deeds of certain railroad properties, and the agreement between your brother as trustee and Mr. Harriman as trustee by which the stock of the San Pedro road was trusteed to the Farmers Loan and Trust Company, the last mentioned contract being dated the 7th of June, 1903, and the balance of them all on the 18th of June, 1903. That was nearly a year after this preliminary contract?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: At the time these last contracts were made, had you completed your line?

Mr. CLARK: June, 1903.

Mr. SEVERANCE: Yes.

Mr. CLARK: No sir.

Mr. SEVERANCE: Well, any part of it?

Mr. CLARK: Yes, part of it.

Mr. SEVERANCE: Which part?

Mr. CLARK: The line was completed from here to Riverside and we were working beyond Daggett, and we were working from Caliente west at that time.

Mr. SEVERANCE: At Caliente you connected up with the lines of the Utah Short Line that you had acquired under your joint deal?

Mr. CLARK: Yes sir. The old line was constructed down to that point.

Mr. SEVERANCE: You are familiar with these various contracts, the subsequent contracts, the permanent contracts?

Mr. CLARK: Yes sir.

1264 Mr. SEVERANCE: They were submitted to you, and your Board of Directors, and approved by you?

Mr. CLARK: I had something to do with them, and I think, as far as I remember, they were approved by the Board of Directors or the executive committee—the Board of Directors, I think.

Mr. SEVERANCE: You were familiar with them and consulted while they were in preparation?

Mr. CLARK: I was.

Mr. SEVERANCE: Who drew these contracts, these subsequent contracts, the traffic agreements, deeds, trustee agreements, and all that?

Mr. CLARK: Mr. Gibbon and Judge Cornish, and I think, Judge Kelly was in New York at that time.

Mr. SEVERANCE: These contracts were prepared, were they not, and these deeds, and so on, in furtherance, to a great extent, as you understand it, of the original contract?

Mr. CLARK: This tentative agreement?

Mr. SEVERANCE: Yes.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Now, this "Exhibit No. 42, Alexander Millar," is a traffic contract between the Southern Pacific and the San Pedro, Los Angeles, and Salt Lake Railroad Company, that seems to have been signed by the Southern Pacific, E. H. Harriman, President, and the San Pedro, by W. A. Clark, President. Articles 2 and 3,—well, in the first place, article 1 of this contract provides that the Southern Pacific Company will interchange freight traffic in the State of California with your company on as favorable terms as with the Southern California Company.

Article 2 reads as follows:

"In partial consideration of the said covenants and agreements "of the said Southern Company, contained in Article 1 hereof, said "San Pedro company hereby covenants and agrees with said South-"ern Company"—that is, the Southern Pacific—"that it will, upon "the execution of this agreement, adopt, print, publish and
1265 "put in force at all points on its leased, owned, or operated "railroad, for the handling of local business thereon, the "lawful freight rates, tariffs, classifications and charges used by said "Southern Company for the handling of any local business which "may be the subject of competition between them."

Article 3 reads as follows: "Each party hereto"—that is, the Southern Pacific and your company—"mutually covenants and "agrees to and with the other that after the adoption and putting in "force of rates as provided by article 2, neither of them shall or will "change any such rates without the consent of the other party "hereto, unless such change may be made necessary in order to meet "the rates, charges, classifications or tariffs of any other company "or competing line of railroad, or to conform to the final decree or "judgment of some court of competent jurisdiction, or some law-"ful and valid requirement of state or national law."

Do you remember those provisions?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: You understood what that meant when you agreed to it, did you?

Mr. CLARK: Well, I take it for granted that I did.

Mr. SEVERANCE: And that that agreement, according to article 5, "is binding upon each of the parties hereto for the term of ninety-nine years"? You understood then that for ninety-nine years, upon the class of traffic mentioned there, you could not make a change of rate without the consent of the Southern Pacific, did you?

Mr. CLARK: I presume that is correct.

Mr. SEVERANCE: At whose instance was that put in?

Mr. CLARK: I cannot tell now; evidently it was not at our instance.

Mr. SEVERANCE: How is that?

Mr. CLARK: I say evidently it was not at our instance.

Mr. SEVERANCE: At your own suggestion?

Mr. CLARK: I say evidently it was not.

1266 Commissioner LANE: Why did you consent to the making of a contract with that provision in?

Mr. CLARK: Why, that let us into Southern California. There

is a provision in there that they shall interchange business with us on the same terms as they interchange with the Santa Fe Company. Now, at that time, we had probably a little over one hundred miles of railroad in Southern California, and that would give us access, by interchange, to three hundred additional miles already constructed by the Southern Pacific in operation.

Commissioner LANE: You say that lets you in to Southern California. Could you not have gotten in without that?

Mr. CLARK: In time, yes sir, at enormous expense. Those lines were already constructed and in operation.

Mr. SEVERANCE: What lines do you mean were already constructed and in operation?

Mr. CLARK: The Southern Pacific line.

Mr. SEVERANCE: Had those been constructed for many years?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: But this contract you made was to run ninety-nine years?

Mr. KELLY: Pardon me. To what sort or class of traffic do you understand, or did you understand that contract to apply, and to what class of traffic has it been applied?

Mr. CLARK: Only to local traffic.

Mr. SEVERANCE: What do you mean by "local traffic"?

Mr. CLARK: Traffic that would be picked up at a Southern California point and laid down in the State of California.

Mr. SEVERANCE: I noticed an interview of my friend, Mr. Dunne, in which he stated that yesterday——

Mr. DUNNE (interrupting): I thought you brought that out at New York yourself.

Mr. SEVERANCE: No, I did not.

Mr. DUNNE: Well, your partner did.

1267 Mr. SEVERANCE: No. Let us see what local traffic means. Have you ever heard, Mr. Clark, of the term "local traffic" being deemed to apply to traffic, local to a line of road, as distinguished from local to a state? For instance, suppose your line ran from Los Angeles over to some point across the line in Arizona, would not the term "local traffic" be properly applied to any traffic local to your line without reference to state lines?

Mr. CLARK: That would be an interstate proposition.

Mr. SEVERANCE: I understand; but would not the term "local" as used in railroad parlance be properly applied to business that is local to your line—that is true, isn't it?

Mr. CLARK: That is a pretty hard question for me to answer.

Mr. SEVERANCE: You answered Judge Kelly that it was intended to apply to business that was picked up and laid down in California?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: If that is the case, will you explain to me what this provision means in article 3? After you have agreed that you will maintain these rates, the Southern Pacific rates, and will not change those rates without the consent of the other party, there is a provision at the end which reads as follows: "Unless such change "may be made necessary in order to meet the rates, charges, classi- "fications or tariffs of any other company or competing line of

"railroad or to conform to the final decree or judgment of some "court of competent jurisdiction, or some lawful and valid require- "ment of state or national law."

Will you explain to me what change could be prevented or required by any national law applying only to commodities transported within the State of California?

Mr. CLARK: No, I do not know that I can.

Mr. SEVERANCE: Does not that show clearly that it was
1268 never the intention that this should apply to traffic local to the State of California, from the fact that in the proviso you expressly reserve the right to change, if it was required by any valid requirement of state or national law?

Mr. KELLY: That is argumentative.

Mr. SEVERANCE: Yes, I know.

Commissioner LANE: I think we are entitled to his opinion about that.

Mr. SEVERANCE: You have asked his opinion about that.

Mr. KELLY: Oh, no, I did not ask his opinion.

Commissioner LANE: What was your understanding of the meaning of that provision?

Mr. CLARK: My understanding of that provision at the time was that it only applied to local business.

Commissioner LANE: I mean with reference to this last question, as to governmental or national regulation?

Mr. CLARK: I would not undertake to answer that.

Commissioner LANE: Mr. Clark, who were the parties to that agreement?

Mr. CLARK: The Southern Pacific Company and the San Pedro, Los Angeles and Salt Lake Railroad Company.

Commissioner LANE: Now, then, isn't it within the power of those two parties, the Southern Pacific Company and the San Pedro Company to give any construction that they please to the word "local" there?

Mr. CLARK: No, I do not think so. I think the word "local" business would apply—as I understand, it would be state business; business picked up in California, at some point in the State, and laid down at another.

Commissioner LANE: Suppose that the Southern Pacific Company and your company owning half each determined that the line from Los Angeles or from San Pedro to Salt Lake City, as a whole, was to be governed by that provision, and give their own interpretation to the word "local?"

1269 Mr. CLARK: My understanding of that contract is that it never was the intention.

Commissioner LANE: But it would be within your power, you think, to give that construction?

Mr. CLARK: I would not want to say that it would.

Commissioner LANE: Proceed, Mr. Severance.

Mr. SEVERANCE: Well, are you able to give any reason for the insertion of that proviso with reference to regulation by national law, if this contract is applicable only to California state business?

Mr. CLARK: No, I am not able to.

Mr. SEVERANCE: By whom was that clause drawn, if you remember?

Mr. CLARK: I do not remember.

Mr. SEVERANCE: It was drawn by your counsel; by some of the counsel in the case?

Mr. CLARK: It certainly was, yes sir.

Mr. SEVERANCE: Either by Judge Kelly, Mr. Gibbon, or Judge Cornish, was it not?

Mr. CLARK: Yes, I think those were the only gentlemen that had anything to do with the matter.

Mr. SEVERANCE: All eminent railroad lawyers, familiar with the use of the terms, and also eminent constitutional lawyers, familiar with the limitations of the Federal Constitution. Those gentlemen drew that contract, and probably did not put in any words that properly did not mean anything—you didn't suppose they did at that time?

Mr. CLARK: No.

Mr. SEVERANCE: You looked upon that as the best expression of the agreement of the parties, didn't you?

Mr. CLARK: I presume we took it so at that time.

Commissioner LANE: Then, as I understand your testimony, that provision was not executed at the direction of yourself or your brother and his associates; it came from the other side?

Mr. CLARK: I did not say that. I do not remember.

Commissioner LANE: Well, I misunderstood the answer
1270 that you made at the beginning of this examination by Mr. Severance upon this question. I thought you said evidently it did not come from our side.

Mr. CLARK: Did that refer——

Mr. SEVERANCE (interrupting): Well, I thought you so testified. If that is not correct, you are quite at liberty to change your answer.

Mr. CLARK: Well, I am willing to say that I do not think that a clause of that kind would come from our associates.

Mr. SEVERANCE: From your associates?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: But that it came from what you have been referring to all the time as "the other people?"

Mr. CLARK: From the other people.

Mr. SEVERANCE: Mr. Harriman and his friends—the Southern Pacific people?

Mr. CLARK: I say I do not remember, but it is not likely that it originated with our people.

Mr. SEVERANCE: Now, at the time that this contract was approved in June, 1903—June 18, 1903, is the date there. At that time do you recall, sir, who the directors of your company were?

Mr. CLARK: In 1903?

Mr. SEVERANCE: Yes.

Mr. CLARK: I can name some of them. I do not hink I can name all of them without the list.

Mr. SEVERANCE: Had there been a division of the directors at that time between the Harriman people, so-called, and your people?

Mr. CLARK: There had not.

Mr. SEVERANCE: There had not?

Mr. CLARK: No sir.

Mr. SEVERANCE: But this contract of July, 1902, had been in force for about a year, hadn't it?

Mr. CLARK: Had been in force for about a year.

Mr. SEVERANCE: And Mr. Harriman had not seen fit to demand the division of the directors?

Mr. CLARK: He had no right to under that.

1271 Mr. SEVERANCE: I think there is a provision that I called your attention to, which stated that he did have a right.

Mr. CLARK: No such things were done, I think.

Mr. SEVERANCE: No, he was given the right to do it for the protection of his interests?

Mr. CLARK: Yes, after the original contract was worked out and signed.

Mr. SEVERANCE: That is what I am speaking of. The original contract is dated July 9, 1902. This traffic agreement is a year later?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: Now, what I want to know, if you remember—of course, the books will be the best evidence—is whether Mr. Harriman up to that time had taken advantage of his right to disturb, as he called it, the independent character of the San Pedro Company or its organization by putting in half the board of directors?

Mr. CLARK: There had been no change in the board of directors until some time after the subsequent contract was signed.

Mr. SEVERANCE: But you knew at that time, of course, that Mr. Harriman had the right at any time to make that change?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Your rights were all fixed and determined by this contract, made the year before, which was being carried out by the making of these new contracts between the companies?

Mr. CLARK: Mr. Harriman never exercised any rights under that contract that the subsequent contracts would give him.

Mr. SEVERANCE: That is, he never put in half the board?

Mr. CLARK: No, sir.

Mr. SEVERANCE: Now, at the same time that you made this contract, you entered into a contract which is marked "Exhibit 41, Alexander Millar" of this record, between the Oregon Short

1272 Line Railroad Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, and the Union Pacific Railroad Company. You remember that, do you not?

Mr. CLARK: I do.

Mr. SEVERANCE: Article 1, section 1, of this contract provided that, "the terms and conditions of this agreement shall exist and "be binding upon each of the parties hereto for the term of ninety-"nine years from the date of the execution thereof".

You understood that at the time, didn't you, Mr. Clark?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: This contract, by article 1, recites the lines of road owned, operated, or controlled by your company, the San Pedro Company, and also the lines of road controlled by the Short Line. That has all been expressed, I think, in the preamble here. And then the line of railroad of the Union Pacific is described as running from Ogden, Utah, to Council Bluffs, together with branch lines.

Article 2, section 1, of this contract, reads as follows: "Said San "Pedro Company hereby covenants and agrees to and with said "Short Line Company that it will not hereafter, during the term of "this agreement, extend its said main line of railroad, or any of its "branch lines of railroad, nor construct or build any lines of rail-"road, or aid any other company or companies in the construction "or building of any line of railroad, nor assist or advise in the "building or construction of any other railroad than the said lines "of railroad in Article 1 hereof described, northward from Salt Lake "City, or which may run into the territory northward of the parallel "of Salt Lake City, Utah".

Who drew that clause?

Mr. CLARK: I do not remember.

Mr. SEVERANCE: Well, that is rather broader than the one in the original agreement.

Mr. CLARK: Practically the same meaning. It works both ways, don't it?

1273 Mr. SEVERANCE: Yes. The next clause does. But you cannot even advise or assist at this time; that was in the original agreement, and the original agreement seemed to relate to branch lines, and this prohibits you from extending your main line. So you knew when you agreed to that contract that you were prohibited from extending the main lines of the San Pedro Company beyond Salt Lake City, to the north.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: That was the end of that?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: It had to be the end of it for ninety-nine years?

Mr. CLARK: Our original plan was to get to Salt Lake City.

Mr. SEVERANCE: But your original plans were to be free to do as you pleased, after you got through, so far as the traffic, or additional building or anything else was concerned?

Mr. CLARK: Well, I cannot say about that.

Mr. SEVERANCE: Well, you say your original plan was to get to Salt Lake City?

Mr. CLARK: Our original plan was to construct a line from Los Angeles to Salt Lake City.

Mr. SEVERANCE: Did your original plan contemplate that you should not be free to engage in traffic upon whatever terms you pleased, and with whomsoever you pleased, after you got through?

Mr. KELLY: I think that is entirely immaterial.

Commissioner LANE: You may answer that, Mr. Clark.

Mr. CLARK: I do not know that that thing occurred to us at that time.

Mr. SEVERANCE: Didn't it occur to you at the time that you were going to be tied up with contracts that would prevent you from building into any other road's territory, when you projected the road?

Mr. CLARK: I do not know that that ever occurred to us.

Mr. SEVERANCE: And it never occurred to you until the
1274 trouble was made for you in getting through that Meadow Valley Wash, and then it seemed to you that you had to make an arrangement of some kind to avoid this litigation and trouble—isn't that true?

Mr. CLARK: I think that is about correct. If we hadn't, we probably would have been tied up in the canyon yet.

Mr. SEVERANCE: Yes; if my friends' legal ability lasted, and I have no doubt it would.

Not that original memorandum, as you recall, provided that the interchange of traffic with the Short Line Company should be preferential, but not exclusive?

Mr. CLARK: Not exclusive.

Mr. SEVERANCE: I will turn to that. And that provision also applied to the Union Pacific.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And you so understood that at the time?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: You understood that in working business East of the Missouri River Gateways, out of Salt Lake City, the terminus of your road, you were to work preferentially with the Union Pacific as against competitive lines?

Mr. CLARK: Yes sir.

Commissioner LANE: In order that you should get through that canyon, was the condition made that you should enter into that contract?

Mr. CLARK: I do not think so.

Commissioner LANE: Why did you do it then?

Mr. CLARK: I cannot say now why it was done, except in order to carry out the construction of this line we would have gotten into litigation there and that would have probably continued for years, and there would not have been any line built through that canyon.

Commissioner LANE: But terms were offered upon which you could get through?

Mr. CLARK: I think so.

1275 Commissioner LANE: And you got through by making that contract?

Mr. CLARK: Well, we built the line.

Commissioner LANE: Well, that contract gives the terms upon which you could build the line, isn't that so?

Mr. CLARK: No, I don't think so. That contract provides that the San Pedro Company should take over certain tracts of the Oregon Short Line and other holding companies of theirs in Utah. The

contract did not say any place, as I remember it, that by doing that, they would let us through the canyon.

Commissioner LANE: No, the contract would not expressly say so, but I understood you to say to Mr. Severance a few minutes ago that you probably would have been tied up there still if you had not entered into that arrangement.

Mr. CLARK: Yes. I do not think there would have been any road built through there unless this arrangement had been entered into between the conflicting interests there. One was in about as good position to fight as the other.

Commissioner LANE: You think you could have held them up as long as they could have held you up?

Mr. CLARK: Well, it was much easier for them, because they had a line from Salt Lake down to Caliente, and the controlling point was this side of Caliente; it was a narrow canyon, with a good many turns in it, and it was not practicable for two lines to build down there unless they were very friendly and had very close centers. They would have had to cross each other, if I remember correctly, about twenty-six times in a very few miles, which would make it pretty dangerous.

Commissioner LANE: They gave evidence of a sincere desire to build, did they?

Mr. CLARK: I think so.

Commissioner LANE: They were coming this way too?

Mr. CLARK: They made no effort to build until after
1276 we had started or decided to undertake this project, so far as I know.

Commissioner LANE: Did they hold out to you that they were going to build a road down into this territory?

Mr. CLARK: They stated so.

Commissioner LANE: They stated so.

Mr. CLARK: Yes sir.

Commissioner LANE: And was it upon the strength of that statement that you made this compromise agreement by which they kept out of the field, that you gave up one-half of the stock in the corporation?

Mr. CLARK: I take it for granted that had its influence upon the final outcome of the matter.

Mr. SEVERANCE: Didn't they say to you in the course of your negotiations, before this tentative agreement was entered into in substance—I do not know in words, but in substance—that if you built your line through they would parallel it, and wasn't that argument made to induce you to enter into this agreement, by which you gave up half your stock?

Mr. CLARK: I do not remember that.

Mr. SEVERANCE: Well, in substance, if not in words, didn't they hold out to you, that they would build in here along side of you?

Mr. CLARK: Their actions may have strengthened that they would do that.

Mr. KELLY: I would like to help the Commissioner out on one point. Mr. Clark, at the time of the controversy down there through

the canyon, the Short Line Road was claiming prior right to a located line, were they not?

Mr. CLARK: They were.

Mr. KELLY: And they did have some ground to stand firm about that prior location? Your location was subsequent in point of time to the one on which they were standing?

Mr. CLARK: Yes sir.

Mr. KELLY: Now, the Meadow Valley Wash is probably a hundred miles in length?

1277 Mr. CLARK: From beginning to end, in round numbers.

Mr. KELLY: Some places there is a broad valley, and in a few places the wash has narrowed down to a pass for a short distance?

Mr. CLARK: That is correct.

Mr. KELLY: I will ask you if it is not true that long before these negotiations on which this first contract of July 9, 1902, was made, the surveyors of the respective parties had gone through the canyon and laid down tentative locations, so that each road had a line practicable for construction through the entire canyon, only that they were required to cross each other frequently?

Mr. CLARK: That is correct.

Mr. KELLY: That is what I want to get at. I wanted to clear up for the Commissioner the idea that it was a physical impossibility to get two lines through the canyon.

Mr. CLARK: Yes. If I remember, it meant that if their line was built and we came in, we would have to cross them twenty-six times in not a great many miles.

Mr. KELLY: And the difficulties that were to be met would be such difficulties as pertained to the construction and location of the two parallel lines crossing each other so frequently, as they did, and then the difficulties, the practical difficulties of operating a railroad through there with that many grade crossings. Those were the principal difficulties from the physical standpoint, were they not?

Mr. CLARK: Those were the difficulties that were considered very carefully.

Commissioner LANE: I understand that you both could get through without interfering with each other, excepting that you would cross each other twenty-six times?

Mr. CLARK: Yes sir, in *every* few miles.

Commissioner LANE: It was a difficult thing, but a possible thing?

Mr. CLARK: It is possible, but it is no[t] practicable.

1278 Mr. KELLY: I wanted to clear up the [i]dea that I understand you have that it was a physical impossibility to get through there.

Mr. SEVERANCE: Then, Mr. Clark, as I understand you, in answer to Judge Kelly, you say that two roads could get through, but you say that they would have to cross each other 26 times in a few miles; but I think you said in answer to my question, it would make it very difficult of operation?

Mr. CLARK: That is correct.

Mr. SEVERANCE: Mr. Clark, that being the case, weren't you to

a considerable extent influenced in making this compromise by the fact that you had been notified that a line parallel with or competing with yours would be built through to Los Angeles; was not that an element in the question, in addition to the difficulties of getting through this wash?

Mr. CLARK: I don't know they ever said that, but we judged it by their actions.

Mr. SEVERANCE: I asked you whether that fact did not operate on your mind in inducing you to enter into that agreement.

Mr. KELLY: Now, with all due respect, I think that the influence that the man may have turned over in his own mind——

Mr. SEVERANCE (interrupting): Strike out the question. I think you are right. You say you don't think they said that to you?

Mr. CLARK: Not to my knowledge.

Mr. SEVERANCE: Did they say anything of that kind to you?

Mr. KELLY: That is objected to.

Mr. SEVERANCE: Or did any of the other people say anything?

Mr. CLARK: I don't think so.

Mr. SEVERANCE: Did they ever say to you that they were going to build through to Los Angeles?

Mr. CLARK: They did not.

Mr. SEVERANCE: Did they ever say that they were going to build through that canyon?

1279 Mr. CLARK: I think they said they had the first right there, and were going to hold it.

Mr. SEVERANCE: And going to build?

Mr. CLARK: Going to build a through line.

Mr. SEVERANCE: And what was the use of that line through the canyon aside from being a part of the through route of this region down here?

Mr. CLARK: It would not be any good unless it was extended through.

Mr. SEVERANCE: Just to lay lown a railroad through that canyon would not do anybody any good, or furnish any business?

Mr. CLARK: No sir, unless it came on——

Mr. SEVERANCE (interrupting): Unless it came down here?

Mr. CLARK: Or into Nevada, parts of Nevada which have developed into a mining country.

Mr. SEVERANCE: They told you that they were in there and that they proposed to hold it and build a line through?

Mr. CLARK: No.

Mr. SEVERANCE: I thought that was what you said.

Mr. CLARK: I said through the canyon.

Mr. SEVERANCE: That is what I mean.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And they knew, you say, it was a matter of common notoriety that you proposed to build a line through to Los Angeles?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: You were building at the lower end at the time?

Mr. CLARK: We were building on this end.

Commissioner LANE: What was the action you spoke of? You said that while they did not tell you, that their actions indicated that they intended to go on.

Mr. CLARK: You may put a different construction on that. That is, the fact that they said they were going to hold that canyon would be some indication that they were going some place else.

Commissioner LANE: They said they were going to hold
1280 the canyon, and the indications were that they were going some place else?

Mr. CLARK: They claimed the first right; they evidently had rights there that we had to respect.

Mr. KELLY: Didn't they buy the Utah and Pacific, a seventy-five mile line, and build forty-five miles down to Caliente as fast as they could do it?

Mr. CLARK: Yes sir.

Mr. KELLY: And provided a lot of material for further construction?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: When did they start that construction that Judge Kelly has just spoken of?

Mr. CLARK: The Utah and Pacific, from Millford, Nevada, was owned by A. W. McCune and his associates, and they bought that as soon as it was noised around that we expected to build a line from Los Angeles to Salt Lake City.

Mr. SEVERANCE: They bought that after it was noised around that you were going to build a line?

Mr. CLARK: They had a portion constructed, and then they extended their line from Uvada to Caliente, about 42 miles in round numbers.

Mr. SEVERANCE: They didn't do that until it was noised around that you were going to build a Salt Lake road?

Mr. CLARK: No, I think not.

Mr. KELLY: Mr. Clark, will you permit me to correct you? Isn't it true that they did that, that they bought the Utah and Pacific before the San Pedro road was incorporated?

Mr. CLARK: Yes sir, that is correct, so far as the purchase of the Utah and Pacific is concerned.

Mr. SEVERANCE: I am speaking of the construction of this other line, the 40 miles which Judge Kelly so proudly states was bought. Was that done before it was noised around that you were going to build a Salt Lake road?

Mr. CLARK: No sir. That was constructed afterward.

1281 Commissioner LANE: What time was the Utah and Pacific bought by the Short Line?

Mr. KELLY: I can give you the history of that very briefly. The old Oregon Short Line and Utah Northern Railway owned a line extending southwardly from Salt Lake through Millford and through to the Utah State line, and they claimed to own, and I believe did own, the grade from the Utah State line through to the Meadow Valley Wash, about forty odd miles. After the foreclosure of the old mortgage of the Oregon Short Line and Utah Northern

Railway Company, the new company bought it in. The rails, however, were not down on that portion of the line south of Millford, and they made an arrangement by which the Utah and Pacific Company, a local Utah company, acquired the right to build a line and operate it from Millford to Uvada. In that arrangement they took an option from the Utah and Pacific people to take that property over at their pleasure——

Commissioner LANE (interrupting)): What year was that?

Mr. KELLY: That was about—I may be mistaken about this; I am only relying upon my recollection, but my recollection is that it was in the latter part of 1898 that the Utah and Pacific people built their little line and it is my recollection that it was in 1900 that the Short Line Company actually took it over.

Commissioner LANE: In 1900?

Mr. KELLY: Yes sir.

Commissioner LANE: What time was it?

Mr. KELLY: Before any of this trouble came on.

Commissioner LANE: What time was it that the first announcement was made of the possibility or probability of this road from Salt Lake City to Los Angeles being built?

Mr. CLARK: I think early in 1901.

Commissioner LANE: Not until 1901? At that time the Utah and Pacific had been turned over to the Oregon Short Line?

1282 Mr. CLARK: Yes, sir.

Commissioner LANE: That had been taken up?

Mr. CLARK: That had been taken up with the Oregon Short Line.

Mr. SEVERANCE: But the 40 mile extension which Judge Kelly spoke of had not been built?

Mr. CLARK: It had not been built from Uvada to Caliente.

Commissioner LANE: It began in March, 1901?

Mr. KELLY: About that time.

Commissioner LANE: The first contract was made in July, 1901, wasn't it?

Mr. KELLY: 1902.

Mr. SEVERANCE: The first contract between Harriman and Clark was in 1902.

Commissioner LANE: That is what I understand. That was July, 1902?

Mr. SEVERANCE: Yes sir. In addition to having these surveyors laying out this line in the pass, did the Oregon Short Line have their surveyors surveying this way toward Los Angeles?

Mr. CLARK: They had for a time.

Mr. SEVERANCE: How is that?

Mr. CLARK: I understood so.

Mr. SEVERANCE: You knew that at the time?

Mr. CLARK: They ran a line going in across the Sante Fe, I think about Ludlow, and came in and connected with the Southern Pacific at some point beyond Banning.

Mr. SEVERANCE: And they ran a line there across the Sante Fe?

Mr. CLARK: I think, to the best of my knowledge—am sure they

ran the line down to Ludlow; whether they ran it this side of it, I don't know.

Mr. SEVERANCE: From the other end to Ludlow?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: How far from Los Angeles is Ludlow?

Mr. CLARK: I think it is about 200 miles.

1283 Mr. SEVERANCE: And the line that they had projected there through this was extended on down to this place at Ludlow?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: That is the surveyed line?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: Was that one of the actions of the Oregon Short Line that made you think that they were contemplating building through—the fact that they surveyed a line down there?

Mr. CLARK: I presume that had some bearing on it.

Mr. SEVERANCE: How near to your projected line did that line run?

Mr. CLARK: Well, after leaving the Meadow Valley Wash, or after leaving Los Vegas, this side of Los Vegas, we separated; we came in a northwest direction and they ran, I should think, pretty nearly west.

Mr. SEVERANCE: How far is Los Vegas—is that the place you spoke of?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: How far is that from this wash?

Mr. CLARK: Los Vegas is about 125 miles west of Caliente.

Mr. SEVERANCE: And up to that point from Caliente the surveys ran side by side, practically?

Mr. CLARK: No, the Meadow Valley Wash, more than half of it—what we call the Meadow Valley—is west of Caliente; between Caliente and Los Vegas.

Mr SEVERANCE: I say clear down to Los Vegas they ran anywhere through the wash but outside of that they ran practically paralleled part of it?

Mr. CLARK: That was the information I had, that they ran that way.

Mr. SEVERANCE: And then there was a separation?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: But were they both tending in this direction?

Mr. CLARK: They were both tending in this direction.

Commissioner LANE: Mr. Severance, I suppose you will

1284 not conclude with this witness in the course of a few minutes?

Mr. SEVERANCE: No sir.

Commissioner LANE: Well, we will at this time take an adjournment until two o'clock this afternoon.

(At 12 noon the Commission adjourned until 2 P. M.)

Afternoon Session, 2 p. m.

J. Ross CLARK, recalled, and examination resumed.

Mr. SEVERANCE: If your Honor please. There is a matter that I neglected this morning, and I have just spoken to my friend, Mr. Dunne, about it. We had an arrangement the other day, when we adjourned in San Francisco, that we would make a stipulation in the record covering a certain matter. I will state it, and if I am not quite correct you will correct me, Mr. Dunne, if you please. It is agreed that the Southern Pacific Company and the Oregon Railway & Navigation Company make no through rates in connection with lines or boats across the Pacific, with the exception of the Portland & Asiatic Steamship Company, the Pacific Mail Steamship Company, the Toyo Kisen Kaisha and the Occidental and Oriental Steamship Company, those being the lines that are mentioned in the testimony as being managed by Mr. Schwerin; that any other lines of boats bringing in traffic terminating at San Francisco, have to pay the San Francisco rate to the East, aside from the steamship rate across the Pacific. That is right, is it not?

Mr. DUNNE: Yes.

Commissioner LANE: Does that apply to both outgoing and incoming business?

Mr. SEVERANCE: Yes, as I understand it, it applies to both.

Mr. DUNNE: That is our understanding.

1285 Commissioner LANE: They do not make through rates in connection with any of the lines except those you have mentioned?

Mr. SEVERANCE: They do not make through rates in connection with any lines except those I have mentioned, no.

Mr. J. C. STUBBS: The interchange between those steamships now since August 28th is covered by published through tariffs, and it is only with the steamship companies with whom we publish through tariffs that we interchange business upon an arrangement upon a division of through rates.

Mr. SEVERANCE: And I have named the companies?

Mr. STUBBS: And you have named the companies.

Mr. SEVERANCE: Will you now read the last question that I asked Mr. Clark before lunch, Mr. Reporter?

(The last question and answer repeated by the reporter.)

Mr. SEVERANCE: Now, I find, Mr. Clark, another provision in this contract with the Union Pacific, and the Oregon Short Line, to which I would like to call your attention. It is contained in Section 2 of this contract, "Exhibit 41, Alexander Millar." That section reads: "Now, therefore, it is mutually agreed and understood "that all traffic which is either taken up or laid down on the lines "of the San Pedro Company in Utah for transportation to or from "any and all points which can be reached with reasonable expedi- "tion by way of the lines of said Short Line Company and said "Union Company and their respective connections, shall be for- "warded exclusively, in so far as that may lawfully be done, by way "of and over the lines of said Short Line Company and said Union

"Company"—which is the Union Pacific. "In consideration where-
"of, said Short Line Company and said Union Company undertake
"and are bound hereby to solicit the transportation of traffic to or
"from points in Utah reached by the roads of San Pedro Company
"exclusively in connection with said San Pedro Company,
1286 "against any and all said San Pedro Company's com-
"petitors." You remember that clause, do you?

Mr. CLARK: Yes sir, I remember it very well.

Mr. SEVERANCE: Mr. Clark, that clause would cover, would it not, so far as traffic originating on your line is concerned, all traffic moving to the East, to the Missouri River and all points beyond it?

Mr. CLARK: I am not quite clear about that, Mr. Severance.

Mr. SEVERANCE: The Union Pacific runs to the river?

Mr. CLARK: Runs to the river, yes.

Mr. SEVERANCE: And you agreed that all traffic that is taken up or laid down on your lines in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line Company and said Union Company, and their respective connections, shall be forwarded exclusively, that is, so far as it may lawfully be done.

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: That would cover all traffic moving to the East, would it not?

Mr. CLARK: Well, I should suppose——

Mr. SEVERANCE (interrupting): By the East, I mean to the Missouri River or points beyond.

Mr. CLARK: It does not say anything about points beyond.

Mr. SEVERANCE: It says over the lines of said Short Line Company and Union Company and their respective connections.

Mr. CLARK: And their respective connections?

Mr. SEVERANCE: Yes, and their respective connections.

Mr. CLARK: Well, I would say yes.

Mr. SEVERANCE: So that you agreed, so far as you lawfully may, to send all traffic that originates on your lines in Utah, to the East over the Union Pacific and Short Line, as against any competitor of those lines.

1287 Mr. CLARK: Yes sir.

Mr. SEVERANCE: And that would make it your duty, would it not, to send that traffic over the Short Line and Union Pacific as against the Denver and Rio Grande and its Eastern connections?

Mr. CLARK: Not if the freight was routed over the Denver and Rio Grande; we would not have any right to divert it.

Mr. SEVERANCE: That is because you think you might not lawfully do it?

Mr. CLARK: I presume that is what is intended to be conveyed.

Mr. SEVERANCE: But where the traffic is delivered to you for transportation, without specific directions that it be routed over the Rio Grande, if it is moving to any point in the East, traffic originating in Utah, you intend to move it over the Union Pacific?

Mr. CLARK: Out of respect to that contract, we have to route it over the Union Pacific.

Mr. SEVERANCE: And, on the other hand, they agree that they, in soliciting traffic, which terminates on your lines, that is, where the Union Pacific or Short Line Companies are soliciting traffic which terminates on your line for transportation, they will turn over to you exclusively such traffic, instead of to your competitors?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What competitors have you in Western Utah?

Mr. CLARK: The Denver & Rio Grande is the only competitor.

Mr. SEVERANCE: In what part of the territory do they compete with you?

Mr. CLARK: They compete as far south as Provo on their main line.

Mr. SEVERANCE: How far is that from Salt Lake City?

Mr. CLARK: About 40 miles. And they also have a branch running down to Marysville or Marysvale, I am not sure which, down in the San Pete country.

1288 Mr. SEVERANCE: How far is that from Provo?

Mr. CLARK: I should say, offhand, about 125 miles.

Mr. SEVERANCE: In which direction does that run?

Mr. CLARK: Southwest.

Mr. SEVERANCE: Is that branch competitive with your line?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: There is a lot of territory——

Mr. KELLY (interrupting): Just a moment, if you do not object, Mr. Severance.

Mr. SEVERANCE: Certainly not.

Mr. KELLY: Mr. Clark, there is another line that you have not mentioned, the line that runs to the Tintic district.

Mr. CLARK: Yes sir, they are competitive with us in the Tintic district as well. I had forgotten that.

Mr. SEVERANCE: What lines have you with which they are not competitive, Mr. Clark?

Mr. CLARK: Well, I should say our lines from Milford south would not be competitive.

Mr. SEVERANCE: How long is that?

Mr. CLARK: From Milford to the Utah line is 75 miles.

Commissioner LANE: Have you a map there showing this territory?

Mr. KELLY: I haven't a map here, your Honor, but I will bring one in tomorrow and show it to your Honor.

Mr. SEVERANCE: I would like to find the territory that this covers.

Mr. CLARK: By way of explanation, there is a range of mountains between the San Pedro line running south, the Salt Lake Line, and the Denver & Rio Grande line, a range in there that they haul goods over in either direction, and also drive sheep.

Mr. SEVERANCE: They what?

Mr. CLARK: They can haul goods over that range.

Mr. SEVERANCE: But do they, as a matter of fact, do that to any extent?

Mr. CLARK: To some extent, I believe.

1289 Mr. SEVERANCE: How far apart are those lines?

Mr. CLARK: Well, I can't tell. I would say, offhand, about fifty miles at Milford.

Mr. SEVERANCE: With a range of mountains in between?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What class of traffic is there that originates there?

Mr. CLARK: There is a good deal of merchandise shipped down into that country, and there is some wool originates there and goes out, and cattle and sheep.

Mr. SEVERANCE: And to send out that wool or those cattle and sheep by your line, for instance, upon which the wool is produced, or the cattle are produced, in the other valley, it would be necessary to drive them over the mountain range?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Is that very often done, sir?

Mr. CLARK: I can't say.

Mr. SEVERANCE: Is there any line of the Rio Grande there that is nearer to your line than fifty miles, except the line down to Provo?

Mr. CLARK: And the Tintic—excepting the Provo and Tintic, I should not think there is—after the diverging point; they go over into the San Pete country, and they keep through down on the plains there, probably the Escalante Plains.

Mr. SEVERANCE: Then the lines, as I take it——

Commissioner LANE: Just wait a moment there, please.

Mr. SEVERANCE (after a pause): As I understand your statement, then, the lines that are substantially competitive with yours are the lines of Provo and what is called the Tintic line?

Mr. CLARK: The Tintic district.

Mr. SEVERANCE: The Tintic district?

Mr. CLARK: The line to the Tintic mining district.

Mr. SEVERANCE: What lines have you that are not com-

1290 petitive with that line? You spoke about one of 75 miles in length. Are there any others?

Mr. CLARK: There is a branch from Milford into 'Frisco that would not be competitive.

Mr. SEVERANCE: What kind of territory is that?

Mr. CLARK: The 'Frisco and Newhouse—it is a mining country there, and the line is about 24 miles long.

Mr. SEVERANCE: Has it a large or small traffic?

Mr. CLARK: Comparatively small; it is increasing.

Mr. SEVERANCE: Are there any other lines that are owned by your company that do not compete for business with the Rio Grande?

Mr. CLARK: No sir, I think not.

Mr. SEVERANCE: Those are the only ones you think of?

Mr. CLARK: Yes sir.

Mr. KELLY: We might save time—it is not exactly regular, I know, but perhaps I can save time by asking a question here.

Mr. SEVERANCE: Cerainly.

Mr. KELLY: Mr. Clark, is here not a line all the way down as far

as Milford that is competitive with yours? In other words, is not your line all the way down as far as Milford competitive with the Rio Grande?

Commissioner LANE: A little louder, please Judge.

Mr. KELLY: Is not the line south, say, from Lynn, all the way down as far as Milford, and as far as Provo, competitive with the Rio Grande on wool and live stock?

Mr. CLARK: Yes sir; I would say it is—as far as Milford anyway.

Mr. KELLY: As far as Milford, anyway, for they can drive them to and fro either way.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: That is how far from the other line?

Mr. CLARK: My impression is that it is about 50 miles.

Mr. SEVERANCE: That is, the line that you speak of in the other valley is about 50 miles away?

1291 Mr. CLARK: Yes, about 50 miles away.

Mr. SEVERANCE: Now, calling your attention to section 4 of this contract, which is a repetition, practically, I believe, of language in the agreement, "nothing in this agreement contained shall be "construed as limiting the rights or privileges or the practices of the "Union Company or of the said Short Line Company, and each of "them, in respect to interchange of traffic each with the other and "each with the Southern Pacific Company, as fully as before this "agreement was made." You understood that contract, did you?

Mr. CLARK: Yes sir, I did.

Mr. SEVERANCE: That provision, I should have said?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: So that you understood that as to shipments to Los Angeles, we will say, from the East, the Union Pacific was under no obligation, unless it saw fit to do so, to route traffic by your line, but they had the right to send it round by Sacramento?

Mr. CLARK: I don't understand it in that way, Mr. Severance.

Mr. SEVERANCE: Just explain what that provision means. I will read it to you again.

Mr. CLARK: I understand it.

Mr. SEVERANCE: "Nothing in this agreement contained shall be "construed as limiting the rights or privileges or the practices of the "Union Company or of the said Short Line Company, and each of "them, in respect to interchange of traffic each with the other"—that is, the Union and the Short Line—"and each with the Southern "Pacific Company as fully as before this agreement was made."

Mr. CLARK: In the first place, the Union Pacific agreed with us to treat our line as a preferential line, that is, we so understood it, for Southern California business.

Mr. SEVERANCE: That is what they say?

Mr. CLARK: They had practically an arrangement for handling coast business that would not interfere with us in any way.

1292 Mr. DUNNE: What did you say—handling what?

Mr. CLARK: Handling the San Francisco business, I mean.

Mr. DUNNE: Oh, the San Francisco business?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: But here is an explicit agreement, Mr. Clark, an explicit provision in this agreement, that nothing in the agreement contained shall be construed as limiting the rights or privileges or the practices of the Union Company, or the Short Line Company, or each of them, in respect to interchange of traffic, each with the other and each with the Southern Pacific Company, as fully as before this agreement was made. Now, previous to the making of that agreement, did not traffic moving from the East over the Union Pacific move to Los Angeles by way of Sacramento?

Mr. CLARK: Yes, I understand so.

Mr. SEVERANCE: And did you not understand that by this contract you were giving them the right to continue to move traffic in that way as fully as if this agreement had not been made?

Mr. CLARK: Not if our preferential agreement with them was any good.

Mr. SEVERANCE: But your preferential agreement, Mr. Clark, is subject to this provision, Section 4, is it not?

Mr. CLARK: Not on business to be delivered in Southern California.

Mr. SEVERANCE: Will you just take this agreement and show me anything that protects you against that?

Mr. DUNNE: If your Honor please, this is asking the witness to determine a question of law, to go into the interpretation of a written contract.

Commissioner LANE: Mr. Severance wants to know just what it contains, as I understand him.

Mr. DUNNE: Mr. Clark has already testified to that.

Commissioner LANE: I think it is a fair question to ask him, and let him look at it and see if there is anything in there to lead him to change his opinion.

Mr. CLARK: What section is that, Mr. Severance?

1293 Mr. SEVERANCE: That is the section at the bottom of that page there. It is marked there, so that you can easily distinguish it.

Mr. CLARK (after examining the document): Well, if there is any other construction to be put on it than what I have already given, I don't think I am capable of doing it.

Mr. KELLY: Mr. Clark, may I suggest to you there: Was it not contemplated at the time that contract was made that the new line, when constructed, would furnish different conditions, upon which you expect preferential service from the Union Pacific road?

Mr. CLARK: Yes sir.

Mr. KELLY: For Southern California business?

Mr. CLARK: That is correct.

Mr. KELLY: Still, consigned business going through by the Union Pacific and the Southern Pacific Company goes that route just as it did before?

Mr. CLARK: Yes sir.

Mr. KELLY: Consigned business? It is in respect to unconsigned business that I asked you, so far as your road is concerned.

Mr. CLARK: Yes sir. Nothing that I see prevents them from doing that.

Mr. SEVERANCE: That is a very nice explanation that our friend Judge Kelly suggests to you, Mr. Clark, but let me call your attention again to this thing. In the first place, you have got a contract with them that they shall deal with you preferentially, but not exclusively as to the through business. Then you have your exclusive agreement as to the Utah business. Now, having given you those rights, the contract proceeds: "Nothing in this agreement con-"tained"—very sweeping, you see—"shall be construed as limiting "the rights or privileges or the practices of the Union Company, or "of the said Short Line Company, and each of them, in respect to "interchange of traffic each with the other and each with the South-"ern Pacific Company, as fully as before this agreement was "made."

1294 Now, what is there left of your preferential agreement, insofar as it affected the Southern Pacific business?

Mr. KELLY: If your Honor please, I don't think that question is proper.

Mr. CLARK: Well, as I said before, my understanding of the matter was that we were to be the preferential line, and I think we have been, for Southern California business.

Mr. SEVERANCE: That is to say, you would be the preferential line, you mean, if they chose to make you that, do you not, as against the Southern Pacific?

Mr. CLARK: Well, I never considered it that way; I never put that construction on it.

Mr. SEVERANCE: Don't you think, Mr. Clark, that when a contract says that nothing herein contained shall affect the relations between the Southern Pacific Company and the Union Pacific, that it means what it says?

Mr. KELLY: If your Honor please, that may be asking for an argument.

Mr. SEVERANCE: I am trying to get at the understanding of the witness.

Mr. KELLY: He has given his understanding, I submit.

Mr. DUNNE: He has given his understanding and given the practice also, the preferential practice.

Commissioner LANE: I think I understand the answer. Your statement, Mr. Clark, is that they did agree to give you privileges on Southern California business?

Mr. CLARK: Yes sir.

Commissioner LANE: That is to say, a preference?

Mr. CLARK: Yes, sir.

Commissioner LANE: And so far they have given you that preference?

Mr. CLARK: So far as I know.

Commissioner LANE: Mr. Severance's question leads to this: Is it your understanding of the contract that they cannot with-

1295 draw that preference at any time they desire, under that clause?

Mr. CLARK: That has always been my understanding of it.

Commissioner LANE: That they cannot withdraw it, you mean?

Mr. CLARK: That they could not, yes.

Commissioner LANE: That it is binding upon them?

Mr. CLARK: Yes sir, unless they want to violate their whole contract.

Commissioner LANE: As to the Southern California business, you are to have it as against the Sacramento route?

Mr. CLARK: That is my understanding of it.

Mr. SEVERANCE: Mr. Clark, who put that section in the contract that provides that the contract shall be ineffectual as far as relations with the Union Pacific and Southern Pacific are concerned?

Mr. CLARK: I don't remember.

Mr. SEVERANCE: Was that called to your attention at the time you agreed to this contract?

Mr. CLARK: I am under the impression that it was. I was pretty familiar with the contract at the time, before it was signed.

Mr. SEVERANCE: Will you kindly state what the purpose of that clause is, if it is not what it says?

Mr. CLARK: Beyond the explanation that I have given you, I don't know that I am qualified to give any other explanation.

Mr. SEVERANCE: I do not understand that as yet you have given any explanation of that clause, Mr. Clark. You gave an explanation of the preferential matter.

Mr. CLARK: From my standpoint, I have.

Mr. SEVERANCE: Will you be kind enough, if I did not catch it, to repeat it then, and state the purpose of putting that clause in the contract.

Mr. CLARK: The preferential clause?

Mr. SEVERANCE: No sir. This clause, Section 4, to preserve the right to the traffic with the Southern Pacific, the right to route traffic as they liked with the Southern Pacific?

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Mr. CLARK: Well, as I have just said, I don't think I am capable of saying or explaining that matter.

Mr. SEVERANCE: So you don't know who put that in the contract, nor do you know the purpose of putting it in the contract, and you did not at the time. Is that right?

Mr. KELLY: I object to that, because that is assuming what the witness has not said.

Commissioner LANE: He may answer the question.

Mr. CLARK: I knew it was in the contract before that contract was signed.

Mr. SEVERANCE: Did you know why it was there?

Mr. CLARK: No sir, I don't know that I could say why.

Mr. SEVERANCE: Do you know who put it there?

Mr. CLARK: No sir, I don't know who suggested it.

Mr. SEVERANCE: Did you direct that it should be put in there?

Mr. CLARK: No sir, I did not.

Mr. SEVERANCE: Did your associates, so far as you know, ask to have that clause put in the contract?

Mr. DUNNE: He has said he does not know who put that clause in the contract.

Commissioner LANE: He can answer the question as asked.

Mr. SEVERANCE: Don't be so disturbed, Mr. Dunne, about a question of that sort.

Mr. DUNNE: You are repeating this question over and over again to this witness.

Mr. SEVERANCE: Yes, I am.

Commissioner LANE: This is a beautiful place, and pleasant for us to remain in, Mr. Dunne.

Mr. DUNNE: It is a lovely climate, your Honor—go ahead, Mr. Clark.

Mr. SEVERANCE: Mr. Dunne having consented, you may now answer, Mr. Clark.

1297 Mr. CLARK: As I have said, I don't remember who suggested that clause, but I am under the impression that it was none of our associates.

Mr. SEVERANCE: Yes, that is what I thought.

Mr. KELLY: I think I recall what you said a while ago, and that will answer Mr. Severance's question and refresh his recollection. I believe you said there was a large amount——

Mr. SEVERANCE (interrupting): I would like to hear what you say, Judge. Don't be so confidential with the witness.

Mr. KELLY: Pardon me. I can't talk as loud as I ordinarily do. Mr. Clark, you stated a little while ago that there was a considerable amount of interchange of business between the Union and the Southern Companies and the Short Line Company at Ogden known as the Coast business or San Francisco business.

Mr. CLARK: Yes, sir, San Francisco business.

Mr. KELLY: Was it not the purpose of that provision to provide that there should be no controversy but that San Francisco business, and all of the business, other than Southern Pacific business, should go along just as it had before, without reference to this contract.

Mr. CLARK: That that contract should not be disturbed.

Mr. KELLY: That is it, generally.

Mr. SEVERANCE: Is that all, Judge?

Mr. KELLY: Yes. He gave that answer a little while ago.

Mr. SEVERANCE: Then, as I understand this suggestion of Judge Kelly, to which you assent, the purpose was not to interfere with the San Francisco business. Was it contemplated that the Salt Lake Road would run to San Francisco?

Mr. CLARK: Not at that time.

Mr. SEVERANCE: Therefore, can you give any reason why it was necessary to protect San Francisco business against the competition of the Salt Lake, which ran 500 miles south of San Francisco?

1298 Mr. CLARK: I don't know, unless they had in mind that we might haul it down here and ship it up by boat, or something of that kind.

Mr. SEVERANCE: You think that might have been it. Is that your best, Mr. Clark? Is that the only explanation you can make?

Mr. CLARK: I don't know any other explanation. We have no

rails nearer than Los Angeles. That is possible to do that, Mr. Severance, of course.

Mr. SEVERANCE: Oh, yes, it is possible, of course. It never has been done very much, has it?

Mr. CLARK: Not to my knowledge.

Mr. SEVERANCE: What is the difference between Ogden and San Francisco?

Mr. CLARK: About 800 miles.

Mr. SEVERANCE: What is the distance from Ogden to Los Angeles?

Mr. CLARK: 780 miles.

Mr. SEVERANCE: What is the distance from San Francisco to Los Angeles?

Mr. CLARK: About 480 miles. I may not be quite correct about the distance from Ogden to 'Frisco. I think it is a little over 800 miles.

Commissioner LANE: Mr. Clark, do you think that that was the purpose of putting that provision in the contract, to secure the San Francisco business to the Southern Pacific?

Mr. CLARK: I don't see any other purpose that it could have been put in there for, Mr. Lane.

Commissioner LANE: Was that the purpose for which it was put in?

Mr. CLARK: Well, I can't say.

Commissioner LANE: You don't know?

Mr. CLARK: I don't know and I can't say. That would be my idea about it. I don't see what it could have been put in for, if it was not for that purpose—don't see what other purpose it could have been put in for.

Mr. SEVERANCE: Section 6 of this contract reads as follows:

1299 "It is covenanted and agreed that said Short Line Company "and its connections, the said Union Company, and each of "them, shall have the right to name and make their through rates "between points, that is, in both directions, on or reached via their "respective lines and points on the line of said San Pedro Com"pany's road in Utah, for business which said Short Line Com"pany or said Union Company might give to or receive from said "San Pedro Company in competition with any and all other con"nections of said San Pedro Company. Provided, however, that "on demand, said Short Line Company and said Union Company "shall join said San Pedro Company in any through rates neces"sary to meet the rates offered by any competing line for such "business."

You are familiar with that, are you, Mr. Clark?

Mr. CLARK: Yes, sir.

Mr. SEVERANCE: And you were familiar with it at that time?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And you knew that unless it was necessary to make a change in those rates by reason of the competition from some outside line, the Union Pacific Company and the Short Line—they are all together, of course, the Short Line being owned by the

Union Pacific—should have a right to make all the rates the through rates, both in and out of Utah, in connection with your road?

Mr. CLARK: That is as I understand it.

Mr. SEVERANCE: And you knew that, in the first instance, of making these rates you would have nothing whatever to say, did you? You understood that, did you?

Mr. CLARK: Well, I expect we would have to be governed by what the contract provided.

Mr. SEVERANCE: You understood that at the time, did you, that you were giving away to them the right to make the rates in and out of Utah?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: To points on your line?

1300 Mr. CLARK: I understood that.

Mr. SEVERANCE: And that that was absolute to non-competitive points, and as to competitive points a change to meet competition only.

Mr. CLARK: That is my understanding.

Mr. SEVERANCE: And you fully understood that at the time?

Mr. CLARK: Yes sir.

Commissioner LANE: How many miles have you in Utah, Mr. Clark?

Mr. CLARK: About five hundred and—well, something like 500 miles, I think, branches and all; that is, from Salt Lake and——

Commissioner LANE (interrupting): What is your total mileage?

Mr. CLARK: Branches and all, something over a thousand miles.

Commissioner LANE: So that as to one-half of that mileage, the Union Pacific can make the rates?

Mr. CLARK: According to this contract.

Commissioner LANE: According to that contract?

Mr. CLARK: Yes sir.

Commissioner LANE: That contract is still in force?

Mr. CLARK: That is still in force.

Commissioner LANE: You are treating it as still in effect?

Mr. CLARK: We are treating it as still in effect, yes sir—as far as I know.

Commissioner LANE: How is that procedure carried out in practice as to the making of rates? Does your traffic manager receive from the Union Pacific the rates that they wish to be enforced along the line in Utah?

Mr. CLARK: I don't think I am competent to answer that Mr. Lane. That is a traffic matter.

Commissioner LANE: You don't know how they are put forth, as a matter of fact?

Mr. CLARK: I could not say.

Commissioner LANE: You do not know who makes the rate?

1301 Mr. CLARK: No, sir, I do not.

Commissioner LANE: Do you know whether your own traffic manager makes the rate, or whether the Union Pacific traffic manager makes the rate?

Mr. CLARK: Well, I am under the impression that all the rates

that have been made there have been made by our own people, our own traffic manager. But he will be able to tell you better than I as to that.

Commissioner LANE: That is to say, he publishes those rates, where they are through rates, and have to be filed with the Interstate Commerce Commission; they are filed by your traffic manager with the Interstate Commerce Commission, in that case, the case of through rates?

Mr. CLARK: Filed by our traffic manager, yes.

Commissioner LANE: But you do not know whether he receives those rates from the Union Pacific or not?

Mr. CLARK: No, sir, I do not.

Commissioner LANE: Has there been any question arise, has any question arisen between your company and the Union Pacific as to any rates in Utah?

Mr. CLARK: Not to my knowledge.

Commissioner LANE: That is all.

Mr. SEVERANCE: Mr. Clark, a question occurs to me in this connection. You say you don't know about this. What did you say your position is? Are you second Vice-President?

Mr. CLARK: Second Vice-President.

Mr. SEVERANCE: Who holds the office of First Vice-President?

Mr. CLARK: Mr. W. H. Bancroft, of Salt Lake City.

Mr. SEVERANCE: Aside from being First Vice-President of your line, what other business has Mr. Bancroft?

Mr. CLARK: He is general manager of the Oregon Short Line.

Mr. SEVERANCE: And he is also general manager, is he not, of a portion of the Southern Pacific lines?

Mr. CLARK: I believe so, extending as far as Sparks.

1302 Mr. SEVERANCE: Extending east of Sparks, yes. Also of a portion of the Union Pacific west of Green River?

Mr. CLARK: I understand so, yes, west of Green River.

Mr. SEVERANCE: And he is your First Vice-President?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And you are the second?

Mr. CLARK: I am the Second Vice-President.

Mr. SEVERANCE: Mr. Bancroft lives in Salt Lake City?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What are your functions, Mr. Clark?

Mr. CLARK: Oh, there are quite a good many of them?

Mr. SEVERANCE: To whom does your general manager report?

Mr. CLARK: He reports to a special committee.

Mr. SEVERANCE: Who is the committee?

Mr. CLARK: Mr. Bancroft and myself.

Mr. SEVERANCE: Mr. Bancroft and yourself?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: You have frequent meetings?

Mr. CLARK: Not very, no.

Mr. SEVERANCE: What does he make—duplicate reports to you?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How frequently?

Mr. CLARK: Oh, whenever occasion demands it.

Mr. SEVERANCE: At no stated times?

Mr. CLARK: At no stated times. The general manager has charge of the operations, and if he wants to spend some money, he makes a requisition for it and puts it up to the special committee.

Mr. SEVERANCE: He puts it up to the executive committee, which consists of Mr. Bancroft and yourself?

Mr. CLARK: Yes sir—no, not to the executive committee, but to the special committee.

1303 Mr. SEVERANCE: Have you also an executive committee?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Who compose the executive committee?

Mr. CLARK: My brother, W. A. Clark, Mr. R. C. Kerens, Mr. E. H. Harriman and Judge W. D. Cornish, of New York.

Mr. SEVERANCE: That is evenly divided, is it?

Mr. CLARK: Yes, sir.

Commissioner LANE: Who has charge of the traffic?

Mr. CLARK: The traffic department reports to the general manager.

Commissioner LANE: And who is the head of your traffic department?

Mr. CLARK: At the present time, Mr. F. A. Wann.

Mr. SEVERANCE: Mr. Wann was formerly with the Alton road, was he not?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How recently has he taken charge of the traffic for you?

Mr. CLARK: The third of January his duties commenced with our company.

Mr. SEVERANCE: Who employed Mr. Wann?

Mr. CLARK: My brother.

Mr. SEVERANCE: Do you know at whose suggestion?

Mr. CLARK: Yes. I think there were several people after Mr. Gillett had resigned—there were several suggestions given to my brother with regard to Mr. Wann, one of them was from Mr. J. M. Haniford, connected with the Northern Pacific, and another one was Mr. Ed. Dickinson, I think.

Mr. SEVERANCE: Connected with the Union Pacific?

Mr. CLARK: No sir, with the Stillman road—I don't remember the name of the road, but a road building from Kansas City south.

Mr. SEVERANCE: Were the executive committee consulted about the appointment of Mr. Wann?

Mr. CLARK: I think so.

1304 Mr. SEVERANCE: Was the special committee consulted?

Mr. CLARK: No sir.

Mr. SEVERANCE: Only the executive committee?

Mr. CLARK: Only the executive committee.

Mr. SEVERANCE: Who preceded Mr. Wann?

Mr. CLARK: Mr. Gillett, Mr. E. W. Gillett.

Mr. SEVERANCE: Was there any interregnum between Mr. Gillett's

incumbency and Mr. Wann's, or did Mr. Gillett hold until Mr. Wann took up the duties of the position?

Mr. CLARK: There was a short interim there of—I don't remember the time exactly, but probably thirty days, and maybe longer—perhaps longer.

Mr. SEVERANCE: Did Mr. Wells have charge of the traffic during that time?

Mr. CLARK: Yes sir—well, Mr. Gillett's subordinates carried it along during that time, in connection with the general manager.

Mr. SEVERANCE: Then, as I understand your organization, Mr. Clark, the head of your traffic department reports to Mr. Wells, the general manager?

Mr. CLARK: That is correct.

Mr. SEVERANCE: And Mr. Wells, the general manager, reports to a committee consisting of Mr. Bancroft and yourself?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What are the functions of the executive committee?

Mr. CLARK: Oh, if they want to expend a large amount of money, we submit that around in the regular way; I send that around to my brother, who is chairman of the executive committee, and I ask for the approval or disapproval of the executive committee. All minor matters do not go up to them; it is only where we want to spend large sums of money that the matter is referred to the executive committee.

Mr. SEVERANCE: You have the rather unusual situation of executive committees and special committees composed of an even number?

1305 Mr. CLARK: Yes sir.

Mr. SEVERANCE: Has there been any discord as to the policy of extension, or anything of that kind, between members of the committee at any time?

Mr. CLARK: None whatever that I know of.

Mr. SEVERANCE: And since this contract was entered into everything has been conducted harmoniously?

Mr. CLARK: It has, so far as I know.

Mr. SEVERANCE: All around?

Mr. CLARK: All around.

Mr. SEVERANCE: Without any dissent?

Mr. CLARK: Without any dissent, yes sir.

Mr. SEVERANCE: To the best of your belief. Is that right?

Mr. CLARK: That is correct.

Mr. SEVERANCE: When did that form of organization begin?

Mr. CLARK: I should say about a year and a half ago. I won't be positive as to the dates. I think about that, or maybe it is a little longer than that.

Mr. SEVERANCE: Did it begin immediately after the road was completed through?

Mr. CLARK: Yes sir. I can't tell you the exact date. It was in May, nineteen hundred and——

Mr. SEVERANCE (interrupting): Five?

Mr. CLARK: Five.

Mr. SEVERANCE: It was about the first of May, 1905, that you ran the first train, was it not?

Mr. CLARK: Yes, on the first of May, 1905.

Mr. SEVERANCE: Prior to that time, the line had been under construction?

Mr. CLARK: Under construction, yes. We had operated on the two ends.

Mr. SEVERANCE: On the two ends?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And who had immediate charge of the operation of the eastern end of the road during that period?

Mr. CLARK: During the construction period?

1306 Mr. SEVERANCE: Yes.

Mr. CLARK: Mr. Wells.

Mr. SEVERANCE: He lived then in Salt Lake?

Mr. CLARK: He lived during that time in Salt Lake.

Mr. SEVERANCE: What road did he come from to your road?

Mr. CLARK: He came from the Ash Park, Prescott & Phœnix.

Mr. SEVERANCE: Down in Arizona?

Mr. CLARK: Down in Arizona.

Mr. SEVERANCE: And he took charge of the operation at the other end?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And who had charge of the operation of this end?

Mr. CLARK: Just a moment.

Mr. SEVERANCE: Pardon me, I thought you had finished.

Mr. CLARK: After we had purchased the Los Angeles Terminal Company, Mr. Wells was here for a time. He was in Los Angeles until the San Pedro Company took over the Short Line road in Utah, and then he was transferred up there and put in charge of that.

Mr. SEVERANCE: Who had charge of the business here, before you completed the line through? Who had charge of the management of this end of the line?

Mr. CLARK: I did.

Mr. SEVERANCE: You had charge of that yourself?

Mr. CLARK: Yes sir, I did. It was along towards—it was for the reason that we had a long gap between there and here and had no telegraph lines, and the superintendent here—it was an unusual organization, the superintendent reported to me.

Mr. SEVERANCE: Now, Mr. Clark, after you had built this end of the line, the end of the line that you had charge of—as I understand you, you first built to Riverside and then connected up there with the Santa Fe—the Southern Pacific and then the Santa Fe?

Mr. CLARK: Yes sir.

1307 Mr. SEVERANCE: And then built on the end from the Santa Fe. That is, you built on from some point on the Santa Fe?

Mr. CLARK: Built from Daggett on to the East.

Mr. SEVERANCE: As fast as that line was constructed, I assume it was open for operation, was it not?

Mr. CLARK: Only to Riverside.

Mr. SEVERANCE: Only to Riverside?

Mr. CLARK: We did not operate any lines beyond Riverside until the line was opened through.

Mr. SEVERANCE: And when was the line to Riverside finished?

Mr. CLARK: In 1903. I can't give you the date definitely, but I should say some time in 1903.

Mr. SEVERANCE: It was some time, at any rate, after the making of this contract of July, 1902?

Mr. CLARK: After that, yes.

Mr. SEVERANCE: Yes sir, when you opened your line to Riverside, did you adopt the rates then in force on the Southern Pacific between here and Riverside?

Mr. CLARK: I am under the impression that we did.

Mr. SEVERANCE: What is the largest traffic out of this region?

Mr. CLARK: The largest one item?

Mr. SEVERANCE: Yes, the largest single item.

Mr. CLARK: Citrus fruits, I think.

Mr. SEVERANCE: Yes sir. And citrus fruits move to Utah common points, Idaho, Montana, and other regions up there?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Over your line?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How does your rate on citrus fruit compare with the Southern Pacific route, by way of Sacramento—from here?

Mr. CLARK: I don't know that I am qualified to answer that.

Mr. SEVERANCE: You do not know about that?

Mr. CLARK: I understand it is practically the same rate.

1308 Mr. SEVERANCE: Is it not exactly the same?

Mr. CLARK: Well, I presume it is.

Mr. SEVERANCE: And is not the rate from Los Angeles to Utah common points by way of Sacramento just the same as it has been for many years?

Mr. CLARK: It is not.

Mr. SEVERANCE: The rate on citrus fruits?

Mr. CLARK: Oh, the rate on citrus fruits.

Mr. SEVERANCE: That is what I am talking about.

Mr. CLARK: I thought you meant other freights. As far as I know, it is.

Mr. SEVERANCE: And the fact that your road is 500 miles shorter to Ogden did not result in any diminution of the freight rate upon this traffic, which you say is the most important item out of Los Angeles?

Mr. CLARK: No sir, it did not.

Mr. SEVERANCE: No. It remained the same?

Mr. CLARK: Yes sir.

Commissioner LANE: Do you use coal on your line in Utah?

Mr. CLARK: We use coal on our engines from Salt Lake City,

and even up to Los Vegas. Now, however, we are dropping back to Caliente.

Commissioner LANE: Where do you get your coal?

Mr. CLARK: Get it off the Denver & Rio Grande, from the Utah Fuel Company.

Commissioner LANE: From the Utah Fuel Company?

Mr. CLARK: Yes sir.

Commissioner LANE: Do you have any coal along your line?

Mr. CLARK: We have none on the line.

Commissioner LANE: You have none on your line?

Mr. CLARK: No sir. We have to depend upon other roads to deliver our coal to us. The coal is delivered at Provo.

Commissioner LANE: And you get your oil from California?

Mr. CLARK: From California, yes.

1309 Commissioner LANE: How far eastward do you operate with oil?

Mr. CLARK: From Los Angeles to Caliente, about 460 miles, I should say.

Commissioner LANE: And that oil comes from where?

Mr. CLARK: The oil that we are using here in Southern California is delivered to us here from the local fields, and the oil that we use beyond Daggett comes from Bakersfield—is delivered to us at Daggett by the Santa Fe Company.

Commissioner LANE: Delivered to you by the Santa Fe Company?

Mr. CLARK: Yes sir, at Daggett.

Commissioner LANE: That is all.

Mr. SEVERANCE: When you first opened your line, Mr. Clark, what did you do for equipment?

Mr. CLARK: We had provided equipment, a reasonable amount of equipment, for the opening of the line.

Mr. SEVERANCE: Do you remember how many freight cars you had?

Mr. CLARK: We ordered at one time 750—from the time we had purchased this local line here?

Mr. SEVERANCE: Yes.

Mr. CLARK: We have been buying some equipment right along. I don't know. I could not give you the detailed number of freight cars. But prior to the time we opened the through line, we had placed an order and had delivered, if I remember aright, 750 box cars, 750 coal cars, about 200 stock cars, and 50 odd new engines.

Mr. SEVERANCE: How many?

Mr. CLARK: About 50, I think, 50 odd.

Mr. SEVERANCE: What arrangement, if any, did you have with the Short Line or the Union Pacific, or the Southern Pacific, as to equipment?

Mr. CLARK: None to my knowledge.

Mr. SEVERANCE: None whatever?

Mr. CLARK: None whatever, no sir.

Mr. SEVERANCE: Have you ever had any?

1310 Mr. CLARK: No sir.

Mr. SEVERANCE: Had no arrangement whatever with them?

Mr. CLARK: Except that if we got short, we would try to hire something from anybody, and we do try to hire from anybody that we can get it from. We have at different times hired engines from the Short Line.

Mr. SEVERANCE: You have at different times—you say you have done what?

Mr. CLARK: We have hired engines from the Short Line, and they have hired engines from us.

Mr. SEVERANCE: Have you more engines than you need for your business at present?

Mr. CLARK: We have not.

Mr. SEVERANCE: Are not some of your engines loaned to the Short Line at the present time?

Mr. CLARK: Not to my knowledge.

Mr. SEVERANCE: Haven't they six of your engines now in use?

Mr. CLARK: Not to my knowledge.

Mr. SEVERANCE: You don't know anything about it?

Mr. CLARK: No sir.

Mr. SEVERANCE: If that has been done, it has not been done with your approval?

Mr. CLARK: That is done through the general manager?

Mr. SEVERANCE: What arrangement have you made for refrigerator cars?

Mr. CLARK: We made a contract with the Armour Company.

Mr. SEVERANCE: How many cars did that include?

Mr. CLARK: A maximum of 3000, I believe.

Mr. SEVERANCE: 3000 cars?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: When did you make that contract?

Mr. CLARK: Some time prior to the opening of the line. I don't remember the exact date.

Mr. SEVERANCE: How long did it run?

Mr. CLARK: It is still in existence.

1311 Mr. SEVERANCE: Is it subject to be terminated at any time, or does it run for a specific period?

Mr. CLARK: I think it runs for a specific period, which, if I remember correctly, is three years.

Mr. SEVERANCE: Three years?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And that will carry it over to 1908?

Mr. CLARK: Over to 1908, yes sir.

Mr. SEVERANCE: Have you a copy of that contract in your office here? You have it, I suppose?

Mr. CLARK: I can get a copy of it, if it is necessary.

Mr. SEVERANCE: If you will be kind enough to let us have that tomorrow morning, Mr. Clark, if you please.

Mr. CLARK: I will do so, yes sir.

Mr. SEVERANCE: And that contract—have you been familiar with these Armour car line contracts?

Mr. CLARK: I was familiar with that contract at the time it was prepared. I don't think I have seen it since.

Mr. SEVERANCE: Was that contract practically the same as the one the Southern Pacific had, except as to the number of cars?

Mr. CLARK: I can't say about that.

Mr. SEVERANCE: You did not see the Southern Pacific's contract?

Mr. CLARK: No sir, I have never seen those.

Mr. SEVERANCE: Who made the negotiations with the Armour Company for the contract on behalf of your road?

Mr. CLARK: Well, it was taken up by—I don't remember who took it up first; I think my brother had something to do with it, and I had something to do with it—talked here with their local representative, Mr. Graham; and I think Mr. Wells had something to do with it.

Mr. SEVERANCE: Who is Mr. Graham?

Mr. CLARK: Mr. Graham is the representative of the Armour Company in Southern California.

Mr. SEVERANCE: Oh, he is the representative of the car lines out here?

1312 Mr. CLARK: The car lines, yes.

Mr. SEVERANCE: And you had to do with him in reference to this contract?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Did this contract become effective immediately after the——

Mr. CLARK (interrupting): Immediately on the opening of the line.

Mr. SEVERANCE: Immediately upon the opening of the line?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And is still in force and is being carried out?

Mr. CLARK: Still in force and being observed.

Mr. SEVERANCE: Are you using the full amount of equipment provided for by your contract?

Mr. CLARK: I don't think so, but I would not say positively.

Mr. SEVERANCE: In shipments of fruit to the East in the Armour cars, what lines do they ordinarily move over, where your line is the initial line?

Mr. CLARK: From Salt Lake?

Mr. SEVERANCE: Yes.

Mr. CLARK: They go over both the D. & R. G. and Union Pacific.

Mr. SEVERANCE: Which line takes the most?

Mr. CLARK: I can't say at present which. Last year, I believe, the D. & R. G. took the most.

Mr. SEVERANCE: And to what point did the shipments go?

Mr. CLARK: What point East?

Mr. SEVERANCE: To what points did they go last year?

Mr. CLARK: I can't tell you.

Mr. SEVERANCE: You say you think the D. & R. G. took the most.

Mr. CLARK: Yes sir, that we turned over more fruit to them than we did to the Union Pacific.

Mr. SEVERANCE: And you don't know to what points that fruit was destined?

1313 Mr. CLARK: No sir, I do not.

Commissioner LANE: You have an understanding with the

Southern Pacific that it does not take any fruit around by way of Sacramento over the Southern Pacific Company's lines, that is, fruit from Southern California?

Mr. CLARK: No sir.

Commissioner LANE: You have none?

Mr. CLARK: No sir.

Commissioner LANE: You have no understanding whatever?

Mr. CLARK: No sir.

Commissioner LANE: Do they, as a matter of fact, take much fruit from Southern California that way?

Mr. CLARK: I am unable to answer that.

Commissioner LANE: Is there an understanding or an agreement between yourself and the Southern Pacific by which this territory is in any way divided as to the handling of fruit?

Mr. CLARK: No sir, absolutely none.

Commissioner LANE: Absolutely none?

Mr. CLARK: No sir.

Commissioner LANE: How many oranges did you carry last year?

Mr. CLARK: I can't say offhand. Their shipments were rather light along after the orange season commenced, and we were getting a good many shipments, and then we had a bad washout, and we were hung up and out of business for three weeks at one time, and the fruit then, of course, was diverted in other directions.

Commissioner LANE: In competition with whom did you get those oranges?

Mr. CLARK: With the Southern Pacific and the Santa Fe.

Commissioner LANE: With the Southern Pacific and the Santa Fe?

Mr. CLARK: Yes sir.

1314 Commissioner LANE: You make no difference in the rate between the Southern Pacific, the Santa Fe and your own line, to Missouri River points, do you?

Mr. CLARK: As I understand it, the rate is the same.

Commissioner LANE: Why do you not put in a lower rate from here to Salt Lake than the rate is from here by way of Sacramento and the Southern Pacific?

Mr. CLARK: On citrus fruits?

Commissioner LANE: Yes.

Mr. CLARK: Well, we believe that the rates on citrus fruits at the time they expect to be moved are low enough—that a very large percentage of the cars that citrus fruits are shipped in return empty, in our case a very large percentage. I don't know what the other companies have found in that direction, but that is the case with us. We feel that the rate is low enough. The service is, as I understand, what the shippers want.

Commissioner LANE: Don't you think you can give a better service because of the shortness of the distance?

Mr. CLARK: Yes sir. Ordinarily we can, if conditions are good and normal.

Commissioner LANE: Are you not enabled to give a lower rate because of the shortness of the distance?

Mr. CLARK: Well, I don't—put it on a question of hauling per mile, I suppose we could, but the rates are not based upon that, as I understand it, Mr. Lane.

Commissioner LANE: Is there not any other factor, aside from the mileage, that prevents you from making that lower rate?

Mr. CLARK: Not to my knowledge.

Commissioner LANE: If you get a company in which 50 per cent. of it is owned by the Union Pacific, and that line in turn owns the line running out to Sacramento and on to Los Angeles, is it possible for you to make a lower rate by way of Salt Lake City?

Mr. CLARK: I can answer that by saying that we have; when the line was opened, we reduced the rates between Los Angeles and Utah common points, and *vice versa*, quite materially.

1315 Commissioner LANE: But nothing on through business?

Mr. CLARK: No reduction on through business, no.

Mr. SEVERANCE: Then you did not reduce the rates on the great commodity of citrus fruits?

Mr. CLARK: No, sir, we did not.

Mr. SEVERANCE: It is not possible for you to reduce a rate, is it, without the consent of the people owning the other half of your stock:

Mr. KELLY: I object to that question.

Mr. SEVERANCE: Is it possible, Mr. Clark?

Mr. KELLY: I object to that question.

Commissioner LANE: That is essentially the question which I myself asked a minute ago.

Mr. KELLY: It is the manner of the statement that I object to.

Mr. SEVERANCE: The manner of the question?

Mr. KELLY: The manner of the statement.

Mr. SEVERANCE: What is it? I will correct it, if you will tell me how you want it put. Or, you put it for me.

Mr. KELLY: Is it not true, Mr. Clark, that you can and do reduce the rates upon your line, in so far as you can control them, without the consent of any of your competitors?

Mr. CLARK: We have done that right along, from time to time.

Mr. KELLY: In respect to all business east of——

Mr. CLARK: It would apply to Colorado points.

Mr. KELLY: Can you or do you raise rates, directing your attention to Colorado points?

Mr. CLARK: Yes sir, we have done that.

Mr. KELLY: I am asking you for your practice.

Mr. CLARK: Yes sir.

Mr. KELLY: Now, Mr. Clark, one question—with your permission, Mr. Severance?

Mr. SEVERANCE: Oh, go ahead, yes, Judge; that is all right.

Mr. KELLY: It has been said that the distance to Salt Lake
1316 is less via your line than via the Sacramento line. To what points is the great mass of the citrus fruits consigned, Missouri River and east, or Utah common points?

Mr. CLARK: Missouri River and east.

Mr. KELLY: What other line is there that takes citrus fruits to

that market, Colorado common points, Missouri River common points, and east of that?

Mr. CLARK: Other than the Southern Pacific?

Mr. KELLY: Yes, other than the Southern Pacific.

Mr. CLARK: The Santa Fe.

Mr. KELLY: Now, taking the Union Pacific and the Santa Fe, or the Union Pacific and your line from here to Missouri River and to Chicago and points east, what is the difference in distance as compared with the Santa Fe?

Mr. CLARK: I think really about 40 miles; along there.

Mr. KELLY: Taking your line, the D. & R. G. to Missouri River points and to Colorado common points, and to Missouri River points, and to Chicago and the East, which is the shorter line as compared with the Santa Fe?

Mr. CLARK: Why, the Santa Fe is the shortest.

Mr. KELLY: And your line via the line just suggested, by the D. & R. G., is something like 150 miles longer than the Santa Fe?

Mr. CLARK: Longer, yes.

Mr. KELLY: Than the Santa Fe?

Mr. CLARK: That the Santa Fe, yes sir.

Mr. KELLY: You have lines for the carriage of citrus fruits through Salt Lake, via the D. & R. G. and the Union Pacific?

Mr. CLARK: We have.

Mr. KELLY: That is all.

Mr. SEVERANCE: Is that all, Judge?

Mr. KELLY: Yes, that is all, I say.

Mr. SEVERANCE: Now, to revert to my question that I was asking you at the time Judge Kelly commenced to examine you. If you have on your Board Mr. Bancroft, and he is the general man-
1317 ager of the Short Line and also of a certain portion of the Southern Pacific and the Union Pacific, and yourself, and you two gentlemen constitute the special committee to whom the general manager reports, will you explain how it is possible, without the consent of your coadjutor, Mr. Bancroft, for your subordinates, who report to you, to reduce rates?

Mr. CLARK: That is very possible.

Mr. SEVERANCE: That is quite possible?

Mr. CLARK: Neither Mr. Bancroft nor myself knows very much about what is done in rates, unless it is something very special.

Mr. SEVERANCE: Oh, I see.

Mr. CLARK: The traffic department work this out and report to the general manager.

Mr. SEVERANCE: So that what you mean, then, is that this can be done without your knowledge?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And without the knowledge of Mr. Bancroft?

Mr. CLARK: Yes sir.

Commissioner LANE: Who would know about it?

Mr. CLARK: The traffic department and general manager.

Commissioner LANE: That is, your traffic department is headed by Mr. Wells.

Mr. CLARK: By Mr. Wann.

Commissioner LANE: I should say Mr. Wann.

Mr. CLARK: Yes sir.

Commissioner LANE: And Mr. Wells is your general manager?

Mr. CLARK: Yes sir.

Commissioner LANE: Would your executive committee know anything about it?

Mr. CLARK: No sir.

Commissioner LANE: Then this matter of the making of rates would be turned over to the employees there?

Mr. CLARK: Worked out by the traffic department, in connection with the general manager.

1318 Mr. SEVERANCE: Then, I understand that, so far as the matter of producing revenue for the maintenance of your line is concerned, or the matter of the transportation of commodities, neither the executive committee nor the special committee have anything to do with it?

Mr. CLARK: Know very much about it, no.

Mr. SEVERANCE: So that if Mr. Wells sees fit to cut the rate to any extent, substantially, he can do it and you don't know anything about it?

Mr. CLARK: He could do it, yes.

Mr. SEVERANCE: What is the advantage of having Mr. Wells report to you, Mr. Clark, if you don't know anything about what he is doing?

Mr. KELLY: Now, Mr. Severance——

Mr. SEVERANCE (continuing): About rates, I will say.

Mr. DUNNE: That is a very proper amendment.

Mr. CLARK: If Mr. Wells reported everything that he had to do or did do, to the special committee, it would keep him very busy. If he wants to spend any more, or make any improvements, he asks permission from the special committee.

Mr. SEVERANCE: Then, as I understand this organization of the Salt Lake Road, it is this: That when it comes to the spending of any money, Mr. Wells is to report to you?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: But when it comes to putting into effect rates from which you get your revenue, he does as he pleases?

Mr. CLARK: Practically so. If he doesn't get results——

Mr. SEVERANCE (interrupting): So that none of his superiors have anything to say about how much the road shall earn, but only about how much shall be spent?

Mr. CLARK: Well, we know in time whether we are getting results, or not.

Mr. SEVERANCE: And that is all?

1319 Mr. CLARK: If not, we think there is something wrong.

Commissioner LANE: Do you know whether Mr. Stubbs really makes the rates through Mr. Wells or not?

Mr. CLARK: He has nothing to do with it.

Commissioner LANE: You don't know, do you?

Mr. CLARK: I do.

Commissioner LANE: How do you know that?

Mr. CLARK: He has nothing whatever to do with the rates of the Salt Lake road.

Commissioner LANE: But how do you know that?

Mr. DUNNE: Speak a little louder, Mr. Clark.

Mr. CLARK: Ask the question again, please?

Commissioner LANE: How do you know, Mr. Clark, that Mr. Stubbs does not suggest to Mr. Wells what the rates shall be? Those matters are not reported to you, you know nothing about the traffic arrangements, or how the rates are made, or when they are made? So how do you know that Mr. Stubbs, the general traffic director of the Southern Pacific system, does not suggest to Mr. Wells just what rates shall be made, and make them to suit himself?

Mr. CLARK: Well, I think if that is the case, I should know it.

Commissioner LANE: How would you find out? Would Mr. Stubbs tell you?

Mr. CLARK: Mr. Stubbs has nothing whatever to do with our organization.

Commissioner LANE: He has something to do with the Union Pacific or Southern Pacific organization?

Mr. CLARK: I understand so, yes, but Mr. Wells would take no instructions whatever from Mr. Stubbs.

Commissioner LANE: How long since you have ceased connections with Mr. Stubbs? You entered into these negotiations preliminary to the contract with Mr. Stubbs.

Mr. CLARK: But he was representing one interest and we were representing another.

1320 Commissioner LANE: And those interests each have fifty per cent. in your railroad today?

Mr. CLARK: Yes sir.

Commissioner LANE: Why should you spurn interference on the part of Mr. Stubbs now—or, rather, why should you spurn as interference any such action on the part of Mr. Stubbs now?

Mr. CLARK: It was agreed that we would have an organization of our own, that was to carry on this corporation.

Commissioner LANE: You do not know anything, as a matter of fact, as to how the rates are made on that road, do you?

Mr. CLARK: Not in detail, no; except what comes to my knowledge from time to time, when I have occasion to look them up. Mr. Gillett, while he was there, if he wanted to make a rate on apples from Colorado common points to Los Angeles, would not ask my permission, as a matter of course.

Commissioner LANE: Whose permission would he ask?

Mr. CLARK: The general manager's.

Commissioner LANE: And the general manager reports to you and to Mr. Bancroft?

Mr. CLARK: He reports to us, yes, but I don't know that he would report any rate that we were to put in. He might some of them, if there was anything extraordinary, or a special rate, or something of that kind.

Mr. KELLY: Mr. Clark, did Mr. Wells, in his handling of rate

matters, so far as he does handle them, conceal anything from you? Does he do so?

Mr. CLARK: Oh, no; absolutely nothing; we talk about it.

Mr. KELLY: You consult frequently in respect to the business of the whole company with him?

Mr. CLARK: Every day almost.

Mr. KELLY: And from time to time, are rates subject- pending between you and Mr. Wells?

Mr. CLARK: They have been discussed, yes sir.

1321 Mr. KELLY: You keep in general touch with him in respect to the rate situation generally?

Mr. CLARK: On the rates and the entire business.

Mr. KELLY: As I understand you, Mr. Wells has certain authority by which he can do things in respect to the making of rates higher or lower, or handling a rate subject.

Mr. CLARK: He is in charge of the property.

Mr. KELLY: But you do not think that Mr. Wells may arbitrarily change conditions so that the revenues of the company would be arbitrarily reduced without a conference?

Mr. CLARK: Oh, no; no, I don't want the gentlemen to get that impression.

Mr. KELLY: In other words, while Mr. Wells is in charge of this subject, he is in charge of the details of it—that is what you refer to is it not? The general principles and general propositions he consults with you about, and of course he would be governed by the directions of the special committee.

Mr. CLARK: Yes sir. I see Mr. Wells every day, and sometimes two or three times a day, to discuss matters with him.

Mr. SEVERANCE: Judge Kelly has suggested to you the functions of Mr. Wells and his powers. Let me ask you if Mr. Wells has any power to override the traffic agreement between the Union Pacific and the Salt Lake Company, as to the rates which your contract says shall be made by Mr. Stubbs or under his direction?

Mr. KELLY: I beg pardon. That assumes something that I think is not in evidence.

Mr. SEVERANCE: Yes, it is in evidence.

Mr. DUNNE: I submit, your Honor, that that is a totally unfair question and a captious question.

Mr. SEVERANCE: Just change it, Mr. Dunne.

Commissioner LANE: You can divide it into two questions, Mr. Severance.

Mr. SEVERANCE: Mr. Dunne, see if this is satisfactory.

1322 Mr. DUNNE: You satisfy the Commissioner, Mr. Severance. He has the last word.

Mr. SEVERANCE: How is that?

Mr. DUNNE: Satisfy the Commissioner. He has the last word.

Commissioner LANE: Proceed and ask your question.

Mr. SEVERANCE: Mr. Clark, you stated in answer to Judge Kelly quite fully, I believe, by "yes" or "no," as to the functions of Mr. Wells as far as rate making is concerned.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Does his authority include the right to make any rights in contravention of those traffic contracts to which I have called your attention?

Mr. CLARK: It is not the intention of our company to violate any agreement that we have ever made.

Mr. SEVERANCE: No. Then, assuming for the sake of the question, that Mr. Stubbs is in charge of the traffic of the Union Pacific, and that certain rates are to be made as stated in the contracts by the Union Pacific. Mr. Wells would have no authority to change those rates upon your lines, would he?

Mr. CLARK: Not without the consent of the parties at interest in the contract.

Mr. SEVERANCE: Not without the consent of the Union Pacific Traffic people—would he?

Mr. CLARK: That is, rates that affect the other lines?

Mr. SEVERANCE: Yes, these through rates.

Mr. CLARK: Through rates?

Mr. SEVERANCE: Yes.

Mr. CLARK: Yes sir, they would have to be a party to it.

Commissioner LANE: That is true as to local rates also, is it not?

Mr. SEVERANCE: I was going to ask that question. That is, as to traffic competitive with the Southern Pacific, local traffic, Mr. Wells' authority would not go to the extent of making a rate that was not assented to by the Southern Pacific, would it?

1323 Mr. KELLY: I object to that. That is construction. Let the contract speak for itself.

Mr. SEVERANCE: Judge Kelly has had the witness state, or rather has stated and had Mr. Clark assent, to the various definitions of Mr. Wells' authority.

Mr. KELLY: Oh, no; there is nothing from which that can be deduced.

Commissioner LANE: As I understand it, Mr. Severance is trying to get the construction that Mr. Clark has placed upon this contract, and the operating construction of the contract, and he wants to know now whether Mr. Wells gives any construction to this contract which conflicts with the theory and the explanation of the contract as given by Mr. Clark.

Mr. KELLY: I am perfectly willing that any specific fact may be inquired into. But neither Mr. Clark nor any other person has the right to change the terms of that contract by construction. Let them ask what has been done. Those things which have been done by the parties constitute a construction of the contract. But it is a pretty difficult proposition to put a witness on the stand and say "Construe this agreement for me." That is a difficult proposition.

Commissioner LANE: Is it a difficult proposition for the witness to say whether Mr. Wells is authorized to put in any rates which, under the contract, or under this theory of the contract which Mr. Severance advanced, Mr. Stubbs might have the power to put in?

Mr. KELLY: Yes, that is wrong, and if you will permit me, it is irrelevant and immaterial, and I can show why. If the witness is asked if Mr. Wells, under his authority, may put in a rate in

violation of this contract, he may say "yes" or "no," as the fact may be. But when it comes to stating a construction or theory of that contract which he advances, different from the contract itself, and then ask the witness whether Mr. Wells may or may not put that in, is an entirely different thing. A question as to what the contract is, how the contract can be construed, can be
1324 answered by what the parties actually do in respect to it, or by what one of the parties does under it. But it is not fair to the witness to state to him a hypothetical case and then ask him as to whether or not this or that may be done. That is probing far beyond the conduct of business or the right of the witness himself to answer for. He has no authority to speak for his principals to that extent.

Mr. SEVERANCE: You are getting far afield, Judge. You mistook my question.

Mr. KELLY: If I understood you correct, this all merely goes to the proposition that I don't want this witness to pass upon a hypothetical matter of that kind.

Mr. SEVERANCE: This is not a hypothetical matter or question.

Commissioner LANE: I understand he is asking directly as to the question upon which he answered this morning and said that certain local rates under their agreement were to be put in by the Union Pacific. Is that right, Mr. Severance?

Mr. SEVERANCE: That is right, your Honor.

Mr. KELLY: There is no testimony in the record, and I certainly did not understand the witness to say, that the Union Pacific had any right whatever to name any local rate on his road in Utah or anywhere else.

Mr. SEVERANCE: The Southern Pacific?

Commissioner LANE: The Southern Pacific, yes.

Mr. KELLY: The Southern Pacific—this contract calls for the Union Pacific to make certain rates on business to and from Utah points, and in that respect there is no difference in this contract from the ordinary and general practice of every railroad in the United States. The initial line, the line having the original haul, or rather the line having the long haul makes the rate on——

Mr. SEVERANCE (interrupting): Judge, right in that connection, excuse me if I interrupt you. It is the rule that the initial line has the right to make the rate and that is the universal rule—that
1325 the initial line has the right to make it. Let me call your attention to this language.

Mr. KELLY: I know the language of the contract.

Mr. SEVERANCE: Let us see if you do. I don't believe you do, or you would not say that. Because this gives the Union Pacific the right to make the rates both ways, whether it is the initial line, or whether the San Pedro line is the initial line. Do you know that it says that?

Mr. KELLY: I know what it reads. When you get a controversy between the Southern Pacific and the Union Pacific in respect to what that means, and to the making of those rates, then I will answer.

Commissioner LANE: That contest is not very likely, is it, between the Southern Pacific and the Union Pacific?

Mr. KELLY: Well, I don't know anything about that. We have had no sharper conflicts than those between the Union Pacific and the Southern Pacific right now.

Commissioner LANE: I would like to get an interpretation of it without waiting for any such a controversy.

Mr. KELLY: Those contests and controversies are constantly occurring.

Mr. SEVERANCE: Let me read this again, because I have no doubt that my friend Judge Kelly, who is exceedingly ingenious, will have some explanation to make. He accounts for this clause in the contract by the suggestion that the initial line has the right to make rates. It reads: "It is covenanted and agreed that said Short Line "Company and its connections, the said Union Company, and each "of them, shall have the right to name and make their through "rates between points, that is, in both directions, on or reached "via their respective lines and points on the line of said San Pedro "Company's road in Utah for business which said Short Line Com-"pany or said Union Company, might give to or receive from said
"San Pedro Company in competition with any and all other
1326 "connections of said San Pedro Company."

So it is not simply rates as to traffic where the Union Pacific is the initial line, but it is rates both ways, whether the traffic originates on the San Pedro line or on the Union Pacific.

Has Mr. Wells been given authority to make the rates either going to or coming from Utah points on your line, and thence over the Union Pacific or Short Line, or has he assumed to do it in any case?

Mr. CLARK: I can't say that he has or has not.

Mr. SEVERANCE: Has Mr. Wells, in any case, assumed to make any rates different than the rates in force on the Southern Pacific on local business?

Mr. CLARK: In Southern California?

Mr. SEVERANCE: Local—yes, put it wherever you please.

Mr. CLARK: Not to my knowledge.

Mr. SEVERANCE: Not to your knowledge?

Mr. CLARK: No sir. However, *they* may have been changes, I don't know.

Mr. SEVERANCE: You say that last year your shipments were light?

Mr. CLARK: Very light.

Mr. SEVERANCE: Very light?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: This year your orange shipments have been heavier, have they not?

Mr. CLARK: Somewhat heavier, yes. We haven't moved as I understand, a great many oranges—I don't know how many.

Mr. SEVERANCE: How were your vegetable shipments last year?

Mr. CLARK: They were very light.

Mr. SEVERANCE: They are heavier this year, are they not?

Mr. CLARK: They are better.

Mr. SEVERANCE: They are considerably heavier, are they not?

Mr. CLARK: A good deal heavier.

1327 Mr. SEVERANCE: Did I understand you to say, in answer to the Commissioner, that fruits and vegetables are still moving from Southern California by way of Sacramento?

Mr. CLARK: No, sir, I said I did not know.

Mr. SEVERANCE: Oh, you said you did not know about that?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: In answer to a question put to you by the Commissioner a few minutes ago, after you had replied to me that the rates on citrus fruits to Utah common points have been lessened, you said you regarded the rates as fair, and that the shippers desired good service rather than low rates?

Mr. CLARK: I did.

Mr. SEVERANCE: With reference to the route by Sacramento traffic moving over the line by way of Sacramento goes over a line 500 miles longer than yours to Salt Lake, does it not? That is true, is it not?

Mr. CLARK: Something over 400 miles—just about that—between 400 and 500.

Mr. SEVERANCE: How do the grades between here and Ogden by the Sacramento route compare with the grades over your road?

Mr. CLARK: I will say they are heavier.

Mr. SEVERANCE: Very much heavier, are they not?

Mr. CLARK: Considerably heavier, yes.

Mr. SEVERANCE: That is, via Sacramento is considerably heavier in grades?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Is it or is it not more expensive to transport traffic over a road with heavy grades?

Mr. CLARK: It certainly is.

Mr. SEVERANCE: So that the cost of transportation over your line from here to Salt Lake is, both by reason of the shorter line and the better grades, much less expensive, is it not, than over the Sacramento route?

Mr. CLARK: Yes sir, I should say so.

1328 Mr. SEVERANCE: How are weather conditions over your road as compared with the Sacramento route as a rule?

Mr. CLARK: Oh, at this time of year, I should think they are a good deal better than over the Sacramento route.

Mr. SEVERANCE: Now, if this traffic that you are moving, that you are moving this year to a large extent——

Mr. KELLY (interrupting): If your Honor please, and I ask for information, under what possible theory of examination is it necessary or desirable to go into such details as the comparison, for example, of expense of service between the Southern Pacific and the San Pedro, or the Short Line, or the particular movements of the vegetable traffic?

Mr. SEVERANCE: May I answer the question?

Mr. KELLY: I would just like to know if there is any; I want to know.

Mr. SEVERANCE: I will state it, very gladly. The vegetable shipment upon which I was just about to interrogate him, he said had increased largely this year. I think the witness will state, and if he does not other witnesses will, that that was largely through the solicitation and efforts of our old friend Mr. Monroe, who was here from Omaha. Now, the Union Pacific owns the Oregon Short Line. The Oregon Short Line owns one-half the Salt Lake road. The Oregon Short Line owns slightly less than half of the Southern Pacific, according to the records. The route from here to Chicago by the Oregon Short Line—I mean by the Salt Lake route and the Union Pacific and the Short Line, is about 2300 miles in round figures. The distance by the Southern Pacific El Paso route is 2400 miles. The distance by Sacramento is about 2800 or 2900 miles. The profit to the Union Pacific, which is in control of all of these lines, and especially the Salt Lake and Union Pacific and Oregon Short Line—I mean aside from the general counsel
1329 of the Salt Lake Road—otherwise in control—the profit of the Union Pacific on a shipment to Chicago, say, would be made up of the whole of the 1000 miles haul east of Ogden, and a one half interest in the haul from here to Ogden. If moved by El Paso, the interest of the Union Pacific is less than a 700 mile haul, while a foreign line, the Rock Island gets the rest of the haul on that line. To transport stuff around by Sacramento is much more expensive, and no greater revenue results to the Union Pacific. I want to find out that exact situation, and follow that up by showing the efforts made by the Union Pacific under present conditions for its own ultimate profit, why they handle the business so as to force this vegetable business, if possible, over the Salt Lake Road. In a nutshell, that is what I want to show, and why I want to show it.

Mr. KELLY: In other words, the Union Pacific is soliciting business for the San Pedro as against the Southern Pacific. Is that it?

Mr. SEVERANCE: It is, for the reason I have given.

Mr. KELLY: I don't care what the reason is. The fact is what we want.

Mr. SEVERANCE: Yes.

Mr. KELLY: Suppose it does. What of it? What difference does that make?

Commissioner LANE: It might make some difference to the minority stockholders of the Southern Pacific.

Mr. KELLY: I suppose they are not interested in this matter.

Commissioner LANE: Well, I don't know about that. Proceed with the question.

Mr. SEVERANCE: Do you know Mr. John A. Munroe?

Mr. CLARK: I do.

Mr. SEVERANCE: How long ago did you last see him?

Mr. CLARK: About two months ago.

Mr. SEVERANCE: Whereabouts?

Mr. CLARK: In Los Angeles.

Mr. SEVERANCE: He is the freight traffic director, or rather general traffic manager—freight traffic manager.

Mr. CLARK: He is the freight traffic manager of the Union Pacific.

1330 Mr. SEVERANCE: Freight traffic manager of the Union Pacific?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What was his mission here in Los Angeles?

Mr. CLARK: Well, I don't know in particular. In a general way he was looking up freight here in the interest of his line, to go over the Salt Lake road also.

Mr. SEVERANCE: To go over the Salt Lake road also?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: And he was calling on the large shippers here, was he not, to induce them to make shipments over that route, the route made up of your line and the Union Pacific?

Mr. CLARK: I understand he called on some of them; but I don't know personally.

Mr. SEVERANCE: And as the result of that, a considerable amount of traffic went that way, did it not?

Mr. CLARK: Well, I can't say that it did or did not. Perhaps it did.

Mr. SEVERANCE: There is at least a coincidence between the fact that your traffic has increased and Mr. Munroe's visit here? That is true, is it not?

Mr. CLARK: That is true.

Mr. SEVERANCE: Upon what line of road does that traffic originate? Take the celery traffic, for instance.

Mr. CLARK: The celery traffic originates on the Southern Pacific.

Mr. SEVERANCE: How do you get it?

Mr. CLARK: They deliver it to us in Los Angeles.

Mr. SEVERANCE: The Southern Pacific deliver to you in Los Angeles?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Can you give an estimate, sir, of the amount of that business that is moved over your line, business originating on the Southern Pacific that is moved over your line and the Southern Pacific since Mr. Munroe's visit here?

Mr. CLARK: I cannot.

1331 Mr. SEVERANCE: Mr. Wells could probably give use those figures.

Mr. CLARK: Yes sir; the traffic department or Mr. Wells can give you those figures.

Mr. SEVERANCE: Where does the fruit moving on your road originate?

Mr. CLARK: Some of it originates on our own line, and some on the Southern Pacific, and some on the Santa Fe.

Mr. SEVERANCE: Where does the largest percentage of it originate?

Mr. CLARK: The Southern Pacific and the Santa Fe tracks reach

a very much larger percentage—I will say reach a very large percentage of the citrus fruits in Southern California. The percentage reached by our own line is much smaller.

Mr. SEVERANCE: I understand. How many packing houses are there on your line exclusively?

Mr. CLARK: I should say about twelve.

Mr. SEVERANCE: How many packing houses are there altogether on the three lines in Southern California?

Mr. CLARK: I can't tell you that.

Mr. SEVERANCE: Can you give me an idea of the percentage of the total represented by those twelve on your line?

Mr. CLARK: Oh, I don't suppose we have over—perhaps not five per cent. of it?

Mr. SEVERANCE: Five per cent. of it?

Mr. CLARK: Less than that.

Mr. SEVERANCE: Less than that?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: How do you get the citrus fruit shipments from those other lines?

Mr. CLARK: We solicit for it.

Mr. SEVERANCE: Where is that fruit delivered to you?

Mr. CLARK: At different connections. We have a connection at Colton.

Mr. SEVERANCE: Colton, you say?

1332 Mr. CLARK: Yes, I think most of the fruit is turned over at—I am not sure of all the delivery points, however.

Mr. SEVERANCE: Yes, I understand. From which you get the bulk of your fruit shipments, the Santa Fe or the Southern Pacific? I mean now, Mr. Clark, outside of those that originate on your own tracks?

Mr. CLARK: I can't answer that.

Mr. SEVERANCE: I would have to get that from the traffic department.

Mr. CLARK: Yes sir.

Mr. SEVERANCE: What percentage of the fruit cars that go out from Los Angeles and vicinity are hauled back here empty. Could you testify as to that, or shall I get that from the traffic department?

Mr. CLARK: I would rather you would get that from the traffic department.

Mr. SEVERANCE: You said that last year you thought the larger part of your fruit shipments went east over the Rio Grande. How is that this year?

Mr. CLARK: I can't say how it is this year.

Mr. SEVERANCE: The traffic people would know about that?

Mr. CLARK: They would know about that.

Mr. SEVERANCE: But last year your fruit shipments were very small, anyway, were they not?

Mr. CLARK: They were very small compared with the total amount of fruit that went out from Southern California.

Mr. SEVERANCE: Do you know the amount in number of cars?

Mr. CLARK: No sir, I do not.

Mr. SEVERANCE: Do you happen to know, Mr. Clark, about the division of the through rate, how you figure out the percentages on your line and the Union Pacific?

Mr. CLARK: Only in a general way. I am not capable of giving you that exactly.

Mr. SEVERANCE: You would prefer that I get that from your traffic department?

1333 Mr. CLARK: I prefer that you get that from the traffic department.

Mr. SEVERANCE: Outside of the Armour cars which you use in fruit shipments, you have testified that you have box cars, coal cars, and flat cars, I believe, of your own?

Mr. CLARK: Flat cars, stock cars—flats, flat cars—box cars, coal cars, stock cars, and flat cars.

Mr. SEVERANCE: Mr. Clark, it has already appeared in the testimony in this case that the Southern Pacific, the Union Pacific and the Oregon Short Line, as well as the Oregon Railway & Navigation Company, have an arrangement with each other, a special arrangement, for the interchange of equipment, that is, cars?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Does that embrace your line?

Mr. CLARK: I think so—the general manager can tell you more about that, but I think we interchange cars with the Short Line at Salt Lake and also at Rio Grande. That is, if a car is loaded from the East, say for Los Angeles, it goes through without transfer.

Mr. SEVERANCE: That is not what I mean. It appears that there is an arrangement existing between the Oregon Railway & Navigation Company, the Oregon Short Line, the Union Pacific, and the Southern Pacific, by which the cars belonging to these respective companies are treated as at home on any of the lines?

Mr. CLARK: That does not apply to us.

Mr. SEVERANCE: That is what I wanted to know. I thought it did not, but I wanted to find out.

Mr. CLARK: No sir, it does not.

Mr. SEVERANCE: That does not apply to your line?

Mr. CLARK: It does not. We have hired—I will show you the reason why that should have been thought of. Last year we exchanged with the Short Line, probably 200 cars. We borrowed 200 of their ballast cars, and loaned them an equal number of other cars, that is, coal cars, and so on, to take their place.

1334 Mr. SEVERANCE: How did you account to each other, and how do you do so? Do you pay a certain per diem, or how do you do it?

Mr. CLARK: I don't know whether it was on a per diem or an exchange.

Mr. SEVERANCE: Would Mr. Wells know about that?

Mr. CLARK: Yes sir, I think he would.

Mr. KELLY: It was during the time of your re-construction work when you had to have ballast cars, and you loaned them as many as you took ballast cars, to take the place of those ballast cars?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: I want to find out whether this clearing house arrangement belonged to your company as well?

Mr. CLARK: It does not belong to our line.

Mr. SEVERANCE: I understood it did not, but I wanted to be sure about it. Have you any steamship connections at San Pedro, Mr. Clark?

Mr. CLARK: We have not.

Mr. SEVERANCE: There is no line of steamers here that connects——

Mr. CLARK (interrupting): Except the coastwise steamers, I should say.

Mr SEVERANCE: Except the coast steamers. There is no line of steamers plying between San Pedro and the Orient?

Mr. CLARK: No regular line of steamers. We had an Oriental ship in there several months ago, but that is, I think, the only one that has been here—the only one to my knowledge, or as far as I have had anything to do with it.

Mr. SEVERANCE: That would be a tramp ship?

Mr. CLARK: That would be a tramp ship, yes sir.

Mr. SEVERANCE: You have no line established as a connection with yours, or otherwise?

Mr. CLARK: We have not.

Mr. SEVERANCE: Does your line participate in any trans-Pacific traffic at all?

Mr. CLARK: Not to my knowledge.

1335 Mr. SEVERANCE: That all moves by San Francisco?

Mr. CLARK: That all moves by San Francisco.

Mr. SEVERANCE: When you first started trains over your road, how were your fruit trains run as to speed compared with what they are now?

Mr. CLARK: They were not very good at that time. Our road was probably open for business before it was a proper time, and our water stations were not all completed and we had a lot of work trains on the line riprapping, ballasting, taking out light rails and putting in heavy, and had that condition existing for many months after we opened the line for through business.

Mr. SEVERANCE: That is it is your recollection, Mr. Clark, that you made slower time in through shipments at that time than you do now?

Mr. CLARK: I think so. That is my impression.

Mr. SEVERANCE: Are you familiar with the traffic?

Mr. CLARK: I was at that time when we were opening the road to through traffic—in a general way, yes.

Mr. SEVERANCE: Is it not the fact, Mr. Clark (let me refresh your recollection here), that for a short time you ran trains through to Chicago in connection with the Union Pacific or the Rio Grande, one or the other in five and a half or six days, fruit shipments?

Mr. CLARK: That was not on the opening of the line.

Mr. SEVERANCE: How long after that was it?

Mr. CLARK: The line opened in May, and that was, if I remember correctly, the following January, a year ago this last January.

Mr. SEVERANCE: How long did you keep that up?
Mr. CLARK: I don't know; not very many trips, I think.
Mr. SEVERANCE: Why did you abandon it?
Mr. CLARK: We were not in condition to make that kind of time.
Mr. SEVERANCE: You made it, did you not?
Mr. CLARK: Oh, we made it, yes, but it was expensive and dangerous.
Mr. SEVERANCE: How is that?
Mr. CLARK: It was expensive and dangerous. We had
1336 a good deal of rebuilding to do up in Utah at that time and we had a lot of light rails that we had taken out since, sixty-pound rails, and a little 52-pound rails, I think, which has been taken out since.
Mr. SEVERANCE: Have you finished that rebuilding?
Mr. CLARK: Not entirely.
Mr. SEVERANCE: Practically?
Mr. CLARK: No, I can't say practically.
Mr. SEVERANCE: Have you made any effort to re-establish that time in fruit shipments?
Mr. CLARK: No sir—that is, not to my knowledge.
Mr. SEVERANCE: Who directed the discontinuance of that fast service?
Mr. CLARK: The general manager, I think.
Mr. SEVERANCE: Was that one of the matters in which he consulted the special committee, or did he do that on his own motion?
Mr. CLARK: I think he did that on his own account.
Mr. SEVERANCE: Do you recollect whether that was done pursuant to any suggestions made by any one else?
Mr. CLARK: No sir, I do not.
Mr. SEVERANCE: You don't know about that?
Mr. CLARK: I don't know about that.
Mr. SEVERANCE: Mr. Wells would know?
Mr. CLARK: He will know, yes.
Mr. SEVERANCE: What is your time now through to Chicago on fruit shipments? Do you know?
Mr. CLARK: No sir, I can't tell you.
Mr. SEVERANCE: What is the present capital stock of your road?
Mr. CLARK: $25,000,000.
Mr. SEVERANCE: That stock is evenly divided, is it not, between the Oregon Short Line Railroad Company on the one hand, and yourself and associates, that is, the old Terminal Company on the other?
Mr. CLARK: Well, I don't know definitely about the Short Line; the stock, I think, was divided equally between W. A. Clark and E. H. Harriman, and deposited with the Farmers Loan & Trust Company.
1337 Mr. SEVERANCE: Yes, they deposited it, but it has already appeared in the testimony that Mr. Harriman, so far as he was concerned, held half of that stuff for the Oregon Short Line. Did you not know that?
Mr. CLARK: No sir, not at that time.

Mr. SEVERANCE: But you knew it now, do you not?

Mr. CLARK: No sir, except as I have seen it in the report of the Short Line—that they put it in among their assets.

Mr. SEVERANCE: And that stock which appears there as deposited by William A. Clark is stock owned by William A. Clark, yourself, and all the other gentlemen that you have referred to as "our people"—I think that is the term.

Mr. CLARK: Yes sir, that one-half belongs to my brother and his associates, which would include some of our St. Louis friends, myself, and some others.

Mr. SEVERANCE: And the other half to the Harriman people?

Mr. CLARK: To the Harriman people, yes.

Mr. SEVERANCE: I think I am through with Mr. Clark, Mr. Commissioner, unless I think of something else in the morning.

Commissioner LANE: Do you gentlemen desire to examine Mr. Clark?

Mr. DUNNE: Does your Honor want to adjourn at this time?

Commissioner LANE: I will continue until half past four, or we will adjourn at this time until to-morrow morning, if you desire it.

Mr. KELLY: I would like to reserve the right to ask Mr. Clark a few questions, if I desire to, to-morrow, and I would rather not go on this evening.

Commissioner LANE: Very well. Then we will adjourn at this time until ten o'clock to-morrow morning.

At four P. M. the Commission adjourned until 10 A. M., Friday morning, February 8th, 1907, Los Angeles, Cal.

1338 LOS ANGELES, CALIFORNIA,
FRIDAY, *February 8th*, 1907—10 a. m.

Present: Commissioner Franklin K. Lane.

Appearances.

C. A. Severance, Esq., For the Interstate Commerce Commission.

Peter F. Dunne, Esq., For the Union Pacific Railroad Company and allied lines.

W. R. Kelly, Esq., For the San Pedro, Los Angeles & Salt Lake Railroad Company.

T. J. Norton, Esq., For the Atchison, Topeka & Santa Fe Railroad Company.

Commissioner LANE: I am ready to proceed, gentlemen, with the inquiry. Have you any further questions that you desire to ask Mr. Clark, Mr. Severance?

Mr. SEVERANCE: I think I will not have any further questions until after the cross-examination, your Honor.

Mr. KELLY: We have no questions, your Honor.

Mr. SEVERANCE: No farther questions, then.

Commissioner LANE: Judge Kelly, do I understand that you do not care to interrogate Mr. Clark?

Mr. KELLY: We do not, your Honor.

Mr. SEVERANCE: That is all, Mr. Clark, then.

Commissioner LANE: You may be excused, Mr. Clark.

Mr. SEVERANCE: Will you be about here this morning, Mr. Clark?

Mr. CLARK: No sir, I will not be here. By the way, you asked me for a copy of that Armour contract. I have that.

Mr. SEVERANCE: Oh, yes. Have you that there?

Mr. CLARK: Yes, here it is. (The witness hands the document to counsel.)

Commissioner LANE: Do you desire to recall the witness and examine him upon that?

1339 Mr. SEVERANCE: Just one moment, your Honor, I want to examine this contract. (After examining the contract) I think you had better take the stand for a moment, Mr. Clark.

J. Ross CLARK recalled, and examination resumed:

Mr. SEVERANCE: Mr. Clark, I will ask you if this paper, which I will ask to have marked as "Clark's Exhibit No. 1," is a copy of the contract existing between the Salt Lake Railroad and the Armour Car Line for refrigerator cars?

Mr. CLARK: It is.

Mr. SEVERANCE: Just mark that "Clark's Exhibit No. 1."

(The same is attached and marked "Exhibit No. 1" to Mr. Clark's testimony.)

Mr. SEVERANCE: Has that contract been carried out since that date, Mr. Clark?

Mr. CLARK: So far as I know.

Mr. SEVERANCE: Has the supply of cars provided there, to-wit, a maximum of 3,000, been sufficient to handle your business at all times?

Mr. CLARK: It has.

Mr. SEVERANCE: You have not suffered from any shortage of cars, refrigerator cars?

Mr. CLARK: I can't say that. We have had a good deal of trouble in getting our cars back, and I think there has been a shortage of cars at different times.

Mr. SEVERANCE: There has been a shortage. But where has that difficulty arisen?—east of your line?

Mr. CLARK: I think to some extent east of our own line.

Mr. SEVERANCE: You have not been troubled much with a shortage this year, have you?

Mr. CLARK: I understand so.

Mr. SEVERANCE: You understand that you have?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: Mr. Wells will know better about that I suppose?

Mr. CLARK: Mr. Wells can give you the details about that, yes.

1340 Mr. SEVERANCE: There was one question I neglected to ask you yesterday, and which just occurs to me, Mr. Clark. Can you recall from memory, and if you can't will you be kind

enough to have made up a list of the directors of your company at the time these contracts dated in 1893 were approved?

Mr. CLARK: A list of the directors at that time?

Mr. SEVERANCE: Did I say 1893? I mean 1903.

Mr. CLARK: 1903.

Mr. SEVERANCE: Yes, a list of the directors at that time. Can you remember them?

Mr. CLARK: Not exactly. I would prefer to get a list from the Secretary's book.

Mr. SEVERANCE: Will you kindly state some of them, such as you can recall of them, and then you can give us the list afterwards? Perhaps I can aid your memory. Your brother was a director, was he?

Mr. CLARK: My brother, yes sir, and Mr. R. C. Kerens, of Salt Lake; Mr. W. S. McCornick, I think——

Mr. SEVERANCE (int'g): Who did you say last?

Mr. CLARK: Mr. W. S. McCornick.

Mr. SEVERANCE: And where does he live?

Mr. CLARK: At Salt Lake City; and Mr. Gibbon, myself, Senator Reed Smoot, of Utah—that is all I recall at this moment.

Mr. T. E. GIBBON: Mr. Kerens' son was not a director at that time.

Mr. CLARK: No sir, I think not. Thomas Kerens was also a director. How many have you, Mr. Severance?

Mr. SEVERANCE: That makes seven. Is that all?

Mr. CLARK: No, there were twelve. I would like to give you a list from the records. I prefer to do that. I will furnish you that after lunch, if that will be satisfactory.

Mr. SEVERANCE: Yes, that will be satisfactory. That will be all, then.

1341 T. E. GIBBON, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Gibbon, where do you live?

Mr. GIBBON: In Los Angeles.

Mr. SEVERANCE: What is your profession?

Mr. GIBBON: I am an attorney at law.

Mr. SEVERANCE: How long have you lived here in Los Angeles?

Mr. GIBBON: Since 1888.

Mr. SEVERANCE: Have you been connected with the San Pedro, Los Angeles & Salt Lake Railroad Company?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: In what capacities?

Mr. GIBBON: I drew the constating instruments for the organization of that company, conducting the legal work for its organization, became one of its directors, its Third Vice-President and General Counsel at the time of its organization, and up to the 1st of December of last year continued to be connected with it in the capacity of General Counsel.

Mr. SEVERANCE: During what period of time were you Vice-President, Mr. Gibbon?

Mr. GIBBON: I think from the beginning, from the organization

of the company until 1904 or 1905, really I have forgotten which—5, I believe.

Mr. SEVERANCE: Previous to the organization of the company were you connected with what is spoken of here as the Terminal Company?

Mr. GIBBON: Yes sir, I began my connection with the Terminal Company by organizing that company in the sense of preparing corporation papers, seeing to their filing, etc., on the 1st day of January, 1901. At that time I was made General Attorney of the company, and some years afterwards I was made the only Vice-President that the company had, our President living in St. Louis, and I continued in the capacity of General Attorney of the company and Vice-President of the Company until it was merged into the
1342 San Pedro, Los Angeles & Salt Lake Railroad Company.

Mr. KELLY: You said 1901, Mr. Gibbon. You did not mean that?

Mr. GIBBON: Oh, 1891, it was organized; yes, 1891; not 1901.

Mr. SEVERANCE: Now, Mr. Gibbon, you were, during those years, in charge, that is, as the ranking executive officer of the Terminal Company?

Mr. GIBBON: Yes sir—ranking in this city.

Mr. SEVERANCE: I mean in this city; that is what I mean.

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Who was the President of the company?

Mr. GIBBON: Mr. George B. Leighton, Jr., of St. Louis, during the time I was Vice President.

Mr. SEVERANCE: And who were the other parties interested in the company?

Mr. GIBBON: Why, a number of gentlemen, principally citizens of St. Louis. Mr. R. C. Kerns had the largest interest. Then Mr. George E. Leighton, the father of the gentleman named a moment ago, I believe had the second largest interest. Then there was Mr. Charles Clark and Mr. Van Blarcom, Mr. West, Colonel Logan, of Little Rock, Arkansas—Colonel Logan H. Roots, I should say, Mr. Hobart, of St. Louis, and I believe at one time in the inception of the company, Senator Elkins had some interest, which I believe he afterwards disposed of. I could not undertake to name all of them, but I have given you the principal ones.

Mr. SEVERANCE: There was no one connected with that company in those days who was affiliated with what is known as the Harriman system?

Mr. GIBBON: There was no Harriman system at the time that company was organized.

Mr. SEVERANCE: I mean of the companies that now compose the Harriman system?

1343 Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Who?

Mr. GIBBON: When the Terminal Company was organized, I think on the day, or, if it was prior, shortly prior thereto, Mr. George E. Leighton had been one of the government directors of the Union Pacific.

Mr. SEVERANCE: Representing the Government?

Mr. GIBBON: Yes sir, and I presume that company afterwards became a part of what you call the Harriman property.

Mr. SEVERANCE: Any one aside from him?

Mr. GIBBON: No one—no connection whatever.

Mr. SEVERANCE: Go back, so far as you know, there was no one connected with the organization or the construction of the Terminal Line who was interested financially in what are known as the Harriman lines?

Mr. GIBBON: No sir, not so far as I have any knowledge.

Mr. SEVERANCE: Now, Mr. Gibbon, was the harbor at San Pedro constructed at that time?

Mr. GIBBON: No sir, except a portion of the inner, what is called the inner harbor; the Government began work on that some 21 years ago, I think, and some 7 or 8 years at least, I should say, before the Los Angeles Terminal Railway Company was organized.

Mr. SEVERANCE: What was the first line that was built by the Terminal Company?

Mr. GIBBON: The first line that was built by the Terminal Company was the line from Los Angeles to San Pedro; but the Terminal Company acquired upon its organization, by consolidation with another company called the Los Angeles Terminal Railway Company, and a company called the Los Angeles, Pasadena & Glendale Railway Company, and a company called the Los Angeles & Glendale Railway Company, a line of narrow gauge road running from this city up to Glendale, in the entrance of the San Fernando Valley, about 8 miles, and a line about 10 miles long running from Los Angeles to Pasadena of standard gauge; and then they pro-
1344 ceeded to build what is called the San Pedro line, the main line from Los Angeles to San Pedro.

Mr. SEVERANCE: That line from here to San Pedro was operated as an independent line, was it not, until it was absorbed by the Salt Lake Road?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Will you state in a general way the ownership of the harbor frontage at San Pedro as it was at the time of the organization of the Salt Lake Road?

Mr. GIBBON: When the capitalists who organized and who were interested in the Los Angeles Terminal Railway Company, organized that company, or the last company of that name, in January, 1901, they conveyed to that company——

Mr. DUNNE (int'g): 1891, you mean, do you not, Mr. Gibbon?

Mr. GIBBON (cont'g): Or 1891, I should say, they conveyed to that company a portion of some land they had purchased aligning a portion of the then existing inner harbor of San Pedro, and a considerable portion of what was the proposed extension of that harbor. That land that was conveyed to the Los Angeles Terminal Railway Company, however, commanded a comparatively small portion of that frontage, but they also vested the title to the remainder of this land, some 1,300 acres, I think, in a subsidiary company called the Los Angeles Terminal Land Company, which was or-

ganized as the complementary company of the Terminal Railway Company, to handle the land propositions that might grow out of the railroad.

Mr. SEVERANCE: Now, Mr. Gibbon, what proportion of the harbor frontage down there was controlled by these two companies?

Mr. GIBBON: Why, I would find it rather difficult to give you the percentage, probably, of the harbor as it was divided at that time. You will understand that at the time these companies were organized, the inner harbor had been developed by excavation, which was the method of developing it for, well, I should say, on
1345 a guess, which might be some distance from accurate, from a half to three-quarters of a mile from the entrance of the harbor. A large portion of that area, that is, the northern portion of it, was not aligned up in private ownership at all, but by a stone dyke or a breakwater which had been built to make the channel there. Then the private ownership of land begun, of the land at the point of land acquired by this railroad there that I am telling you about.

Mr. SEVERANCE: Yes.

Mr. GIBBON: So that I should say the holdings of the railroad extended then up the northern side for, oh, a few hundred yards—it could not have been, by any possibility, I think, over a quarter of a mile, and the remainder of the land was vested—oh, no, it was not that much, it was very little—I don't believe, come to think about it now, that there was over 200 yards of water frontage which was owned by the Los Angeles Terminal Railway Company, the remainder of it being vested in the Los Angeles Terminal Land Company, and that was in the——

Mr. SEVERANCE: And who owned the balance of the frontage there?

Mr. GIBBON: Why, all the frontage of the north side, the side on which that railroad was——

Mr. SEVERANCE (int'g): I mean of the developed harbor, Mr. Gibbon?

Mr. GIBBON: Well, the Southern Pacific had 3,000 feet on the south side, the San Pedro side, on which is the town of San Pedro, in the form of wharves, to which it had originally obtained title, or at least the right of occupancy, by wharf franchises, and which I believe it afterwards obtained title to in the form of tide land grants, or something of that kind, directly from the State. Then there was another portion of that area, to the north of that, owned by the San Pedro Lumber Company, and I think the Perry Mill & Lumber Company owned a portion of it, the Pacific Coast Steamship Com-
1346 pany had a holding there also, and I believe that that, as near as I can now recall, exhausted the holdings.

Mr. SEVERANCE: Now, Mr. Gibbon, the work of excavating and building that harbor continued, did it not?

Mr. GIBBON: To some extent, yes sir—to the carrying out of what was called the turning basin project, which contemplated the extension of the improved area of the inner harbor northward, or westward, rather, I suppose, it is more west than north, oh, several

hundred yards further than it was when this road was organized—when the Terminal road was organized.

Mr. SEVERANCE: After that time, did the Terminal road, or the Terminal Land Company, or the successor of those companies, the Salt Lake Road, acquire any additional harbor frontage down there?

Mr. GIBBON: No additional harbor frontage that was not already controlled by the Los Angeles Terminal Land Company.

Mr. SEVERANCE: That is what I mean.

Mr. GIBBON: The land that had been vested in the Los Angeles Terminal Land Company, upon the organization of the Los Angeles Terminal Railway Company, and the purchase by it of the properties of the St. Louis people, the Terminal Railway Company and the Terminal Land Company became vested in the San Pedro, Los Angeles & Salt Lake Railroad Company.

Mr. SEVERANCE: And aside from that, it has no holdings there?

Mr. GIBBON: What has no holdings there?

Mr. SEVERANCE: The Salt Lake Road.

Mr. GIBBON: None at all.

Mr. SEVERANCE: Did the Southern Pacific add to its holdings there at all?

Mr. GIBBON: I believe by the acquisition of some land extending easterly from its 3,000-foot wharf frontage, a place called Tim's Point, which I believe it acquired some two or three years ago, extending towards the entrance of the harbor.

Mr. SEVERANCE: Were there docks constructed by either one of the companies there, Mr. Gibbon?

1347 Mr. GIBBON: Do you mean in the sense of wharves?

Mr. SEVERANCE: Yes—docks or wharves?

Mr. GIBBON: Oh yes. Our company obtained a franchise for I think a thousand feet, and afterwards obtained control of some additional; I suppose that it has something between two and three thousand feet there now.

Mr. SEVERANCE: Has the Southern Pacific Company any docks there?

Mr. GIBBON: That company occupies the 3,000 feet that I have already mentioned a few moments ago, which it originally acquired under a wharf franchise from the County of Los Angeles, and whether it has constructed any wharves in front of this Tim's Point acquisition, or not, I am not advised at this time.

Mr. SEVERANCE: But they have wharves in front of their holdings to the extent of 3,000 feet there, I understand you?

Mr. GIBBON: They have wharves on the strip of 3,000 feet, which was originally covered by this wharf franchise that I have mentioned.

Mr. SEVERANCE: What lines of boats reach the harbor of San Pedro, if you know, Mr. Gibbon?

Mr. GIBBON: The only line of regular freight and passenger steamers is the Pacific Coast Steamship Company. There are other lines of lumber steamers and lumber schooners, both steam and sail, which ply there, the names of the owners of which I would not be able to give you. I could furnish them to you, but not at this moment.

Mr. SEVERANCE: They are private lines in a way, in the sense of private lines or boats bringing down lumber from the north?

Mr. GIBBON: Well, some of them are, I presume. Some of them are private lines in the sense of belonging to lumber companies, and others are lines which would be, I suppose, called common carriers, because I think they are in the business of transporting lumber without being the owners of the lumber yards.

Mr. SEVERANCE: You say the only regular line of boats to
1348 San Pedro is the Pacific Coast Steamship Company. They come from Puget Sound points, do they not?

Mr. GIBBON: North and south. They ply from San Diego to San Francisco, and beyond, I believe.

Mr. SEVERANCE: The Pacific Mail Steamship Company does not touch there?

Mr. GIBBON: They do not, so far as I know.

Mr. SEVERANCE: And never have?

Mr. GIBBON: Beyond an occasional boat, I think not, sir. At least my information does not serve me that way.

Mr. SEVERANCE: There is no line of boats crossing the Pacific making its terminus at San Pedro?

Mr. GIBBON: No sir, no regular line. There have been one or two tramp boats, I believe, that have made the trip from San Pedro; but very few.

Mr. SEVERANCE: Has the Salt Lake Road any joint rates with any steamship line?

Mr. GIBBON: That I could not say.

Mr. SEVERANCE: You do not know as to that?

Mr. GIBBON: No sir.

Mr. SEVERANCE: I did not know but what that might have come within your observation. You say it has not?

Mr. GIBBON: The traffic department would have to tell you that; I cannot.

Mr. SEVERANCE: How is that?

Mr. GIBBON: I say the traffic department would have to tell you that; I cannot; I do not know.

Mr. SEVERANCE: Now, coming down to the organization of the Salt Lake Road. If I understand you you incorporated that company?

Mr. GIBBON: In the sense of doing the legal work, yes sir.

Mr. SEVERANCE: And became its Vice-President—one of its Vice-Presidents.

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Down to what time did you continue to be Vice-President?

1349 Mr. GIBBON: I think it was November, 1904—or 5—5, possibly.

Mr. SEVERANCE: Who succeeded you?

Mr. GIBBON: Sir?

Mr. SEVERANCE: Who succeeded you?

Mr. GIBBON: There was no successor elected to that position. I will say that the duties of the Vice-President were vested in the Gen-

eral Manager—of the Third Vice-President were vested in the General Manager, and the position was not filled afterwards. The fact is, the Third Vice-Presidency was a sort of arrangement for the construction of the road and getting it under way, and later on it was rather a fifth wheel of the organization, and it was abolished.

Mr. SEVERANCE: So that you occupied that position during the construction, did you?

Mr. GIBBON: During the construction, yes sir.

Mr. SEVERANCE: Did you also incorporate the Empire Construction Company?

Mr. GIBBON: I drew the articles for that company, yes sir.

Mr. SEVERANCE: Do you recall, sir, whether at any time the Salt Lake Company advertised for bids for the construction of its line?

Mr. GIBBON: You mean for the total construction?

Mr. SEVERANCE: Yes.

Mr. GIBBON: Oh, I don't now recall that they ever did.

Mr. SEVERANCE: Let me refresh your recollection. The Empire Construction Company took the contract, did it not, to build the line?

Mr. GIBBON: No sir. The Empire Construction Company was originally organized as the financing company, and with the possibility of holding the construction contract, the contract for constructing the line. But that was never carried out, that plan.

Mr. SEVERANCE: What company did hold the construction contract?

Mr. GIBBON: So far as I remember, none.

1350 Mr. SEVERANCE: Were there no construction contracts made with anybody?

Mr. GIBBON: I don't recall. I remember distinctly that the functions of the Empire Company were abandoned, and that there was no other company took its place.

Mr. SEVERANCE: Mr. Wells suggests that you did not understand my question. The question is whether there were any contracts let for construction work on the road.

Mr. GIBBON: Oh, there were numerous contracts let, in the sense of constructing different portions of the line, yes.

Mr. SEVERANCE: To whom were they let?

Mr. GIBBON: Oh, I could not give you the names——

Mr. SEVERANCE (int'g): Who were they, just small contractors?

Mr. GIBBON (cont'g): —of all the contractors, but they were let for sections of the line. I think the Utah Construction Company did considerable work for us, and what was the name of that company that Mr. Norton was interested in?

Mr. CLARK: John H. Norton & Company.

Mr. GIBBON: John H. Norton & Company did considerable work; and, in fact, there were several contractors engaged on the line from the first to last, I believe, Mr. Severance.

Mr. SEVERANCE: Mr. Gibbon, did not the Salt Lake Road advertise for bids to build the line from Salt Lake City to Riverside?

Mr. GIBBON: As a whole?

Mr. SEVERANCE: Yes.

Mr. GIBBON: I think not, sir. I have no recollection of it.

Mr. SEVERANCE: Did they not advertise for bids for the construction of that line in sections?

Mr. GIBBON: Why, I am sure I can't tell you what the engineer did. That was in the engineering department, and whether he advertised for bids, or sent out notice to responsible parties, or
1351 how he got the notification out that they desired bids, I can't say.

Mr. SEVERANCE: But, irrespective of the methods, did not the company request tenders in some way, either by advertisement or by personal communication or letter, for the construction of the whole line, either as a whole or in sections?

Mr. GIBBON: All that I can say is that I am under the impression that the engineer did send out invitations to construction companies. But I have no absolute knowledge of that.

Mr. SEVERANCE: Who was the engineer?

Mr. GIBBON: For a portion of the time, the engineer was Mr. Hawgood.

Mr. SEVERANCE: Where is he now?

Mr. GIBBON: He is in the City of Los Angeles. Later Mr. Tilden.

Mr. SEVERANCE: And where is he?

Mr. GIBBON: He is in the City of Los Angeles also. He is our Chief Engineer at the present time.

Mr. SEVERANCE: You spoke of Utah Construction Company. Did they ever have a contract for the construction of the portion of the line in Utah?

Mr. GIBBON: I believe they did some work in Utah. Whether they did—the line was, of course, constructed in Utah when we purchased it.

Mr. SEVERANCE: But as I understand it there was——

Mr. GIBBON (int'g): There was some reconstruction work done there.

Mr. SEVERANCE: I understand that. But previous to the time you made these joint contracts, did the Utah Construction Company have a contract to build lines in Utah?

Mr. GIBBON: I could not say.

Mr. SEVERANCE: You don't know about that?

Mr. GIBBON: The engineering department would have to give you that information. I don't know.

Mr. SEVERANCE: Do you know who the parties were in the Utah Construction Company?

Mr. GIBBON: No, sir, I do not.

1352 Mr. SEVERANCE: Did you have to do with the preparation or the approval of the contracts with that company?

Mr. GIBBON: I did with the approval of the contracts, yes, naturally.

Mr. SEVERANCE: But you do not recall what proportion of the road they covered?

Mr. GIBBON: No sir, I do not. It is a routine matter that I did not charge my mind with.

Mr. SEVERANCE: It is now your recollection, is it, Mr. Gibbon,

that the Empire Company dropped out of the scheme, and had nothing to do with the construction of the road?

Mr. GIBBON: With the final construction of it, yes sir.

Mr. SEVERANCE: Did it build any of the lines?

Mr. GIBBON: Well, there were some purchases of material, and matters of that sort, carried on in the name of the Empire Construction Company at first, and contracts made, but that was only, I believe, for some work done in California; I think that did not extend beyond this State.

Mr SEVERANCE: This contract made between Mr. Clark and Mr. Harriman, Exhibit No. 53, Alexander Millar, recites, among other things, that the Empire Construction Company, of the State of Utah, is an organization for the purpose of providing for the financing, construction, and equipment of the railroad of said San Pedro Company, with a capital stock of $1,000,000 divided into shares of $100 each par value, all of which capital stock has been subscribed for and has been fully paid up and issued. That is correct, is it?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Outside of this contract—I observe that it is said here in this contract that the assets of said Empire Company consist of claims against and contracts with the said San Pedro Company for money advanced, work done, and material furnished on account of the improvement and acquirement of railroad property for said San Pedro Company.

1353 Mr. GIBBON: Yes sir. I will say in that behalf, that the Empire Company I know furnished the railroad with considerable money that was expended in right of way in California, and I believe it also made contracts for the material that was used in the construction (certainly a large portion of it), in the construction work between here and Riverside.

Mr. SEVERANCE: But the company did not take the contract for the construction of any of the line, as you recall it, and sublet it to these contractors who built the line in sections?

Mr. GIBBON: Just what the *modus operandi* was with reference to that, I am unable to say at the present time. I know that the company did do considerable financing in the way of advancing money for the work done, and the right of way and other property acquired in Southern California; but I am quite sure its financing never extended beyond Southern California, and that it was practically retired, as far as being an active factor in the construction of the road is concerned, before we entered upon the work in Nevada or Utah.

Mr. SEVERANCE: Now, Mr. Gibbon, are you able to testify from your recollection as to the extent of work that was done in laying out the line of your company, prior to the time of this contract of July 9, 1902, between Mr. Clark and Mr. Harriman?

Mr. GIBBON: No sir. What I would say about that would be of the most general character. I could say that we had laid out our line in Southern California, and a good deal of it had been built, I think. It had not been completed, I am quite sure. We had done some surveying and acquired some rights of way in Nevada,

and I am quite sure there had been surveying done in Utah. But to what extent that went, you would have to learn from the departments charged with that particular work.

Mr. SEVERANCE: Do you remember that surveyors started out from Salt Lake City to survey this country?

1354 Mr. GIBBON: There had been some surveying done from Salt Lake City westward, I am quite sure, before that contract was ever executed.

Mr. SEVERANCE: It appears from the testimony of Mr. Clark—however, just a moment, I will strike that out. Will you state, Mr. Gibbon, whether at the time you organized this company, and for some time thereafter, it was the intention of the gentlemen interested in the property to build an independent line from Salt Lake to Los Angeles. By "independent," I mean a line that was not affiliated with any of the transcontinental systems, in the sense of being tied up with them in any way?

Mr. GIBBON: I can't answer that, except that I might probably answer it by saying that I am not aware that the parties who undertook to build the line had any definite plan as to affiliating with any line, although there had been, these people had, through myself and others, approached the people in control of what would be their connecting lines, before that time, before the matter was finally floated, with the idea of what connections might be made for the company, and so forth.

Mr. SEVERANCE: Yes.

Mr. GIBBON: That had never extended to any idea of community of ownership, or anything of that kind.

Mr. SEVERANCE: That is what I mean. You had approached the Gould people as well as the other people?

Mr. GIBBON: Not the Gould people. If you will remember, at the time we organized, the Rio Grande Western was an independent ownership, and I had had myself personally some interviews with General Palmer, whom I happened to know, about connections, and so forth.

Mr. SEVERANCE: But it was not contemplated, was it, at that time, that there would be any division of ownership between your people and the Union Pacific, so far as the San Pedro line is concerned?

Mr. GIBBON: Well, there was certainly no definite plans
1355 to that effect, no. But it may have been contemplated by any of the individuals—of course I don't know as to that.

Mr. SEVERANCE: That would be in the minds of the individuals. But there was nothing of that kind talked over?

Mr. GIBBON: No sir.

Mr. SEVERANCE: Or considered in your meetings?

Mr. GIBBON: Nothing at all.

Mr. SEVERANCE: Now, Mr. Gibbon, it appears from the testimony of Mr. Clark yesterday that there were certain difficulties met with when you got up to what was called The Meadow Valley Wash. I assume that, as counsel, you must have had some connection with those matters?

Mr. GIBBON: Yes sir, I did—rather.

Mr. SEVERANCE: Will you state briefly, Mr. Gibbon, just what the trouble was there, and what happened, and all about it?

Mr. GIBBON: A good many years ago, before we undertook this matter, a subsidiary company of the Union Pacific, or representing or certainly backed by Union Pacific interests, had undertaken the extension of the lines connected with that company through Nevada, and I believe with the idea of eventually coming to Southern California. They had gone as far there, I believe, as constructing a track to the Nevada-California State line, in the sense of laying the steel on it, and preparing it to be operated, and had constructed a roadway——

Mr. SEVERANCE (int'g): Just a moment there, Mr. Gibbon. Can you tell me when that track was laid?

Mr. GIBBON: No sir, I cannot, but it was not very long either way from the time that our Los Angeles Terminal Railway Company was organized, because that company was organized at that time with the understanding with the then management of the Southern Pacific that it should become the terminal at San Pedro of a—I mean the Union Pacific—of the Union Pacific line.

1356 Mr. SEVERANCE: That was before my friend Judge Kelly piloted the Union Pacific through the receivership proceedings.

Mr. GIBBON: It was about that time that this line was constructed that I am speaking of now, leading down into Nevada and from the California-Nevada State line for some distance a roadbed had been constructed and a number of tunnels had been made. The Meadow Valley Wash is what I suppose in railroad construction would be called, in railroad parlance, a strategic construction for any line of railroad desiring to build through from Salt Lake City to Southern California, and naturally we wanted to occupy that position, and——

Mr. SEVERANCE (int'g): Permit me to interrupt you again.

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: You stated something about some grading having been done and some tunnels constructed?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Were those constructed back in the old times—1891?

Mr. GIBBON: Along a little before or a little after 1891—yes, 1890 and 1891—in the late '80's or the early '90's.

Mr. SEVERANCE: Had anything been done with that grade prior to the time your Salt Lake road was projected?

Mr. GIBBON: In the sense of occupying it or using it, do you mean?

Mr. SEVERANCE: Yes.

Mr. GIBBON: Not that I am aware of; it was lying there unoccupied, certainly, when we undertook the building of the road.

Mr. SEVERANCE: Yes sir. Now go ahead. Proceed with the history of The Meadow Valley Wash.

Mr. GIBBON: About the time or shortly after we organized our

company, just how long after I am not able to say now without consulting data——

1357 Mr. SEVERANCE (int'g): By "our company" you mean the Salt Lake Company?

Mr. GIBBON: Yes, the Salt Lake Company, usually called the San Pedro Company. (Cont'g)—the Oregon Short Line Company undertook, I believe, to occupy that grade. Whether that company—I believe at that time the Oregon Short Line people, or the people who were connected with that road, had not organized the company with which they very shortly afterwards organized, called the Utah, Nevada & California Railroad Company, of Nevada, but about that time, possibly shortly afterwards, that company was organized and later I think everything was conducted in the name of that company. It became a race as to who should be possessed of that grade and those tunnels, and also the right of way which had previously been surveyed and made out and located by this subsidiary company of the Union Pacific interests, some 10 or 11 years ago?

Mr. KELLY: The Oregon Short Line & San Francisco Railway Company was the name of that company was it not?

Mr. GIBBON: Yes sir—was the name of the old company.

Mr. SEVERANCE: Mr. Gibbon, this activity on the part of the Oregon Short Line in the organization of a new company did not take place until after your company had been organized and it was matter of public notoriety that you proposed to build through to Salt Lake?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: What next occurred, Mr. Gibbon. You say it became a race between the two companies as to which should get possession of that right of way. What form did that race take?

Mr. GIBBON: Well, that right of way had been sold for taxes by the County. We secured the tax title, to give us some right over it. Then the Oregon Short Line, or their subsidiary companies, secured what rights remained, if any, in the company that originally

1358 located a right of way, not merely the constructed roadway but the survey through The Meadow Valley Wash. We secured some right of way from private parties. In fact, either side secured anything in the nature of legal rights that would give them any claim upon that strategic position. We were in there with our construction forces, and they went in there with theirs. We came very near to having some bloodshed, and there were some clashes that might have been very serious, but they were not, fortunately, so far as the loss of life is concerned. Finally each side got into court, and each side got the other tied up on injunctions, so that neither one should construct a line or obtain any advantage in the way of constructing a line there. Judge Kelly got us pretty well tied up, representing the other interests, and we got them in pretty nearly the same fix, as far as going on with the work was concerned, and it seemed that we each one had reached a point where neither could do any work there or accomplish anything.

Commissioner LANE: At that time, Mr. Gibbon, how many miles of road did you have built down from Salt Lake City?

Mr. GIBBON: None.

Commissioner LANE: And from Los Angeles towards Salt Lake City, how much did you have built?

Mr. GIBBON: We were building the line towards Riverside at that time, sir—the San Pedro Company.

Commissioner LANE: How many miles did the Oregon Short Line have from Salt Lake City down towards the Meadow Valley Wash?

Mr. GIBBON: Oh, I suppose, main line and branches, nearly 500 miles.

Mr. SEVERANCE: What they had had for a number of years?

Mr. GIBBON: Yes.

Mr. SEVERANCE: Ever since the reorganization?

Mr GIBBON: Yes sir.

Mr. DUNNE: Mr. Severance, will you allow me to interrupt you and ask him a question there?

1359 Mr. SEVERANCE: Certainly.

Mr. DUNNE: Had you constructed at this time any line at all outside of the State of California?

Mr. GIBBON: I think not; none that I know of. Finally, when we had gotten—if I may go on with the story?

Mr. DUNNE: Yes, do so.

Mr. GIBBON: When we had gotten each other pretty well tied up, Judge Kelly and I were present at the argument of one of our numerous law suits which we had reciprocally brought, each against the other, when there came up some preliminary matter in Salt Lake City, during the argument one day and while our co-counsel were occupying the attention of the Court, the Judge and I were chatting, and I suggested to him that if we succeeded in securing a prior right through this Meadow Valley Wash, I was perfectly willing to admit that, under the United States law with reference to the occupancy of canyons or valleys of that kind, gorges, that they could force a way through there, and that I believed that he would concede that if his people succeeded in getting the prior right we could force a way through, the only thing being that the road that had the prior right would probably be crossed so many times by the other road going through that it would make it very difficult and dangerous for each side to operate through there; and, assuming that they wanted to build, and knowing, as I did, that we wanted to build, it seemed to me, from a sensible point of view, that we had better try to get our people together and put through a joint corps of engineers to work in the building of the lines and getting the best possible location for two lines, so as to avoid a multiplicity of crossings, which, in a very treacherous place like that, would naturally be for one line to take a definite location, and the other line to take what was left. We agreed that we would recommend that to our respective lines, and we did so, and there was a kind of protocol drawn up which took the form finally of a written stipulation, which was filed in 1360 the United States Court at Carson City, Nevada, where these cases were pending, as I recall now, which provided for the entrance in this Meadow Valley Wash of a joint surveying party who were to locate the two lines, and that joint surveying party did

enter upon their work. Just how far it was prosecuted, I don't remember, but I know they did a very considerable amount of surveying and location work, and located the two lines through there, or did a great deal of work in that direction. Pending, however, the final conclusion of that work and the vesting of the title in each of the contesting companies' interests, the arrangement was made which resulted finally in the joining of the two interests in the building of the one line of road.

Mr. SEVERANCE: At the time that Judge Kelly and yourself had that conference at Salt Lake City which resulted in this stipulation, it was still the intention of your people to build a line through from Salt Lake?

Mr. GIBBON: So far as I can recollect, and I should say it undoubtedly was.

Mr. SEVERANCE: And so far as you are advised, or were advised at the time, it was claimed by the other interests that they were going to build a line through?

Mr. GIBBON: Yes sir, and we were led to believe from various things we saw that they meant to do it.

Mr. SEVERANCE: And it would have resulted, if you had not made this arrangement of an amicable passage through this canyon and there had been no amalgamation—it would have resulted, in that event, in two lines of road through?

Mr. GIBBON: Yes sir, it would have resulted in two lines of road. That is correct. And through a country that could not maintain one.

Mr. SEVERANCE: So far as the local business of the line is concerned?

Mr. GIBBON: So far as the local business of the line is concerned, it could not maintain one, no sir.

1361 Mr. SEVERANCE: Was it contemplated by your people when you inaugurated the scheme of building the San Pedro road that the through business or the local business would be the main dependence of the company, as to its income?

Mr. GIBBON: We expected that the through business would be the main dependence. But at that time we expected, of course, to have through business from the eastern lines, the Rio Grande Western and the Union Pacific.

Mr. SEVERANCE: Now, Mr. Gibbon, do you know who initiated this contract, or negotiated the transactions that led to the making of the contract of July 9, 1902?

Mr. GIBBON: In the sense of knowing what individual first suggested it to the other, I do not, no sir.

Mr. SEVERANCE: Where was it done? Was it done here, or was it done in the east?

Mr. GIBBON: I think it is one of those natural things that arise sometimes between people that are—that it was an outgrowth, undoubtedly, of this negotiation with reference to running the two lines through, as I have said.

Mr. SEVERANCE: Through that valley, you mean?

Mr. GIBBON: Yes, through that valley, because, as the parties in

interest met and talked over the thing, so far as my knowledge served me, and I was very intimately connected with that matter at that time, it was a sort of mutual coming together of the minds of both sets of people, both interests, that they would better serve the interests of each by joining and building one line of road than to go on and build two lines, as they were doing.

Mr. SEVERANCE: Was that a unanimous feeling on the part of your people?

Mr. GIBBON: Why, so far as I know, absolutely unanimous.

Mr. SEVERANCE: No difference of opinion among your people regarding that?

Mr. GIBBON: No sir. In the course of the discussion,
1362 there was this: It was very earnestly discussed by our people, if we had to accept a close ally at Salt Lake City, as we undoubtedly apparently did, and for this reason, because it was perfectly apparent to us, and to anybody it seems to me, that knows anything about railroading, that if we built that line, any interests that were interested in the Southern Pacific would have to build a line for the protection of the business that had been going before that time through the Sacramento gateway for Southern California; and the question with us was whether we would rather have the Denver & Rio Grande and the Rio Grande Western—and by the way, it had all become the Denver & Rio Grande at that time because Mr. Gould had purchased the Rio Grande Western and had control of both of them between the time we organized our company and the time this agreement was made—it became a very interesting matter with us, I say, as to which we would take if we had to take an exclusive ally with our people, and they finally decided, in discussing the matter, that the Union Pacific had more to offer them than the other route, on account of the superiority of the Union Pacific as a traffic line through the middle west.

Mr. SEVERANCE: Yes. Well, then, when you initiated the road, however, you expected, as you have said, to have had two connections?

Mr. GIBBON: We had hoped for that, yes sir.

Mr. SEVERANCE: Yes. And it was only after the——

Mr. GIBBON (int'g): Permit me to interrupt you. I merely related that with reference to considering those matters in answer to your question as to whether our people were all agreed on this arrangement finally. They were, so far as I know, unanimous.

Mr. SEVERANCE: My last question was: At the time you initiated the road, you expected to have the two connections, that is, you hoped to have them?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: You did not learn that you would be compelled to make your connections solely with the Rio Grande, or
1363 work solely with the Rio Grande, until the Oregon Short Line had waked up and commenced to try to get possession of this old grade, did you?

Mr. GIBBON: Well, we probably did not have the matter brought

to our attention, that what we had hoped would be a connection would probably be a rival.

Mr. SEVERANCE: A rival?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: I examined Mr. Clark rather in detail, Mr. Gibbon, with reference to the various terms of this contract as finally made. Who drew that contract? Do you know? Which person drew it—the Clark and Harriman contract?

Mr. GIBBON: That contract was drawn, in the sense of the legal work upon it, I think between Judge Kelly and myself.

Mr. SEVERANCE: Whereabouts?

Mr. GIBBON: Principally in New York City, I think.

Mr. DUNNE: You mean the contract of July 9, 1902?

Mr. SEVERANCE: Yes, the contract of July 9, 1902. During how many months did the negotiations proceed before that contract was drawn?

Mr. GIBBON: That is July 9, 1902, is it not?

Mr. SEVERANCE: Yes.

Mr. GIBBON: Oh, it must have been a period of several months. Without refreshing my memory, I could not give it to you. From the time we had agreed upon this truce and putting our engineers in the field jointly, and until July 9, 1902, negotiations were pending more or less during that time, leading up to this agreement.

Mr. SEVERANCE: You say that Judge Kelly and yourself drew that agreement. Judge Kelly at that time was the counsel of the Union Pacific, was he not?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: And you say that the contract was distinctly drawn, so far as drawing it is concerned, by Judge Kelly and yourself. Who were the parties who conducted the negotiations as to what should be put into the contract?

1364 Mr. GIBBON: I think the details were worked out largely, as I recall, by Mr. Ross Clark on one side and Judge Cornish on the other.

Mr. KELLY: And Mr. Stubbs?

Mr. GIBBON: Well, Mr. Stubbs was there too, I believe. Mr. Stubbs was also present. Then there was a reference to Senator Clark and Mr. Harriman when points were reached which required the decision of principals.

Mr. SEVERANCE: Mr. Stubbs worked out the traffic end of it, did he?

Mr. GIBBON: Yes sir, I think so, principally.

Mr. SEVERANCE: I thought it sounded like Mr. Stubbs. Did you gentlemen stay in New York for several months while this was being drawn?

Mr. GIBBON: We were there for a month or six weeks, I think, at that time. I know it was a number of weeks. It is a matter that was not done in a day, of course, or several days.

Mr. SEVERANCE: Was this contract of July 9, 1902, immediately made public?

Mr. GIBBON: I beg pardon.

Mr. SEVERANCE: Was the contract of July 9, 1902, immediately made public?

Mr. GIBBON: I don't think so.

Mr. SEVERANCE: When was the fact that some kind of an arrangement had been made, made public?

Mr. GIBBON: Just as to the date, I can't say, but some time in the year 1903.

Mr. SEVERANCE: That is, you went on then with the construction work, did you, through Nevada, during that period?

Mr. GIBBON: I think there was not a great deal of construction work done in Nevada for some time after that contract was made.

Mr. SEVERANCE: I say during the time, not after the contract was made?

Mr. GIBBON: The work on—we finished up the contsruc-
1365 tion work here to Riverside, and there was some work done there. But the work was most actively pushed later on, as I recall.

Mr. SEVERANCE: When was the division of the Board of Directors of the San Pedro Company made, if you recall?

Mr. GIBBON: Whether that was at the election of 1904 or 1905, I don't recall. It was one or the other of those years.

Mr. SEVERANCE: Was the fact that the Harriman and Clark interests had gotten together made public prior to that time?

Mr. GIBBON: Prior to the division of Board of Directors?

Mr. SEVERANCE: Yes.

Mr. GIBBON: In a general way, yes; oh yes, I am quite sure that it had become public property before that.

Mr. SEVERANCE: At the time you were inaugurating the road and building the line to Riverside, was it contemplated that you would build this line through from Riverside to a point beyond El Cajon Pass?

Mr. GIBBON: When we first began?

Mr. SEVERANCE: Yes.

Mr. GIBBON: Yes, it was contemplated as a possibility, although we had, I believe, among ourselves, discussed the possibility of negotiating trackage arrangements with the Santa Fe for the very obvious reason, of course, that a track over such a place as that is like a bridge, really, in railroading, and there is no——

Mr. SEVERANCE: No local traffic?

Mr. GIBBON: No local traffic, no, and it would seem a pity to multiply companies, to build two lines where one might serve. Whether our head, the head of our company, Senator Clark, or Mr. Ross Clark, his representative, had approached the Santa Fe Company with reference to that, or not, I don't know. But I know that the possibility of making that arrangement was discussed among ourselves.

1366 Mr. SEVERANCE: You do not recall, do you, that any arrangement was attempted with the Santa Fe until after the contract of July 9, 1902?

Mr. GIBBON: No sir, I have said that—that I had no knowledge of it.

Mr. SEVERANCE: This contract provides that Harriman, as trustee, will negotiate with the Southern California Railroad Company, and, if possible, obtain from said company the right for the San Pedro Company to use the tracks of the Southern California Company from the point of its junction with the tracks of the Southern Pacific Company at or near Colton, to the point of junction of its tracks with the tracks of the Santa Fe Pacific Company at or near Barstow, and then also to negotiate with the Santa Fe Pacific Railway Company, and if possible obtain from said company the right for the San Pedro Company to use the tracks of said Santa Fe Pacific Company between Barstow and Ludlow, California. Did Mr. Harriman conduct those negotiations on your behalf for you?

Mr. GIBBON: I did not have any positive knowledge about that at all. I knew the negotiations were taken up by somebody. The details, however, were worked out by Mr. Wells on the one side and ourselves on the other, later on.

Mr. SEVERANCE: I think that is all.

Commissioner LANE: Any questions, gentlemen?

Mr. KELLY: Mr. Gibbon, you were present at the examination yesterday?

Mr. GIBBON: Yes sir.

Mr. KELLY: And one of the contracts that was made between the San Pedro Company and the Southern Pacific Company was a contract bearing date June 18, 1903.

Mr. GIBBON: Yes sir

Mr. KELLY: Will you kindly look at Article III. of that contract and say whether or not you had anything to do with its drafting?

Mr. GIBBON (after examining the article in question): I
1367 did. I represented the San Pedro Company at that time, the original promoters of that company, when this contract was drafted.

Mr. KELLY: If you can, will you explain how the last sentence in that article came to be there? If you can explain it, you may do so.

Mr. GIBBON: The article, I believe, Judge, is one sentence.

Mr. KELLY: I mean the last phrase of the sentence.

Mr. GIBBON: Do you mean this portion which says "unless such change may be made necessary in order to meet the rates, charges, classifications, or tariffs of any other company or competing line of railroad, or to conform to the final decree or judgment of some court of competent jurisdiction, or some lawful and valid requirement of State or National law"?

Mr. KELLY: Yes sir. That is the substance of what I mean, relating to that clause.

Mr. GIBBON: With reference to the State or National law?

Mr. KELLY: Yes, that clause. Just tell how that came to be in there?

Mr. GIBBON: I think I suggested the addition of those words for this reason: The whole article it will be noted, provides for, and the preceding article, article II, to which it refers, provides for local rates. I will say that the word "local" in railroading is used sometimes in a

double sense; sometimes it is "local" as to the system—local traffic; and at other times local traffic is given a territorial significance. The term "local traffic" or "local freight," whatever it is, I affirm had a territorial significance here and was intended to refer to Southern California traffic. When this article was suggested, article III, providing for these rates remaining stationary, you know, without a change, etc., I suggested the adding of this phrase for the reason that, as we all know, sometimes local freight, that is, the rate, what is a local rate, may become complicated with an Interstate rate by a shipment, in a given locality becoming an interstate shipment, I wanted our company to be in the position, if
1368 that should ever arise at any time, not to be forced by this stipulation as to rates to in any way violate a law. Of course, it might never arise. But there are times, of course, when local rates become complicated with interstate rates, as I say, and then I wanted the company to have a clear and full right to so act with reference to those rates as not to become a violator of law in any way —in other words, to protect itself. That is why that clause was added.

Mr. KELLY: That suggestion, then, originated with you, Mr. Gibbon, as representing the San Pedro Company, did it?

Mr. GIBBON: As I recollect it now, it did.

Mr. KELLY: And its purpose was to provide against a contract relation which might apparently be in violation of law?

Mr. GIBBON: Yes sir.

Mr. KELLY: Either of any legislation then existing or which might thereafter be enacted?

Mr. GIBBON: Against any insistence upon the maintenance of a local rate which, if maintained, might in any way become complicated with an interstate rate, and thereby subject to the National law.

Mr. DUNNE: It would include the extension of National jurisdiction over interstate traffic, if such a thing occurred during the life of that agreement also, would it not?

Mr. GIBBON: Certainly; it would go to the extension of National jurisdiction over any kind of traffic that became amenable to it.

Mr. SEVERANCE: May I interrupt you with one question?

Mr. DUNNE: Certainly.

Mr. SEVERANCE: What is there in that article that causes you to refer to California business?

Mr. GIBBON: May I read the two articles?

Mr. SEVERANCE: You may read the two articles, yes.

Mr. GIBBON: So as to point it out, Article II reads: "In partial consideration of the said covenants and agreements of the
1369 said Southern Company contained in article I hereof, said San Pedro Company hereby covenants and agrees with said Southern Pacific Company that it will, upon the execution of this agreement, adopt, print, publish and put in force at all points upon its leased, owned, or operated railroad, for the handling of local business thereon, the lawful rates, tariffs, classifications, and charges used by said Southern Company for the handling of any local busi-

ness which may be the subject of competition between them." Of course, the preceding parts of the contract and the physicial facts were such as to make that necessarily confined to traffic in Southern California, because there is the only place where those conditions arose to which it could or did apply.

Mr. SEVERANCE: What about traffic between California and Salt Lake, or Ogden?

Mr. GIBBON: We would not call that local business.

Mr. SEVERANCE: Would it not be local to the line of the Salt Lake Road?

Mr. GIBBON: No sir, I don't think so. I don't see where we can have any competitive traffic there.

Mr. SEVERANCE: Did you say, Mr. Gibbon, a few moments ago, that the word "local" might be used as indicating as local to the system?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Or local to the locality?

Mr. GIBBON: Yes sir, I did.

Mr. SEVERANCE: Now, the Salt Lake Road reaches Utah common points, and it was proposed that it should—I mean the San Pedro Road—and the Southern Pacific by way of Sacramento reaches Utah common points.

Mr. GIBBON: Yes sir, but, Mr. Severance, that was not in contemplation. In the first place, we have no lines in Utah, and under our agreement as to construction never will have, that could interfere with the Southern Pacific in local matters—that is, as far I can possibly see. Article I, however, of the contract——

1370 Mr. SEVERANCE (int'g): One question there, Mr. Gibbon. The same rates apply to Ogden and Salt Lake City, do they not, from the coast?

Mr. GIBBON: From the coast, but they are not local.

Mr. SEVERANCE: I understand. They are local to your line, though?

Mr. GIBBON: No, oh no.

Mr. SEVERANCE: You say that a rate from Los Angeles to Salt Lake City is not local to the San Pedro line?

Mr. GIBBON: Yes sir, but I am telling you also that the word "local" here is used in a territorial sense.

Mr. SEVERANCE: You say so, but I am asking you if there is anything in the contract that says so?

Mr. GIBBON: There is this that indicates it very strongly. Section 1, the beginning of the contract, says: "The said Southern Pacific Company undertakes and agrees to and with said San Pedro Company that it will interchange freight traffic in Southern California with said San Pedro Company to and from points south of the parallel of Mojave, California, in like manner and upon as favorable terms and conditions as said Southern Company at the same time interchanges traffic with the Southern California Railway Company, and that in the movement of such traffic, or the charge therefor, under similar circumstances and conditions, it will not discriminate in any respect in favor of any connecting line to the preju-

dice or disadvantage of said San Pedro Company; but this shall not be construed as forbidding or restraining the said Southern Company from favoring its own lines as against the San Pedro line, that is to say, lines of railroad owned, operated, or controlled by said Southern Company.

Section 2. The Southern Company, in respect of the traffic mentioned in Section 1 of this article, will join with said San Pedro Company and with said Oregon Short Line Railroad Company and said Union Pacific Railroad Company in forming through lines of freight service, and in through rates therefor upon agreed divisions of
1371 through rates for such service equal to the facilities, service, and terms accorded by it to said Southern California Company on like kind of traffic.

Article 2. In partial consideration of the said covenants and agreements of the said Southern Company contained in Article 1 hereof, said San Pedro Company hereby covenants and agrees with said Southern Company that it will, upon the execution of this agreement, adopt, print, publish and put in force at all points upon its leased, owned or operated railroad, for the handling of local business thereon, the lawful rates, tariffs, classifications and charges" and so forth. You will notice that at the conclusion of article I it reads to the Southern California Company purely and simply.

Mr. SEVERANCE: That is the consideration for the agreement in the other article?

Mr. GIBBON: Yes. If the contract did not make it perfectly plain that that was all intended to make it refer to California, then it was the fault of the lawyers who drew it, because it was the intent of the parties.

Mr. DUNNE: Was that the intent of the parties?

Mr. GIBBON: Sir?

Mr. DUNNE: You say that was the intent of the parties?

Mr. GIBBON: Yes sir, unquestionably. Nothing else was considered, for a moment.

Mr. SEVERANCE: That is, you intended to agree that for 99 years you would not charge any higher rate than the Southern Pacific did to Riverside or San Bernardino, or Colton, or any other place in Southern California which you might reach?

Mr. GIBBON: Yes sir. We felt——

Mr. SEVERANCE (int'g): But you did not intend to tie yourself up as to points across the line in Nevada, but only to prevent any competition in California?

Mr. GIBBON: Only in the territory mentioned in section 1 throughout—Southern California south of the parallel of Mojave.

Mr. SEVERANCE: Does it say so?

Mr. GIBBON: Yes sir.

1372 Mr. SEVERANCE: Is that used in Section 2 or Section 3?

Mr. GIBBON: Section 1.

Mr. SEVERANCE: Oh no.

Mr. GIBBON: Not directly, but Section 2 refers to Section 1, and Section 3 to Section 2—or rather Article III to Article II.

Mr. SEVERANCE: But it refers to it by saying on consideration of the benefits you get in Section 1, you get so and so.

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: And then follows the agreement?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Without any limitation as to whether it applies to California or any other State?

Mr. GIBBON: Beyond the fact that it says "local," and I think hardly anybody could read the contract over without seeing that the provisions of that contract could not be made to refer to some locality in Utah, or to some locality in Nevada, when the very beginning of the contract gives the locus as Southern California south of Mojave, in which the contract is supposed to operate.

Mr. SEVERANCE: By the way, as a California lawyer, may I ask you if at the time that was made there was any statute in California similar to the Sherman Anti-Trust Law?

Mr. GIBBON: No sir, I think not.

Mr. SEVERANCE: There was not?

Mr. GIBBON: No sir.

Mr. SEVERANCE: So that combinations are not regarded with disfavor in California, locally?

Mr. GIBBON: Well, that combination I do not think is inimical to any law on the statute books of our State.

Mr. DUNNE: We have a statute here with reference to contracts in restraint of trade, which is a mere development of the common law doctrine, and which does not impeach any contract which restrains trade as to any question——

1373 Mr. SEVERANCE: That was in accordance with the construction given in the trans-Missouri case.

Mr. DUNNE: But it was reconstrued in the Northern Securities case.

Mr. SEVERANCE: I am quite familiar with that case.

Mr. DUNNE: Is that all?

Mr. SEVERANCE: I am very glad you referred to it.

Mr. DUNNE: You may be referred to it again before we get through with it.

Mr. SEVERANCE: I think we will. I hope so.

Mr. DUNNE: Is that all, Mr. Severance?

Mr. SEVERANCE: That is all. Excuse me for interrupting, but I thought we might save time by it.

Mr. KELLY: Certainly.

Mr. DUNNE: Mr. Gibbon, at the time that the provision was inserted in this contract for the adoption by the San Pedro line of the Southern Pacific rates upon this local traffic in Southern California south of the parallel of Mojave, was that local traffic at that time itself the subject of competitive struggle between the Santa Fe and the Southern Pacific?

Mr. GIBBON: I should say it was.

Mr. KELLY: For all of the territory reached——

Commissioner LANE: Was that condition changed, and did it not

become no longer a subject of competition between the Southern Pacific and the Santa Fe?

Mr. GIBBON: I am afraid I do not understand the Commissioner's question. Was it changed, did you ask?

Commissioner LANE: Yes. Mr. Dunne asked you if at that time the traffic in Southern California was subject to competition between the Southern Pacific and the Santa Fe road?

Mr. GIBBON: Yes sir.

Commissioner LANE: You said it was?

Mr. GIBBON: I said I thought it was. My opinion is based upon the fact that the territory was pretty thoroughly occupied by the branch lines of both of those companies, and they were supposed to be competing companies.

1374 Commissioner LANE: During the history of your road, during the time that you were in connection with the San Pedro road, was that condition in any way changed as to the Santa Fe and Southern Pacific competing for that traffic?

Mr. GIBBON: Not that I have any knowledge of.

Commissioner LANE: Were they—I mean was your road in any way a party to any agreement by which the territory of Southern California was divided as between the Santa Fe, the Southern Pacific and yourselves?

Mr. GIBBON: Not to my knowledge.

Commissioner LANE: Was any kind of an agreement, any agreement of that kind made, of which you have any knowledge?

Mr. GIBBON: Not to my knowledge, absolutely.

Commissioner LANE: Was any consideration given to the fact that there was a great volume of trade down here, traffic of that kind, which could be divided in the making of this agreement, or in the making of the other agreements that you made with the Union Pacific and with the Southern Pacific?

Mr. GIBBON: Yes sir. In that respect it was given business. We were coming into Southern California with a main line and practically no branches to the points of origin of the most valuable traffic in Southern California, the citrus fruit traffic and vegetable traffic. We felt that by making that agreement with the Southern Pacific, whereby they agreed to give us the same rates as a connection that they did with any other road—if you will notice the agreement there, that we were, through a company whose lines ramify through all Southern California, to put ourselves in touch with the point of origin of this very valuable freight, without having to wait for the time necessary to build, or to go to the expense of building branch lines to those particular places, and that was the reason the agreement was made. Of course, we considered, with reference to the rates for that privilege that we could very well afford to do that for the

1375 company that would give business to us, for the good of being in touch with this valuable traffic.

Commissioner LANE: That would keep you from building roads in Southern California and reaching out for business yourselves?

Mr. GIBBON: It would keep us, you say—is that it?

Commissioner LANE: Yes. I say it would keep you from build-

ing roads in Southern California and reaching out for business there?

Mr. GIBBON: It would make it possible to get the business.

Commissioner LANE: Without building a road?

Mr. GIBBON: Yes sir. Of course, we might build a road if we wanted to. But anyway it gave us a chance, if anybody wanted to ship over our lines whose packing house happened to be along the Southern Pacific lines, to do so, and the Southern Pacific penetrates almost every part of Southern California. It gives us a chance to get that business, because they made that contract to deliver it to us under certain favorable terms.

Mr. DUNNE: Mr. Gibbon, you appreciate, do you not, that in the operation of competing roads, rates will, generally speaking, be equalized? The one railroad meets the rates of the other, does it not?

Mr. GIBBON: I know that as a fact in the operation of railroads. I know that is the result.

Mr. DUNNE: In point of fact, Mr. Gibbon, a great deal of undue significance has been given to the subject matter of competition between railroads in mere rates. Is not the substantial and forceful competition, competition in service and facilities, rates being equated?

Mr. GIBBON: Well, I think it is. I am not a railroad expert, and don't pretend to *me*. But it seems to me that in the business of Southern California, especially, the kind of business on shipments that originate here, that service is quite as prime a factor as rates, because it is very important to the successful handling of that business that it get east as soon as possible?

1376 Commissioner LANE: If that is so, do you think that it promotes the most effective and efficient service to have the line between Salt Lake City and Los Angeles controlled by those who have the Union and the Southern Pacific, and the Southern Pacific system? The witness has been asked to volunteer an opinion, I suppose he can give his opinion there.

Mr. GIBBON: I have no objection to giving it. I have always felt, if the Commissioner please, that the physical superiority of the line between here and Salt Lake City, and the fact that it connects with the Union Pacific there, would necessarily command for that line a very large proportion of the traffic originating here, notwithstanding the fact that you may argue that some of the interests connected with the San Pedro line have other interests which you might say could be made opposing interests in the ownership of interests in other lines of road. For this reason, if there is, for instance, actual competition on the part of the Santa Fe, our rate to Salt Lake City furnishes a link in the only road that can compete with that road in handling expeditiously the kind of commerce that is to be handled expeditiously from this country, with the possible exception of the Southern Pacific. But the people whose dual interests are supposed to produce the objectionable result that your Honor spoke about a moment ago, if they ship on the Southern Pacific, get a division of 700 miles as against all the remainder going to a foreign line, if they ship to El Paso and turn it over, for instance, to the Rock Island, whereas if they ship over our line they get a division from the

half interest, their interest for the less than 800 miles between here and Salt Lake, and they get all the remainder for the haul by the Union Pacific—and what is the length of the Union Pacific?

Mr. SEVERANCE: A thousand miles.

Mr. GIBBON: Suppose we halve 800 miles and you add to that the Union Pacific; that gives us 1,400 miles of haul practically, whereas they get, if they send it over the El Paso, and by the El Paso
1377 Gateway, but 700 miles, as I say. I don't pretend to be a railroad expert, but those matters suggested themselves to me as matters of common sense in relation to this matter.

Mr. DUNNE: Mr. Gibbon, you are familiar with the provisions of the Interstate Commerce law, as provided, by which a rate shall not be increased or lowered except upon 30 days' notice?

Mr. GIBBON: Yes sir.

Mr. DUNNE: That notice must be given to the Commission, must it not?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: I suppose, if I may——

Commissioner LANE (int'g): Just a moment. I want to continue this line for a moment. You do not understand, Mr. Gibbon, that the publication that is required by the Interstate Commerce law, the giving of 30 days' notice, in any way deprives a railroad of the right of reducing rates?

Mr. GIBBON: Of the right to reduce rates?

Commissioner LANE: Yes sir.

Mr. GIBBON: Why, my impression is that they had no right to make a change in the rates.

Commissioner LANE: That they have no right to make a change in the rates except upon 30 days' notice?

Mr. GIBBON: Yes sir.

Commissioner LANE: But they can, by giving the 30 days' notice.

Mr. GIBBON: Yes sir, by giving that notice.

Commissioner LANE: I don't understand that you have answered the question that I put to you. You have got a line from Los Angeles to Salt Lake City?

Mr. GIBBON: Yes sir.

Commissioner LANE: In answer to Mr. Dunne, you said the great question in railroading today is not so much the question of rates as it is the question of facilities?

Mr. GIBBON: Yes sir.

Commissioner LANE: The question of getting cars and the question of their prompt movement.

1378 Mr. GIBBON: Yes sir.

Commissioner LANE: And the question of the proper handling of the fruit that has to go?

Mr. GIBBON: Yes sir.

Commissioner LANE: You spoke also of the Santa Fe road being a competitor of the line between Los Angeles and Salt Lake City?

Mr. GIBBON: Yes sir.

Commissioner LANE: And controlling the rates. Would it be better for the people of Southern California, if we are going into

matters of opinion, in the way of obtaining facilities, to have another road that would compete with the Southern Pacific, as well as the Santa Fe?

Mr. GIBBON: Yes, competition, actual competition, in both rates and service, of course—if I understand your question.

Commissioner LANE: Then it would be your judgment that if you could have put through the road from Los Angeles to Salt Lake City without the combination with the Oregon Short Line, that that would have been a better thing than the combination, not as a railroad proposition, but as a service proposition, because it would have developed competition in the matter of facilities.

Mr. GIBBON: When I answer that question fully, as I view it—I suppose you want my view simply; of course, it is only a matter of opinion.

Commissioner LANE: Yes.

Mr. GIBBON: I would say no. I certainly doubt the possibility of maintaining in a serviceable condition a line of railroad from Los Angeles to Salt Lake City, built and operated as that road would have been built and operated if it had had the competition of another line practically parallel which would have had all of the business of the Union Pacific go to it; I don't believe it could have been maintained in such a position as to have been a factor in the fruit business on this coast.

Commissioner LANE: Then your understanding is, that
1379 because the Union Pacific could compel the Oregon Short Line, on its line from Salt Lake City down to Los Angeles, which was projected, to give it all of its California business, that it would not have been advantageous for your road to have built separately?

Mr. GIBBON: I think the Union Pacific California business is of much more importance than the Oregon Short Line California business.

Commissioner LANE: It was, then, the power of the Union Pacific and the value of that connection which made it impracticable to have two roads from Salt Lake to Los Angeles.

Mr. GIBBON: I believe it would have been, as a mechanical proposition, impracticable, because the Union Pacific line—it is not necessary for me to suggest to the Commissioner, who has made a study of those things—when it comes to the matter of dispatch of freight and of the mechanical handling of freight, the Union Pacific line is so much superior to any other connection there, that with the Union Pacific line having a fruit line to Southern California, it would have been so thoroughly in control of the fruit situation that it seems to me the other line would not have fared very well, and I doubt if it would have been a serious factor in the transportation situation from here. I know we thought it was better to join in partnership with another interest and get the line through than to submit ourselves to the danger of it.

Commissioner LANE: Was it better for you to have the one connection than it would have been to have had two?

Mr. GIBBON: But we have two at the present time.

Commissioner LANE: You have two?

Mr. GIBBON: Yes sir.

Commissioner LANE: And you have through rates, joint rates, over the Denver & Rio Grande?

Mr. GIBBON: Yes sir, just the same as we have over the Union Pacific, I understand.

Commissioner LANE: Was it contemplated by you that you would have connection with the Union Pacific if you ran through
1380 from Los Angeles to Salt Lake City, originally, as an independent line?

Mr. GIBBON: We hoped that we would.

Commissioner LANE: Was there any reason why you would not?

Mr. GIBBON: No reason that we knew of at that time why we would not. But later on we discovered that the interests of the Union Pacific would require it to have some sort of a connecting line in Southern California, or a very considerable interest in that sort of a line.

Commissioner LANE: That is all.

Mr. SEVERANCE: Why did its interest require it to have that? It had not had it for all the years the Union Pacific had been built, had it?

Mr. GIBBON: As to whys and wherefores, I can hardly be expected to answer for them. It was very evident to us, however, that they were going to do it, because they had incorporated all the companies for that purpose, and they were in the field surveying and getting material together, and it was the practical question of what we had to face that we had to deal with.

Mr. SEVERANCE: And they went through the work of incorporating these companies, and put their surveyors in the field, only after you people had started out to build an independent line to Salt Lake City?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Prior to that time, they had been compelled to serve California either through the El Paso gateway or the Sacramento gateway?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: And they had made no move whatever to serve them through a direct line from Salt Lake, or any Utah point thereabouts?

Mr. GIBBON: No sir.

Mr. SEVERANCE: So when you said it was necessary, that necessity did not arise until you proposed to build an independent line?

1381 Mr. GIBBON: Well, the public had no evidence that it had arisen at that time, certainly.

Mr. SEVERANCE: Mr. Dunne a few moments ago asked you a question about the 30 day provision of the Interstate Commerce law, evidently with the purpose of showing that this contract, to some extent, at least, suppressing competition, would be a reasonable thing because of the 30 day provision.

Mr. DUNNE: No, that was not my point at all.

Mr. SEVERANCE: That 30 day provision was not in force at all when those contracts were made, was it?

Mr. GIBBON: No sir.

Commissioner LANE: I think I would like to know just what his point was.

Mr. SEVERANCE: What was your point?

Mr. DUNNE: It was simply to suggest to your Honor that when rates are raised or lowered under the new law, all lines are advised by 30 days' notice, and they meet the rate, and the rates are equated and the forceful proposition is the proposition of service and facilities.

Mr. SEVERANCE: Then I will suggest to you: At the time this contract was made, this situation did not exist, and any line could lower a rate without giving 30 days' notice, could it not?

Mr. GIBBON: Yes sir. That is my understanding of the law.

Mr. SEVERANCE: And you understand further than that that our friend Mr. Stubbs, and other traffic men, did lower rates on much less than 30 days' notice, do you not?

Mr. GIBBON: I presume they did.

Mr. SEVERANCE: And you realize, do you not, that the Southern Pacific line, at the time you entered into these contracts assumed that you would know enough to lower rates on less than 30 days' notice?

Mr. GIBBON: I suppose so; I suppose the same law that applied to them would apply to us, of course.

Mr. SEVERANCE: Now, another thing. You have suggested that the Union Pacific is your best connection because they are
1382 in a position to give better service and quicker service than any of their competitors?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Is it not a fact that for a short time in the year 1905, the Salt Lake road gave its fast citrus fruit train service to the east?

Mr. GIBBON: Just what year it put that service on, and the history of it, I don't know.

Mr. SEVERANCE: You recall such a thing, do you not?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: You knew it?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: And is it not a fact that those trains ran east over the Denver & Rio Grande?

Mr. GIBBON: That I don't know. I don't think so, but, however, I don't know. I am quite sure, as a matter of most elementary knowledge of the physical conditions of railroads, that you cannot make a good service, as good time over the Denver & Rio Grande, with their heavy grades, as you can over the Union Pacific with the grades eliminated to a great extent.

Mr. SEVERANCE: I dare say you will agree that the amount of traffic on a road has something to do with the facility of moving trains?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: And you know, do you not, that all the business

over the Oregon Short Line, and from the O. R. & N., and all the business coming from the Southern Pacific and San Francisco and going over the Southern Pacific to San Francisco, is poured into the Union Pacific?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: All of that easterly traffic has to be taken over the Union Pacific?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: And you knew also that the Denver & Rio Grande was not a part of the system of which the Union Pacific was a part, did you not?

1383 Mr. GIBBON: Yes sir, to be sure. I assume, however, in reference to that, and as to the application of what I said as to fruit shipments from Southern California, that any railroad attempting to handle the citrus fruit trade, for instance, will do it on a preferential schedule which will give that freight the right of way over almost any other freight they have. So, that being the case, the amount of freight on the line would not cut much figure.

Mr. SEVERANCE: Are you aware of the fact that the service has deteriorated to such an extent that, instead of making a six days' trip to Chicago, as you did for a short time, it becomes very often from 10 to 14 days?

Mr. GIBBON: Well, no, but I presume, like all service now, it is congested on account of the impossibility of their getting motive power to move the freight.

Mr. SEVERANCE: They have sufficient motive power to move citrus fruits, if they are giving them the preference, have they not?

Mr. GIBBON: That is a question, whether they have or not. It is very difficult even to get enough to move their passenger traffic through. It is a most unfortunate condition of affairs with all roads.

Mr. SEVERANCE: That is all.

Mr. KELLY: Mr. Gibbon, referring to the contract attached to Mr. Millar's testimony, Exhibit 41, dated June 18, 1903, between the Short Line, the Union Pacific, and the San Pedro road, will you please look at section 6 of article 4 and see whether you had anything to do with the construction of that section, and if so, you may state the reason for its adoption.

Mr. GIBBON (after examining the exhibit): Yes sir, I did. I recall very distinctly the discussion which resulted in the adoption of that section.

Mr. SEVERANCE: Would you mind reading that? I don't recall just what it is.

Mr. GIBBON: Certainly. "Section 6. It is covenanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and

1384 make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah, for business which said Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with all other connections of said San Pedro Company; pro-

vided, however, that, on demand, said Short Line Company and said Union Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business." I might probably answer your question better by giving a little short history of the matter.

Mr. KELLY: That is what I want.

Mr. GIBBON: I remember very distinctly when Mr. Stubbs proposed this section, leaving out, or which did not have in the latter four lines, beginning with the word "provided" after the ";". We, of course, viewed with some degree of disfavor at first, and as giving rather more control over our line than we thought was proper, the section as it stood. And the argument was this: We are about to sell you 500 miles in all of the system of the Oregon Short Line, which has been of very great value to the remaining part of that system and also to the Union Pacific, in which the interests are identical or largely so, as a feeder for gathering and distributing traffic over our through lines. Now, we don't want to put you in a position, in selling you this line, to make an agreement with somebody else, some other competitor, by which you could use the lines we are turning over to you as a stick to crack our heads with, so to speak. Therefore, if it becomes necessary to protect the traffic and carry it over our lines as against a competitor we want the right to make the rates, to preserve that. We suggested as a complement to that, as reciprocal to that, that they must also add this provision: "Provided, however, that on demand said Short Line Company and said Union Company shall join said San Pedro Company in
1385 any through rates necessary to meet the rates offered by any competing line for such business," and that, if I may illustrate, works this way: Of course this contract is made for a long time, and we naturally expect a lot of other competing lines to be in that territory before the term of the contract is completed—that is the natural history of railroading everywhere. For instance, it could be used in this way for the protection of the Southern Pacific Company and the Oregon Short Line——

Mr. KELLY (int'g): You mean the Union Pacific Company?

Mr. GIBBON: I mean the Union Pacific and the Oregon Short Line. We ship a lot of wool from Southern California, and it goes over the Rio Grande, to which line we deliver it at Provo. Others go over the Southern Pacific. If the Rio Grande, in order to get all of that wool, were to make a cut in rates, which, however, did not cut our rate, or if we wanted, on account of some promise or reciprocity in traffic, to favor them, we could not do that, because the Southern Pacific and the Union Pacific could come in to force us under this stipulation of the contract to adopt a competitive rate which would give them an equal show for that shipment. But conversely, suppose the Rio Grande were moving a lot of valuable freight moving from Denver to Provo, which is a competitive point between our line and the Rio Grande. Suppose, in order to cut us out of any of that haul that had been coming around by the Union Pacific and been going over our line to Provo, the Denver & Rio Grande were to give them a reduced rate, we could turn around and force

the Union Pacific and the Oregon Short Line to give us a rate which would protect us against that reduction. And we felt that the thing being mutual in that way—of course we saw considerable force in the argument that these lines turned over to us might be used against the very people selling them to us, and we felt that if there was added to that our right to protect ourselves by making
1386 the rates over their lines on incoming and outgoing competitive business, just as they reserved that right to make rates over our lines, it might be a provision valuable to us at that time, and grow very much more so in the future.

Mr. KELLY: In other words, the rate making power, discussed yesterday by questions and answers, under this section 6 you understood to have been made reciprocal?

Mr. GIBBON: I think so, yes. We understood that to be the force of it.

Commissioner LANE: How could this road as to Utah ever be used in that way, when half of the stock was owned by your people and half by the Harriman people? They would have a veto upon anything of the kind.

Mr. GIBBON: How could it ever be used in what way, sir?

Commissioner LANE: In the way of developing competitive business and diverting the business to the Denver & Rio Grande.

Mr. GIBBON: Well, it seems to me it is proper, for by the Union Pacific and Short Line insisting on putting that in, it appears they had an idea that it might be used in that way sometime,—else they would not have tried to safeguard that. However, if the condition was such as the Commissioner supposes, then the section would be useless and would have hurt no one.

Commissioner LANE: But it is subject to another construction. The clause itself is subject to another construction than that one which you gave, is it not?

Mr. GIBBON: I don't see that it is. What construction is it, sir?

Mr. DUNNE: What construction has your Honor in mind?

Mr. GIBBON: I was not endeavoring to construe the clause but to give the history of it.

Mr. DUNNE: That is the purpose of it.

Commissioner LANE: That is its purpose?

Mr. GIBBON: Well, its purpose is what it says, I think,
1387 to give them the right if they want to use it, for their protection, to name rates over our lines, just as the succeeding clause, beyond any doubt, we feel, because we suggested the wording, gives us the right, if it becomes necessary to our protection, to name rates over their lines, and they must live up to them.

Commissioner LANE: How far would you say your right under that clause to name rates over their lines would go?

Mr. GIBBON: Just as far as theirs—that they would join us in any rates necessary to protect us from competition. It was intended to have exactly the same scope, and to be entirely reciprocal.

Commissioner LANE: Would that extend—I haven't the clause in front of me—to the Southern Pacific line?

Mr. GIBBON: Oh, no; simply to the Union Pacific and the Oregon Short Line.

Mr. DUNNE: Would your Honor like to see it?

Mr. SEVERANCE: Here is the section.

Commissioner LANE: Section 6, I understand, and the Southern Pacific has nothing to do with that, then (The Commissioner examines the section).

Mr. SEVERANCE: May I ask the witness a question, your Honor?

Commissioner LANE: Yes sir.

Mr. SEVERANCE: Mr. Gibbon, calling your attention again to this section, which his Honor has before him, it is a fact, is it not, that under that section the Union Pacific has the right to make all the rates in and out, in connection with your line?

Mr. GIBBON: On competitive business, yes; they cannot compete with them.

Mr. SEVERANCE: May I take the agreement?

Mr. DUNNE: You take my copy, if you like, Mr. Severance.

Mr. GIBBON: It refers to business that could be handled by a competitor.

Mr. SEVERANCE: Here is the way it reads: "It is cove-
1388 nanted and agreed that said Short Line Company and its connections, the said Union Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said San Pedro Company's road in Utah, for business which said Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company."

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Now, they have the right to fix those rates?

Mr. GIBBON: On competitive business, yes sir.

Mr. SEVERANCE: That is to say, competitive with connections of the San Pedro Company?

Mr. GIBBON: With their connections, yes sir.

Mr. SEVERANCE: Yes, I understand. That gives them the right then, in all that territory, in the first instance, to make the rates—I mean in the territory that is competitive?

Mr. GIBBON: Yes sir, as to business in the territory that is competitive.

Mr. SEVERANCE: We will not misunderstand each other. Let us develop just what this section means. Then the rate, irrespective of whether it is satisfactory to you or not, is made by them—they have the rights to make those rates, and you are compelled to accept those rates?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: If for reasons of his own, independent of this particular matter, if by reason of traffic in other sections that might be competitive, as to some particular industry, Mr. Stubbs is of the opinion that it would be a good thing for the Union Pacific to put in a certain competitive rate over his line and yours, you are com-

pelled to take it, no matter what the considerations are that impel Mr. Stubbs to put in the rate?

Mr. GIBBON: No sir, it is qualified.

1389 Mr. SEVERANCE: What is the qualification?

Mr. GIBBON: It is qualified by this: If he should name a rate there not necessary to protect them from competition, but which would lay us open to competition, I think the provision would give us a right in that connection——

Mr. SEVERANCE (int'g): Is there any provision about that?

Mr. GIBBON: Read on.

Mr. SEVERANCE: I am coming to that in just a minute. The proviso that you say you put in there for the protection of your company, is simply that on demand they shall join you in any through rates necessary to meet any rates offered by any competing line for said business?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: That is to say, suppose the Rio Grande Western, or any other competitor, should offer a lower rate? That is what that is to cover, is it not?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: To protect you against a competitor offering a lower rate.

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: But you have no protection against Mr. Stubbs putting in an unduly low through rate to that territory himself, have you? Suppose the competitor says "no."

Mr. GIBBON: Yes sir, we have this protection.

Mr. SEVERANCE: What is your protection?

Mr. GIBBON: We have, of course, the protection that every man has against a man doing a thing that would be very poor as a matter of business policy. Under our agreement as to the division of rates, they are bound to allow us as much as we do upon the division of that rate.

Mr. SEVERANCE: But I understand the case that was put a few moments ago—suppose they can secure a large amount of traffic for your system—you know you have a short line of road in Utah, comparatively speaking.

1390 Mr. GIBBON: Yes sir.

Mr. SEVERANCE: If, whatever the considerations are that move Mr. Stubbs to do it, or Mr. Munroe, or whoever may put in the rates, they deem it wise for their interest to put in a rate there, you have got to stand it, have you not?

Mr. GIBBON: Yes sir, we have got to stand it, unless, as I say——

Mr. SEVERANCE (int'g): You have got to stand it in any case, and the only protection you have is that when some competitor makes a rate, you have a right to have them meet it?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: Otherwise you are completely in their hands; unless a competitor makes a rate that you want to meet, you are absolutely in their hands?

Mr. GIBBON: If it be supposed that they could carry traffic so

much cheaper than we could that they could afford to do a thing of that sort, it might, of course, work a very great hardship upon us, which would of course result in a corresponding benefit to the public, whoever should have the benefit of those rates, and I don't know that the Commission would object to it upon those grounds.

Mr. SEVERANCE: That might be so. The public might benefit in one section and lose in another, because they are not confined to one little single line of track as you are.

Mr. DUNNE: Mr. Gibbon, do you understand that the right of the Oregon Short Line and its connection, the Union Company, to make these rates in and out of Utah, applies except with reference to such business as the Short Line—I am reading from the contract—or the said Union Line might give to or receive from said San Pedro Company in competition with any and all other connections of said San Pedro Company?

Mr. GIBBON: Oh no. We limited it with that character of business when we started.

Mr. SEVERANCE: That is understood.

1391 Mr. DUNNE: I do not understand your question that way.

Mr. SEVERANCE: Oh, yes. It is through business.

Mr. DUNNE: It is not only through business, Mr. Severance, but it is the through business expressed in paragraph 6.

Mr. SEVERANCE: Undoubtedly. Why, certainly. I am quite familiar with that.

Mr. GIBBON: However, I don't think we need any more protection than that in any direction.

Mr. SEVERANCE: But the language is unambiguous that they give over the rate making rate to the Union Pacific, except where another line makes a cut——

Mr. DUNNE (int'g): Mr. Gibbon, you do not understand, do you, that you have given over the rate making power on through rates to the Union Pacific or the Short Line, except upon business which that company might give to or receive from your company, in competition with any or all other connections of your company?

Mr. GIBBON: Absolutely not. That is what the section says.

Commissioner LANE: That is, they can make the through rates obtaining on traffic originating in Utah on your road as against the Denver & Rio Grande?

Mr. GIBBON: Yes sir.

Commissioner LANE: Or any other road that connects with your road?

Mr. GIBBON: Yes sir. We can do the same thing on their rate as against a rate which the Denver & Rio Grande might make against us.

Mr SEVERANCE: But you cannot do that except to meet a rate put into effect by the Denver & Rio Grande?

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: You cannot initiate a rate, in other words?

Mr. GIBBON: No sir.

Mr. SEVERANCE: You are absolutely tied up, so far as initiating any rates is concerned?

1392 Mr. GIBBON: Yes sir.

Mr. DUNNE: Mr. Gibbon, you are not tied up so far as initiating rates is concerned, except where the business is competitive, within the limitations of that section?

Mr. GIBBON: No sir, there is nothing in that that would prohibit us from making a cut in the rate ourselves; that does not tie us up in that?

Mr. DUNNE: Let me put this question to you Mr. Gibbon: This contract recites that they shall have the power to initiate rates?

Mr. GIBBON: Yes sir.

Mr. DUNNE: That they shall have the power to initiate rates with reference to a certain kind of business?

Mr. GIBBON: Yes sir.

Mr. DUNNE: And with your permission I will hark back to the precise words of the contract, "which the Short Line Company or said Union Company, might give to or receive from said San Pedro Company, in competition with any and all other connections of said San Pedro Company."

Mr. GIBBON: Yes sir.

Mr. Gibbon: Yes sir.

Mr. DUNNE: That is the competitive business you have in mind?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Now, let me instance a shipment. Take a shipment of wool originating at Milford, if I am correct that such a shipment would originate at such a point—I take it simply for the purposes of illustration. Milford is a point in Utah, is it not?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Denver is a point in Colorado?

Mr. GIBBON: Yes sir.

Mr. DUNNE: A movement of wool from Milford, Utah, to Denver, Colorado, would be an interstate movement?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Under this contract, you have a connection
1393 not only with the Union Pacific for Denver, but also with the Denver & Rio Grande, have you not?

Mr. GIBBON: Yes sir.

Mr. DUNNE: So that business might be given to or received by you from either of those two connections?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Now, if you have a through rate with the Union Pacific on wool originating at Milford and destined to Denver, and the Denver & Rio Grande, for the purpose of taking that business off the rails of the Union Pacific, should come to you and offer to shrink its proportion of the through rate, so that a less through rate would obtain by your connection with them, the Union Pacific would have a right to protect itself, as being your preferred connection, by its making the rate and insisting that you adhere to the rate as made by it?

Mr. GIBBON: That is my understanding of the scope of the provision.

Mr. DUNNE: Now going around the other way. Provo is a com-

petitive point, is it not, between the Denver & Rio Grande and between the Union Pacific and your line into Provo?

Mr. GIBBON: Yes sir.

Mr DUNNE: The Denver & Rio Grande could pick up a shipment at Denver and carry it through to Provo, could it not?

Mr. GIBBON: On its own rails.

Mr. DUNNE: And at its own rate, could it not, Mr. Gibbon?

Mr. GIBBON: Yes sir.

Mr. DUNNE: That same shipment could move in by the way of the Union Pacific and your line?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Into Provo?

Mr. GIBBON: Yes sir.

Mr. DUNNE: You have a through rate with the Union Pacific?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Suppose that the rate quoted by the Denver
1394 & Rio Grande from Denver to Milford is so low relatively to the through rate that you have with the Union Pacific, that the business moves preferentially along the line of least resistance, by the lower rate?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Across the line of the Denver & Rio Grande?

Mr. GIBBON: Yes sir.

Mr. DUNNE: Are you not authorized, under this contract, to go to the Union Pacific and say, "We insist in our turn upon making the through rate from Denver to Provo, so that we can meet the competition of the Denver & Rio Grande?

Mr. GIBBON: We so construe that.

Mr. DUNNE: And are they not compelled, no matter what the views of my imperial friend, Mr. Stubbs, may be, as he seems to be characterized upon the other side—no matter what his views may be, he would be compelled to yield to your demand, would he not?

Mr. GIBBON: We supposed that to be the force of the section when we dictated it.

Mr. SEVERANCE: That is very nice. I don't think anybody doubts anything you have brought out, Mr. Dunne. Let me ask you this question, Mr. Gibbon. Under this section, you cannot make any cut in a through rate, can you, unless a line competing with the Union Pacific has first made the cut?

Mr. GIBBON: Why, yes, I don't see why not. Why can't we?

Mr. SEVERANCE: Let us see if you can.

Mr. GIBBON: If I understand the force of your question——

Mr. SEVERANCE (int'g): I don't think you do, or you would not answer it that way. It reads: "It is covenanted and agreed that said Short Line Company and its connections the said Union Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines and points on the line of said
1395 San Pedro Company's road in Utah, for business for which said Short Line Company, or said Union Company, might give to or receive from said San Pedro Company in competition with

any and all other connections of said San Pedro Company." Of course my question applies to this competitive business.

Mr. GIBBON: Yes sir.

Mr. SEVERANCE: You have no right to cut that rate unless the conditions obtain that is contained in this section?

Mr. GIBBON: That is correct.

Mr. SEVERANCE: And then comes the other clause: "provided, however, that on demand, said Short Line Company and said Union Company shall join said San Pedro Company in any through rates necessary to meet the rates offered by any competing line for such business."

Mr. GIBBON: Your idea is, then, that if they had taken the initiative in making a rate, then we have no right to disturb that rate. That is your idea, as I gather?

Mr. SEVERANCE: That is it exactly, Mr. Gibbon.

Mr. GIBBON: We have no right to disturb it except under the excuse of claim of competition. Is that it?

Mr. SEVERANCE: Yes, by another line.

Mr. GIBBON: Yes, I think that is true.

Mr. SEVERANCE: So you have no power to make rates at all on that through business that is competitive—as competitive business is defined in that section?

Mr. GIBBON. Except when it is necessary to protect ourselves.

Mr. SEVERANCE: You are absolutely in the power of Mr. Stubbs, or his subordinate, so far as making that rate is concerned, until the Rio Grande comes in and makes a cut; until that is done, you have got to hold that rate, and you cannot extend a promise to the shipper that if he will go and locate a big industry on your line, you will assure him a low rate to his market, and so build up the business of the company?

Mr. GIBBON: I suppose in connection with that statement,
1396 I might add that it would be impossible for the Union Pacific to execute that power, arbitrarily, that is, to the injury of our line in a lowering of the rates, since they are bound to join in any loss to which we would be subjected, and in the second place, the lowering of rates in such a way would be very gratifying to the public on the lines served.

Mr. SEVERANCE: You have said that before, Mr. Gibbon. That is not a new suggestion. But this is a fact, is it not: That there might arise many contingencies by which it would be for the interests of the Union Pacific, by reason of its vast system, to make rates into your territory which would not be profitable rates taken by themselves?

Mr. GIBBON: To them?

Mr. SEVERANCE: Yes, certainly. Whereas, by doing that, they might secure large benefits in other quarters. You are helpless against them, are you not, in such an event?

Mr. GIBBON: Yes sir, we would be, I presume.

Mr. SEVERANCE: That is all.

Mr. GIBBON: But—with reference to that particular clause, I confess that I cannot conceive of any conditions arising which would

justify their doing that, on the ground of getting some advantages somewhere that would reciprocate to them for those low rates. I cannot conceive it. It is a condition of railroading which I cannot now imagine.

Mr. DUNNE: No matter how many competitive connections might be made, or how many competitive points might be multiplied, like the analogy I suggested of Provo, you can compel them to make a rate which would enable you to meet that competition?

Mr. GIBBON: We think so. That was what the section was intended to accomplish.

Mr. DUNNE: Well, your Honor, we have very nearly reached the hour of 12. Shall we adjourn?

Commissioner LANE: Are you through with the witness?

Mr. SEVERANCE: I think so.

1397 Mr. DUNNE: We might want to recall him at 2 o'clock for a question or so, your Honor.

Commissioner LANE: Very well. Then we will take an adjournment at this time until 2 o'clock.

(An adjournment was here taken until 2 o'clock P. M.)

After Recess, 2 p. m.

Commissioner LANE: You may proceed, gentlemen. Mr. Gibbon, take the stand. Do I understand, Mr. Severance, that you are through with the examination of Mr. Gibbon?

Mr. SEVERANCE: Yes.

Commissioner LANE: Judge Kelly, do you wish to ask him any further questions?

Mr. KELLY: That is all, Mr. Gibbon. You are through with Mr. Gibbon, are you?

Mr. SEVERANCE: Yes.

R. E. WELLS, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Wells, where do you live?

Mr. WELLS: In Los Angeles.

Mr. SEVERANCE: How long have you lived here?

Mr. WELLS: Six years, barring two years that I was in Salt Lake.

Mr. SEVERANCE: What is your business?

Mr. WELLS: The railroad business.

Mr. SEVERANCE: How is that?

Mr. WELLS: I am General Manager of the Salt Lake Railroad.

Mr. SEVERANCE: How long have you occupied that position?

Mr. WELLS: Six years.

Mr. SEVERANCE: When you first came to the Salt Lake Railroad, what lines did it have?

Mr. WELLS: Simply what was known as the old Terminal line.

Mr. SEVERANCE: And you operated that, did you?

1398 Mr. WELLS: Yes sir.

Mr. SEVERANCE: What is the nature of the traffic that was carried over that line?

Mr. WELLS: Lumber, chiefly.

Mr. SEVERANCE: Bringing in lumber from San Pedro—to Los Angeles.

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Was there any fruit moved out over that line?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Going to what place?

Mr. WELLS: Oh, I could not say—eastern points. That came off our Glendale branch.

Mr. SEVERANCE: What rate did you make on fruit in connection with the steamers? Did you have a joint rate?

Mr. WELLS: I could not say. I don't think any fruit moved that way.

Mr. SEVERANCE: Oh, I thought you said some fruit did move that way.

Mr. WELLS: Oh, no. Then I misunderstood you. It was turned over to either the Southern Pacific or the Santa Fe here.

Mr. SEVERANCE: Oh, I asked you if it was turned over at San Pedro. I misunderstood your answer. So that, so far as this freight business was concerned in those days, it was practically confined to lumber?

Mr. WELLS: Yes sir, that is it.

Mr. SEVERANCE: What were your first duties in connection with the Salt Lake Road, that is, the new road, as distinguished from the old line to San Pedro?

Mr. WELLS: Oh, anything—I don't know—I don't remember—I don't know just what you mean.

Mr. SEVERANCE: What jurisdiction did you have? What did you have jurisdiction over?

Mr. WELLS: What little there was here.

Mr. SEVERANCE: What little was there, outside of the terminals?

Mr. WELLS: From here to Glendale, 10 miles, and from here to Pasadena.

1399 Mr. SEVERANCE: Yes, I am familiar with that. But I mean after you had begun to construct the new road, what did you first do? When I say "the new road," I mean the line to Salt Lake.

Mr. WELLS: I had nothing to do with the construction of it.

Mr. SEVERANCE: You had nothing to do with the construction of it?

Mr. WELLS: No sir.

Mr. SEVERANCE: But you said you were at Salt Lake City for a while?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: When did you go there?

Mr. WELLS: I went there in May, 1903, after the line south of Salt Lake, the Oregon Short Line south of Salt Lake, or rather the lines, were taken over by our company.

Mr. SEVERANCE: They were not taken over until June, were they?

Mr. WELLS: July 7th, as I remember.

Mr. SEVERANCE: You went there before they were taken over, did you—a little before they were taken over?

Mr. KELLY: What year are you talking about, Mr. Severance?

Mr. SEVERANCE: 1903.

Mr. WELLS: 1903, yes.

Mr. SEVERANCE: Up to July, 1903, who operated those line in Utah?

Mr. WELLS: The Oregon Short Line.

Mr. SEVERANCE: Then they were operated as part of the Oregon Short Line system, in the same manner that they theretofore had been operated?

Mr. WELLS: So far as I know, yes sir.

Mr. SEVERANCE: For a year after the contract was made between Mr. Harriman and Mr. Clark, which has been introduced in evidence?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: On July 9, 1902?

Mr. WELLS: Yes sir.

1400 Mr. SEVERANCE: When you took your position over there with the Short Line, it was publicly announced that the Salt Lake had taken over the property?

Mr. WELLS: Oh, yes.

Mr. SEVERANCE: And you went from here to handle that end?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Who did you leave in charge of the operation at this end?

Mr. WELLS: Well, as Mr. Clark stated yesterday, he was practically in charge.

Mr. SEVERANCE: How much of the line was built when you went over there? I mean this end of the line. Had you built out to Riverside then?

Mr. WELLS: No. It was out somewhere—well, somewhere between Riverside and here.

Mr. SEVERANCE: Who had charge of the traffic on that end of the line, the Salt Lake end, beginning July, 1903, when you went over there?

Mr. WELLS: Prior to my going there?

Mr. SEVERANCE: No, after you went there.

Mr. WELLS: After I went there, Mr. Gillett, Mr. E. W. Gillett, our General Freight and Passenger Agent.

Mr. SEVERANCE: Where was he?

Mr. WELLS: Well, his headquarters were here. He spent a good deal of time there, however.

Mr. SEVERANCE: Was there any change made at that time in the rates on the lines taken over by your company, prior to the completion of the other line?

Mr. WELLS: I think not, but I don't know. I don't know of any.

Mr. SEVERANCE: Did you find in existence, when you went there, a division sheet as between those lines and the Union Pacific?

Mr. WELLS: That I could not say. The details of the traffic, I was not familiar with.

Mr. SEVERANCE: Well, was a division afterwards agreed upon?

Mr. WELLS: It naturally must have been, yes.

1401 Mr. SEVERANCE: Do you know anything about what that division is?

Mr. WELLS: No, I do not.

M. SEVERANCE: You don't know now.

Mr. WELLS: No sir, I do not.

Mr. SEVERANCE: Mr. Clark said that the traffic department reported to you?

Mr. WELLS: So they do, in a general way.

Mr. SEVERANCE: But they never report that to you?

Mr. WELLS: No sir, I don't think they do.

Mr. SEVERANCE: So you know nothing about the division between the Union Pacific and the Salt Lake road?

Mr. WELLS: Not the details of it, no.

Mr. SEVERANCE: I don't care anything about the details. I mean the scheme on which the division is made. Is it made on a mileage basis, or on a basis in connection with computation of the locals, or how is it done?

Mr. WELLS: I think it is a matter of contract—in that contract.

Mr. SEVERANCE: But you do not recall how that contract provides, or how it figures out?

Mr. WELLS: No sir, I do not.

Commissioner LANE: Mr. Wells, have you copies of your division sheet?

Mr. WELLS: Yes sir.

Commissioner LANE: That is, you have got them here, have you not?

Mr. WELLS: They are all filed with the Commission.

Commissioner LANE: A full division sheet?

Mr. WELLS: I think so. That is my understanding of it.

Commissioner LANE: Then you are willing to have that made a part of the record in this case?

Mr. WELLS: Yes sir.

Mr. KELLY: There is no objection whatever to that.

Mr. SEVERANCE: You will have copies made?

Mr. KELLY: I will forward them to Washington.

1402 Commissioner LANE: May I ask here who makes those divisions between yourself and the Union Pacific?

Mr. WELLS: It is done as a matter of agreement between the traffic departments.

Commissioner LANE: And do you act for your road?

Mr. WELLS: No sir, I do not.

Commissioner LANE: Who does?

Mr. WELLS: Now, the General Traffic Manager, Mr. Wann.

Commissioner LANE: Mr. Wann?

Mr. WELLS: Yes sir.

Commissioner LANE: Have you heretofore acted in that matter?

Mr. WELLS: No sir. Mr. Gillett, General Freight and Passenger Agent, prior to Mr. Wann, acted in that capacity.

Commissioner LANE: Then in the making of a through rate with the Union Pacific, you do not act?

Mr. WELLS: No sir.

Commissioner LANE: But the freight man, Mr. Wann, or Mr. Gillett——

Mr. WELLS: Yes sir.

Commissioner LANE (cont'g): did act?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: May I take that contract that is on your Honor's desk?

Commissioner LANE: Yes. Were their acts subject to revision by you?

Mr. WELLS: Would be, if I wanted it, or if they thought it desirable.

Commissioner LANE: Who had the selection of this gentleman, Mr. Wann, and of Mr. Gillett, as well? Did you select them?

Mr. WELLS: I selected Mr. Gillett.

Commissioner LANE: Was it a personal action on your part? To whom did you report the selection of Mr. Gillett?

Mr. WELLS: To Mr. J. Ross Clark.

Commissioner LANE: As a member of the special committee?

1403 Mr. WELLS: At that time, no sir; he was Second Vice-President and there was no special committee.

Commissioner LANE: That was six years ago, was it?

Mr. WELLS: Yes sir, six years ago.

Commissioner LANE: And Mr. Wann's selection; how was that made?

Mr. WELLS: As I understand it, by Senator Clark. He made the appointment—he made the announcement.

Commissioner LANE: He is President of the road?

Mr. WELLS: Yes sir.

Commissioner LANE: Proceed, Mr. Severance.

Mr. SEVERANCE: While these adjustments were made by these other gentlemen, they were made, as you understand it, pursuant to the terms of the traffic contract between the Oregon Short Line, and the Union Pacific, and the Salt Lake road?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Well, now, Mr. Wells, I don't want to spend time discussing traffic with you unless you have had something to do with it. But if you had anything whatever to do with it, I would like to get your knowledge upon the subject. I will ask you a general question. Was the making of rates or the agreeing upon a division of through rates reported to you?

Mr. WELLS: I presume they were reported to me, officially—they undoubtedly were. But as to what they were, I really haven't got them in my head.

Mr. SEVERANCE: I notice at the latter end of Section 12 of this contract, Exhibit 41, Millar, it is provided as follows: "Joint

through rates for business other than that which is subject to the competition of rival carriers shall be divided *pro rata* per rate; that is to say, each party shall receive of such through rate a *a* share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties. Divisions of all joint through rates shall be made on Salt Lake; that is to say, the San Pedro Company and its connec-
1404 tions to represent one unit, and the Short Line Company and its connections to represent another unit; but the minimum and arbitraries in this agreement otherwise provided for shall not be affected thereby." You are not familiar with that clause, are you?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Do you understand it that that business is divided according to the minimums and arbitraries described in another part of the contract?

Mr. WELLS: Yes sir, I presume so.

Mr. SEVERANCE: In order to get at those rates, though, it would be necessary to inspect the local rates of each company?

Mr. WELLS: Yes sir, I suppose it would.

Mr. SEVERANCE: While these rates were from time to time submitted to you, perhaps, for approval, you did not give much of any attention to them, as I understand it; they were in the charge of the traffic department?

Mr. WELLS: That is the idea, yes. The head of the traffic department is held responsible for the proper computations.

Mr. SEVERANCE: Then as I understand it, Mr. Wells, the reporting by the traffic department to you, in so far as rates are concerned, is largely a formal matter?

Mr. WELLS: To a very great extent, yes.

Mr. SEVERANCE: So that as to rates, the matter is practically left to the traffic people?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Subject to whatever contract obligations you are under?

Mr. WELLS: Certainly.

Mr. SEVERANCE: And the traffic man would be at present Mr. Wann, and formerly Mr. Gillett?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Who has charge of operation?

Mr. WELLS: I have.

Mr. SEVERANCE: What arrangements have you between your road and any of the lines of the Harriman system with reference to the loaning to each other of cars? Or leasing to each other of cars?

1405 Mr. WELLS: None whatever.

Mr. SEVERANCE: Have you ever had any?

Mr. WELLS: I don't remember of any now.

Mr. SEVERANCE: Have you ever had any arrangement for the leasing, one to the other, of motive power?

Mr. WELLS: Not leasing, we——

Mr. SEVERANCE: Well, loaning.

Mr. WELLS: Well, we swapped: during reconstruction and construction, we had some modern power, large wheeled engines, that were not suitable for construction service, and we turned those over to the Southern Pacific, or the Oregon Short Line it was, and in turn they would give us engines that were more suitable for construction purposes.

Mr. SEVERANCE: Has there been nothing of that kind since the road was completed?

Mr. WELLS: No sir, I think not.

Mr. SEVERANCE: You sometimes use their equipment, their flat-cars or box-cars?

Mr. WELLS: Oh, yes.

Mr. SEVERANCE: The same as you do of other lines?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: And what do you pay for them?

Mr. WELLS: It is simply a question of per diem, the same as other lines.

Mr. SEVERANCE: What per diem?

Mr. WELLS: 50 cents from December 1st.

Mr. SEVERANCE: You pay the same per diem as other lines?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: It was originally 20 cents, and is now 50 cents. Is that right?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: How much freight equipment have you now?

Mr. WELLS: Offhand I should say 2500 cars.

Mr. SEVERANCE: Divided into what classes?

1406 Mr. WELLS: 750 coal cars, 750 box-cars, about 400 flat-cars, I should say, and general stock and miscellaneous cars—I don't remember the figures as to them.

Mr. SEVERANCE: There has been introduced in evidence today a contract with Armour's car-lines, by which they agreed to furnish you a maximum of 3000 refrigerator cars?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: How many of those cars have you in service?

Mr. WELLS: Immediately on our lines?

Mr. SEVERANCE: On your lines or under your control, engaged in your traffic?

Mr. WELLS: Today?

Mr. SEVERANCE: Yes sir.

Mr. WELLS: About 250.

Mr. SEVERANCE: Only 250?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Why do you not have more? Don't you need them for traffic?

Mr. WELLS: Well, we can't move them very well.

Mr. SEVERANCE: Why not?

Mr. WELLS: We are short of power?

Mr. SEVERANCE: You are short of power?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: When did you get short of power?

Mr. WELLS: About September, I should say.

Mr. SEVERANCE: What was the matter? Some of your engines smashed up?

Mr. WELLS: Not that exactly. The business increased, for one thing, and all our heavy power now, it is all going out at practically the same time, and requires more shop repairs. We have had to keep a good many engines in reconstruction and construction. That is about the story.

Mr. SEVERANCE: Then, as I understand it, you are so deficient in power, and have been since last fall, that you can only employ in the movement of fruit 250 cars out of a possible 3000?

1407 Mr. WELLS: Oh, no. That is not. I don't think that is the way the contract reads, and is certainly not the way it is intended to.

Mr. SEVERANCE: You have a right to call on Armour & Company up to 3000 refrigerator cars?

Mr. WELLS: Yes sir, but of course, you will appreciate we could not use all those cars all at once.

Mr. SEVERANCE: Well, they would be scattered along over your connections, yes.

Mr. WELLS: Oh yes, but they would not be under our control. I understood you to say under our control?

Mr. SEVERANCE: What I meant to say was, how many of those 3000 cars are you employing in your business, that is, either on your own rails, or that have left your rails with loads and have not yet returned, but that are to be returned to you. That is what I intended to ask you, Mr. Wells.

Mr. WELLS: I could not answer that offhand. It might be answered by—no, I would not undertake to say, I would not like to say. I could get the information very readily for you, if you desire it.

Mr. SEVERANCE: Are you able to transport at the present time, with this lack of motive power that you speak of, all the freight that is tendered you?

Mr. WELLS: We are doing it.

Mr. SEVERANCE: You are doing it?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: And vegetables likewise?

Mr. WELLS: Yes, subject to some delay.

Mr. SEVERANCE: Yes. And you have been doing that all winter?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: What delays do you mean? You say subject to some delays. What delays do you mean?

Mr. WELLS: The bunching of loads, trains, at the district terminals.

Mr. SEVERANCE: How is that?

Mr. WELLS: The bunching of trains at district terminals.

1408 Mr. SEVERANCE: Where are your district terminals?

Mr. WELLS: Coming west from Salt Lake, at Lynn, and the next is Milford, the next is Caliente, Las Vegas, Daggett, San Bernardino, and Los Angeles.

Mr. SEVERANCE: And by "bunching at terminals," you mean

you start out with less than a full train-load, and unite that less than a train-load with another less than a train-load to make up a full train-load?

Mr. WELLS: Sometimes that, and sometimes full trains.

Mr. SEVERANCE: What do you mean? That you would put two full train loads together?

Mr. WELLS: I meant that while—no, not that, delays the fast train—that is what I intended to say.

Mr. SEVERANCE: That is to say, the train itself will be delayed.

Mr. WELLS: Yes sir, the train itself will be delayed.

Mr. SEVERANCE: By reason of insufficient motive power?

Mr. WELLS: Yes sir. And then I had in mind your question as to handling all the traffic that is offered.

Mr. SEVERANCE: Now, Mr. Wells, I asked you yesterday for a statement of the number of cars that you have handled last year and this year. Have you that statement with you?

Mr. WELLS: Yes sir, I have. Here it is.

Mr. SEVERANCE (after examining the paper handed him by the witness): I notice by this statement, Mr. Wells, that you give the number of carloads of vegetables handled this year, whereas you do not give the number handled last year. Did you not handle vegetables last year on your line?

Mr. WELLS: Very few cars, but I think they are there.

Mr. SEVERANCE: How is that? I did not understand you?

Mr. WELLS: I say, I think they are there.

Mr. SEVERANCE: Here is the statement, Mr. Wells. I am asking in regard to the vegetables, now, you will remember.

1409 Mr. WELLS (after examining the statement): Then it must have been so small that they counted them into miscellaneous.

Mr. SEVERANCE: You have practically gone into the vegetable business for the first time this year, then, Mr. Wells?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: What do you mean by—I see you have divided your shipments of fruit for the year ending October 31, 1906, into local and other shipments. What do you mean by "local" shipments?

Mr. WELLS: Destined to points west of the Missouri river.

Mr. SEVERANCE: They are called "local," are they?

Mr. WELLS: In this sense they are, yes; at least that is the way the statement was made up.

Mr. SEVERANCE: Then in this particular instance, "local" does not mean Southern California alone?

Mr. WELLS: No sir, it does not.

Mr. SEVERANCE: But it means to any points local to your line and its immediate connections, the Short Line and Union Pacific?

Mr. WELLS: Or more particularly in this case, to Denver.

Mr. SEVERANCE: Yes. Then it is as to your immediate connections—you call that "local" as distinguished from "through"?

Mr. WELLS: No sir. It is simply a term, Mr. Severance, that is used and has been used by the citrus fruit people here, or by the

railroads, if you please, in describing fruit that is destined to points other than the extreme east.

Mr. SEVERANCE: I see. So that that is a generally accepted use of the term "local" in this vicinity?

Mr. WELLS: So I am informed. That is what I understand, yes.

Mr. SEVERANCE: So that it is not confined to California?

Mr. WELLS: No sir.

1410 Mr. SEVERANCE: And your through shipments are shipments that go east of the Missouri river?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Is that right?

Mr. WELLS: That is what this statement covers.

Mr. SEVERANCE: Yes. That is what I mean, what this statement covers.

Mr. WELLS: Yes sir.

Mr. SEVERANCE: When are the heaviest fruit shipments, as a rule; at what seasons of the year?

Mr. WELLS: Oh, from my limited experience, I understand it is January, February and March.

Mr. SEVERANCE: January, February and March?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: This year January was a light month, was it not, because of the climatic conditions?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Too much rain?

Mr. WELLS: That is the idea.

Mr. SEVERANCE: And cold weather?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: How many packing houses have you on your lines in Southern California, fruit-packing houses?

Mr. WELLS: I could not say. About a dozen, I should say.

Mr. SEVERANCE: About a dozen?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Do you happen to know how many there are on the other lines?

Mr. WELLS: No sir, I do not.

Mr. SEVERANCE: Could you give an estimate as to what percentage of the packing houses in Southern California are on your line?

Mr. WELLS: No sir, I could not.

Mr. SEVERANCE: Have you been over the lines?

Mr. WELLS: I beg your pardon?

Mr. SEVERANCE: Have you been over the lines here in Southern California?

1411 Mr. WELLS: Yes sir, I have.

Mr. SEVERANCE: And there is a very, very small percentage of the packing houses that are on your line. Is that true?

Mr. WELLS: Yes sir, that is true.

Mr. SEVERANCE: Have you ascertained, Mr. Wells, what percentage of the fruit shipments for the year ending October 31, 1906, moved over your line?

Mr. WELLS: I haven't figured it that way. Here are the carloads.

Mr. SEVERANCE: How is that?

Mr. WELLS: Here is the number of cars?

Mr. SEVERANCE: This is the number of cars that moved over your line. But I asked you what the percentage of the total shipments going out of this territory moved over your line. Do you know what the total shipments were over the three lines?

Mr. WELLS: Oh, they were about 25,000, I think.

Mr. SEVERANCE: About 25,000. And the total number over your line was 2330, as appears by this statement, which would be a little under 10 per cent. Is that about as you understood it?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Do you know about what percentage of the shipments you are getting this year—since November 1, 1906?

Mr. WELLS: No sir, I don't know how it would figure that way.

Mr. SEVERANCE: I notice that last year you seemed to get nearly half of your through shipments and also of your local shipments of citrus fruit, of the Santa Fe, while this year you only have 29 cars of through shipments from the Santa Fe out of a total of 336 cars, through shipments, and 5 cars out of 37, in local shipments. What made that change?

Mr. WELLS: I don't know, I am sure.

Mr. SEVERANCE: I see that last year you had about 45 per cent. of your cars off the Santa Fe tracks, perhaps 40 per cent. to 45 per cent., while this year it is less than 10 per cent.

1412 Mr. WELLS: Yes sir—yes, I see that.

Mr. SEVERANCE: Do you know any reason for that?

Mr. WELLS: No sir, I don't know any.

Mr. SEVERANCE: How is that, Mr. Wells?

Mr. WELLS: No sir, I do not, I say.

Mr. SEVERANCE: Is that by virtue of any arrangement of any sort between yourself, your lines, and the Santa Fe or Southern Pacific?

Mr. WELLS: There is no arrangement.

Mr. SEVERANCE: So that there is no arrangement between the companies that has anything to do with this remarkable change in the proportion of shipments you receive off one line and off the other?

Mr. WELLS: No sir.

Mr. SEVERANCE: Are you able to give any reason why that should have been?

Mr. WELLS: None occurs to me at present.

Mr. SEVERANCE: How did you happen to have this year this large vegetable business, when last year you had, as you say, practically none?

Mr. WELLS: It was solicited.

Mr. SEVERANCE: Solicited by whom?

Mr. WELLS: By our solicitors.

Mr. SEVERANCE: By anybody else?

Mr. WELLS: Yes sir. By Mr. Munroe.

Mr. SEVERANCE: Mr. Munroe is the Freight Traffic Manager of the Union Pacific, is he not?

Mr. WELLS: Yes sir.
Mr. SEVERANCE: He was out here?
Mr. WELLS: Yes sir.
Mr. SEVERANCE: When was he here?
Mr. WELLS: In the autumn sometime; November, I think.
Mr. SEVERANCE: Who was here with him?
Mr. WELLS: I don't know. I was not here.
Mr. SEVERANCE: You do not happen to know Mr. McCormick was here with him?
Mr. WELLS: Yes sir, that is true.
Mr. SEVERANCE: You know that, do you?
Mr. WELLS: Yes sir.
1413 Mr. SEVERANCE: Mr. McCormick is Assistant Traffic Manager of the Harriman lines, is he?
Mr. WELLS: Yes sir.
Mr. SEVERANCE: And you do know that while Mr. Munroe was here with Mr. McCormick, who is Assistant Traffic Director of the Southern Pacific, as well as of the Union Pacific, Mr. Munroe was actively soliciting traffic to move over the Salt Lake and Union Pacific?
Mr. WELLS: He was, yes sir.
Mr. SEVERANCE: How long did Mr. McCormick remain here?
Mr. WELLS: I could not tell you.
Commissioner LANE: How has the vegetable business previously been done—by what line?
Mr. WELS: I don't know.
Commissioner LANE: That business is chiefly celery, is it not?
Mr. WELLS: How is that?
Commissioner LANE: I say that is chiefly celery, is it not?
Mr. WELLS: Chiefly celery, yes sir.
Commissioner LANE: Did that formerly go by the Santa Fe, or did it go around by the Sunset route?
Mr. WELLS: That I could not say. I do not know.
Mr. SEVERANCE: In what kind of cars do these vegetables move?
Mr. WELLS: In refrigerator cars.
Mr. SEVERANCE: Just the same class of equipment as the citrus fruit car?
Mr. WELLS: Yes sir.
Mr. SEVERANCE: Armour cars?
Mr. WELLS: Armour cars.
Mr. SEVERANCE: I see that you moved locally 18 cars, and through shipments 1092 cars, of vegetables between November 1, 1906, and February 3, 1907.
Mr. WELLS: Yes sir.
Mr. SEVERANCE: Have you had any trouble getting sufficient equipment to move those cars?
1414 Mr. WELLS: Yes, we have.
Mr. SEVERANCE: When?
Mr. WELLS: As I explained a few minutes ago, difficulty in moving the empties.
Mr. SEVERANCE: Have you been able to move all the vegetables

tendered you? Have you had to serve notice on any vegetable growers that you could not take their vegetables?

Mr. WELLS: That I could not say.

Mr. SEVERANCE: You have not, to your knowledge.

Mr. WELLS: No sir, that is what I meant to convey.

Mr. SEVERANCE: What classes of vegetables are included in this traffic?

Mr. WELLS: Celery, mostly; some cauliflower, I think that is all.

Mr. SEVERANCE: Do you happen to know, Mr. Wells, the names of the consignors of this celery and cauliflower?

Mr. WELLS: No sir, I do not.

Mr. SEVERANCE: You do not know who they are?

Mr. WELLS: No sir.

Mr. SEVERANCE: There are certain large shippers here, are there not?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: How is that?

Mr. WELLS: I beg your pardon.

Mr. SEVERANCE: There are certain large shippers here, are there not?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Now, on whose tracks do those vegetables originate?

Mr. WELLS: Southern Pacific.

Mr. SEVERANCE: Then that large traffic of nearly 1,100 cars was delivered to you, was it, from the Southern Pacific tracks?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: By the Southern Pacific Railroad?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: What did they get out of it?

1415 Mr. WELLS: I could not tell you.

Mr. SEVERANCE: You don't know what they got out of it?

Mr. WELLS: No sir, I don't know what they got out of it.

Mr. SEVERANCE: They did get something, did they not?

Mr. WELLS: Undoubtedly they got something out of it.

Mr. SEVERANCE: At what point are these big celery beds?

Mr. WELLS: South of here about 40 miles, I should judge.

Mr. SEVERANCE: And where did they deliver the celery to you?

Mr. WELLS: At Los Angeles, mostly; altogether, in fact.

Mr. SEVERANCE: Have those cars been delivered to you without objection or demur by the Southern Pacific—as far as you know?

Mr. WELLS: I could not say—I don't know that I understand your question.

Mr. SEVERANCE: Have they delivered them to you without objection. Have the Southern Pacific made any objection to you to delivering those cars of vegetables to your lines?

Mr. WELLS: Not to me, they have not, no.

Mr. SEVERANCE: Have they to anybody else, as far as you know?

Mr. WELLS: I could not say, I am sure.

Mr. SEVERANCE: It was told here the other day that the Southern Pacific people have been notifying packers of fruit not to pack fruit

at present, on account of the shortness of cars. Have you sent out any notice of that kind?

Mr. WELLS: Not that I am aware of, no sir.

Mr. SEVERANCE: Do you ship any vegetables or citrus fruits to the east in Armour cars that have been brought out here by the Southern Pacific?

Mr. WELLS: Technically, yes. As for instance, we loaned
1416 them some cars at one time when we were flush and didn't need them, and they used those cars that we had hauled empty, and, of course, they naturally swapped back when we needed them.

Mr. SEVERANCE: Is it not a fact that Armour equipment is used as is most convenient between you and the Southern Pacific?

Mr. WELLS: Naturally they are operating over both roads.

Mr. SEVERANCE: That is what I want to get at.

Mr. WELLS: Yes sir.

Mr. SEVERANCE: So that when you need any Armour cars, you take any cars there are here, whether they came out over your road or the other?

Mr. WELLS: Well, no. I would be glad if that were so. We have to beg pretty hard before the S. P. will give up a car, you know.

Mr. SEVERANCE: I understand that, but you do hand them back and forth, one to the other, you and the Southern Pacific?

Mr. WELLS: We exchange cars, yes sir.

Mr. SEVERANCE: You exchange the Armour cars?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: What percentage of these fruit cars, Mr. Wells, are reurned west empty? About what percentage?

Mr. WELLS: I could not tell you.

Mr. SEVERANCE: Taking it over your line, and what percentage would you say?

Mr. WELLS: Oh, about—guessing at it, about 80 per cent. or 90 per cent.

Mr. SEVERANCE: 80 per cent. or 90 per cent., may be. Is any effort made by you, or by your eastern connections to bring back loads in those cars?

Mr. WELLS: Oh, yes sir.

Mr. SEVERANCE: And when you are successful, what classes of commbdities do you bring in them?

Mr. WELLS: Merchandise.

Mr. SEVERANCE: Packing house products?

Mr. WELLS: Sometimes; and merchandise also.

1417 Mr. SEVERANCE: Do you think, Mr. Wells, from your knowledge of operation, that any considerable part of delay in getting citrus fruits to market was occasioned by the desire of the railroad to bring back loads in those refrigerator cars?

Mr. WELLS: Oh, no.

Mr. SEVERANCE: You don't think that cuts much figure?

Mr. WELLS: No sir—it would not in the case of our road, I am sure, because of the small percentage.

Mr. SEVERANCE: You mean because of the small percentage of loaded cars coming back here?

Mr. WELLS: Yes, sir. I would not be inclined to block the game that way.

Mr. SEVERANCE: What other kind of commodities move to the east in any volume from this region, aside from citrus fruits and vegetables?

Mr. WELLS: Well, that is about—that is our mainstay, I will say.

Mr. SEVERANCE: Yes, that is right. That is as much your mainstay as grain is off in the northwest?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: What is there shipped in here aside from general merchandise and foodstuffs?

Mr. WELLS: That is about all there is to it.

Mr. SEVERANCE: That is about all?

Mr. WELLS: Yes, sir.

Mr. SEVERANCE: Then necessarily, Mr. Wells, the great percentage of equipment must come west empty, must it not, because of the fact that there is so much greater tonnage movement to the east than to the west? I mean over your road, of course.

Mr. WELLS: Yes sir.

Mr. SEVERANCE: To this immediate region down here?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: The Santa Fe road does not use Armour equipment, does it?

Mr. WELLS: I could not say as to that.

1418 Mr. SEVERANCE: You don't know whether it does or not?

Mr. WELLS: I don't know, no.

Mr. SEVERANCE: You don't know that the Santa Fe road does not use Armour cars?

Mr. WELLS: I mean that I do not know that they are tabooed; I know they have their own refrigerator line.

Mr. SEVERANCE: That is what I mean. They have a refrigerator line of their own, have they not?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Do you know anything about a new regrigerator line that has recently been organized by the Harriman line?

Mr. WELLS: I know that there has been one organized.

Mr. SEVERANCE: How is that?

Mr. WELLS: I know that there has been one organized.

Mr. SEVERANCE: Did your people have anything to do with that?

Mr. WELLS: I don't know.

Mr. SEVERANCE: Who is there in your road that would know, Mr. Wells?

Mr. WELLS: I think—well, I really don't know much about the concern, how far it has progressed. I don't know whether they have any refrigerator cars or not. It is a little thing yet, I guess.

Mr. SEVERANCE: Yes. You don't know of anybody connected with your road that would know whether any arrangements had been made to——

Mr. WELLS (int'g): I think I would know when it would as-

sume proportions large enough to affect us—of course I would. We have received, I will say for your information, some three or four of the new cars under load. I am not quite sure about that, but I think they were under load, and we moved them from Salt Lake to Southern California—I don't know the destination.

Mr. SEVERANCE: The Armour contract that you have pro-
1419 vides for payment by the mile for the use of the cars, does it not?

Mr. WELLS: Six tenths of a cent a mile.

Mr. SEVERANCE: That is the payment divided between your line and the Union Pacific and the other roads, on a mileage basis?

Mr. WELLS: Oh, absolutely.

Mr. SEVERANCE: You pay by the mile, and they pay by the mile?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: And that is irrespective of the conditions of the freight?

Mr. WELLS: Oh, yes; they are not connected in any way.

Mr. SEVERANCE: They are not connected in any way?

Mr. WELLS: No sir.

Mr. SEVERANCE: Who is there on your line of road, Mr. Wells, that would be apt to know the reason for the great change that appears by this table between the percentages of fruit shipments you received from the Santa Fe last year and this year?

Mr. WELLS: Well, I don't know; the solicitors might.

Mr. SEVERANCE: They are the only hope you can think of?

Mr. WELLS: The General Traffic Manager might know.

Mr. SEVERANCE: Has there been any difference in the relations between the Santa Fe and yourselves this year over any previous year?

Mr. WELLS: No sir.

Mr. SEVERANCE: None whatever?

Mr. WELLS: None that I know of.

Mr. SEVERANCE: But, as I understand you, there is no arrangement existing whatever between your road and any other for the division of this business?

Mr. WELLS: No sir.

Mr. SEVERANCE: None whatever?

Mr. WELLS: None whatever.

Mr. SEVERANCE: When Mr. Munroe was here soliciting vegetable shipments, he was also soliciting fruit shipments by way of your road, was he not?

1420 Mr. WELLS: That I could not say.

Mr. SEVERANCE: You merely know as to the vegetables?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: Do you know who went around with him, when he was here, introducing him to people?

Mr. WELLS: No sir. I was not in the city.

Mr. SEVERANCE: Do you know anybody in your road that would know?

Mr. WELLS: Yes sir. I should suppose Mr. Peck, Assistant Gen-

eral Passenger Agent, or Mr. Sloan, Assistant General Freight Agent, would be with him.

Mr. SEVERANCE: It has appeared here by some testimony, Mr. Wells, that for a time your road made some fast shipments of citrus fruits—about a year ago, last winter. You recall that fact, do you not?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: What was the time made to Chicago?

Mr. WELLS: Something like 6 days, as I remember; or six and a half.

Mr. SEVERANCE: What lines did those trains move over?

Mr. WELLS: I beg pardon?

Mr. SEVERANCE: What lines of road did those trains move over?

Mr. WELLS: They were turned over to the Rio Grande at Provo and Salt Lake.

Mr. SEVERANCE: And who took them after the Rio Grande? The Burlington?

Mr. WELLS: They took some, I believe; I don't know.

Mr. SEVERANCE: How long did you run those fast trains.

Mr. WELLS: I don't recall now. They were being run, as I remember it, when I was east, at Chicago, or somewhere. We didn't run them long.

Mr. SEVERANCE: Did you stop them as quick as you got home?

Mr. WELLS: Why, I don't recall whether I stopped them before or after I came home.

1421 Mr. SEVERANCE: Who was responsible for starting those trains?

Mr. WELLS: Oh, I guess we were all a little bit eager about making a showing at the start.

Mr. SEVERANCE: But this was not at the start, was it?

Mr. WELLS: Practically, yes sir.

Mr. SEVERANCE: I thought this was along in December, and you started in May?

Mr. WELLS: Well, I know, but then, there was no fruit moving; it was only—this fast time was made on citrus fruit.

Mr. SEVERANCE: In what months?

Mr. WELLS: It is my impression it was in January.

Mr. SEVERANCE: In January?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: You made rather a long start, then—from May to January?

Mr. WELLS: Yes sir, it was a long start.

Mr. SEVERANCE: A long start.

Mr. WELLS: But the fruit didn't ripen.

Mr. SEVERANCE: Do not the citrus fruit ripen earlier than January? That is, does not the citrus fruit season open earlier than January?

Mr. WELLS: I think they have an official opening October 31st.

Mr. SEVERANCE: Somebody or other was responsible for starting this 6 day service. Now, was that six day service abandoned through the request of the Rio Grande or the C. B. & Q.?

Mr. WELLS: It worked itself out, as a matter of fact.

Mr. SEVERANCE: Just answer my question. Did either the Rio Grande road or the C. B. & Q. request the abandonment of that through service, that fast service?

Mr. WELLS: No sir, they did not.

Mr. SEVERANCE: Then, is it not a fact that your road was the one that caused it to be abandoned?

Mr. WELLS: We were instrumental in it; there is no doubt about that.

1422 Mr. SEVERANCE: You were instrumental in it, you say. Whose instruments were you?

Mr. WELLS: Nature's.

Mr. SEVERANCE: Did the Southern Pacific people make any suggestions to you about that train—about those trains?

Mr. WELLS: Yes sir, they did. They protested.

Mr. SEVERANCE: Yes. That is just what I thought.

Mr. WELLS: So did the Santa Fe.

Mr. SEVERANCE: And in deference to their request, you took off that train. Is that the idea?

Mr. WELLS: No sir, that is not quite so. We ran it to the end of the chapter, as long as our road was in a condition to run it.

Mr. SEVERANCE: How long after those protests were lodged with you did your road continue in a condition to run these fast trains?

Mr. WELLS: Well, I don't recall as to that.

Mr. SEVERANCE: How quick did it wear itself out?

Mr. WELLS: Pretty quick.

Mr. SEVERANCE: Yes. That is just what I thought.

Commissioner LANE: How long did the trains run?

Mr. WELLS: I beg your Honor's pardon? I did not get that.

Commissioner LANE: How long did they run? For how long a period of time did you run those trains, those fast trains?

Mr. WELLS: I don't remember the exact time. I could get that for you, if you want me to.

Commissioner LANE: Just give it approximately?

Mr. WELLS: Well, I think our trouble commenced in March, the first of March—our bad track and washouts, and a little of everything.

Commissioner LANE: You ran them from January to March?

Mr. WELLS: January and February.

Commissioner LANE: January and February.

Mr. WELLS: Yes sir.

Commissioner LANE: When did you get the protests from the Southern Pacific and Santa Fe?

1423 Mr. WELLS: I think when the first train was landed in Chicago.

Commissioner LANE: You were not here when the trains were started, were you?

Mr. WELLS: I think I was not. I know I was away about two months, or such a matter.

Commissioner LANE: You ordered them to be stopped yourself, either when you were east or when you were here?

Mr. WELLS: No, I didn't order them to be stopped.

Commissioner LANE: Did you not? Who did order them stopped?

Mr. WELLS: They stopped on account of disability on our part to keep the time up.

Commissioner LANE: Were there any orders given for them to be stopped at all?

Mr. WELLS: Not by me.

Commissioner LANE: By anybody on the road?

Mr. WELLS: Not that I know of.

Commissioner LANE: Just stopped of themselves.

Mr. WELLS: Stopped of themselves.

Commissioner LANE: When were the protests made? At what time were the protests made?

Mr. WELLS: I beg pardon?

Commissioner LANE: At what time were the protests made by the Southern Pacific?

Mr. WELLS: As I say—I understand, they did not make the protests to me, but they were complaining, I think, when the first train reached Chicago.

Commissioner LANE: Upon what ground did they complain?

Mr. WELLS: It was setting a pretty lively pace, you know, for an infant road.

Commissioner LANE: To whom did they complain?

Mr. WELLS: I think to our traffic department here; I could not say.

Commissioner LANE: Who were the complaints made by, what officers?

Mr. WELLS: That I don't know.

1424 Commissioner LANE: Did you see the complaints yourself?

Mr. WELLS: No sir.

Commissioner LANE: Did they come in the form of telegrams?

Mr. WELLS: No sir. Well, I don't know; they were not to me. I could not say.

Commissioner LANE: How did you know, then, the time when the complaints were made?

Mr. WELLS: Well, I am guessing at that, to a large extent.

Commissioner LANE: When the bad times were over, why did you not start those trains up again—bad times on your road, I mean?

Mr. WELLS: Well, the bad times are not over yet.

Commissioner LANE: They are not over yet?

Mr. WELLS: Not quite, no sir; not by any means.

Commissioner LANE: But you are able to handle all the business that is given to you, I understood.

Mr. WELLS: Yes sir, but not in a satisfactory way, as I think I stated to Mr. Severance.

Commissioner LANE: Is there much competition between you and the Southern Pacific over the Sacramento gateway for that business?

Mr. WELLS: I do not know about the Sacramento gateway par-

ticularly, Mr. Commissioner, but I do know there is the liveliest competition for every pound we get.

Commissioner LANE: You have to fight for business?

Mr. WELLS: Yes sir.

Commissioner LANE: Your solicitors solicit as against the Southern Pacific and Santa Fe?

Mr. WELLS: Yes sir, they do.

Commissioner LANE: And the Union Pacific solicitor comes down here sometimes and solicits for your road?

Mr. WELLS: There is one stationed here who solicits for us continually.

1425 Mr. SEVERANCE: As against the Southern Pacific and against the Santa Fe?

Mr. WELLS: Yes sir.

Commissioner LANE: For you and for the Union Pacific?

Mr. WELLS: Yes sir.

Commissioner LANE: Does that solicitation take the form at all of preference in the way of freights, or preference in the way of special facilities?

Mr. WELLS: I don't understand you.

Commissioner LANE: I mean, does the Union Pacific make any offer of specially fast time as against the Southern Pacific when it solicits fruit going over your line?

Mr. WELLS: That is all, I should say—I am not very familiar with their methods, in fact, I am not familiar at all, I don't know.

Commissioner LANE: You have got the figures there showing the amount of business that goes from Southern California by way of Sacramento, have you, Mr. Severance?

Mr. SEVERANCE: No.

Mr. KELLY: You haven't asked for them.

Mr. SEVERANCE: I have not had a Southern Pacific man on the stand. We will find that out when we get Mr. Graham on the stand. Mr. Wells, is your road in a worse physical condition now than it was at the time you were running these fast citrus fruit trains?

Mr. WELLS: No sir.

Mr. SEVERANCE: Then, why is it that you have not put those trains back on, on that fast service, if you have got your road fixed up?

Mr. WELLS: We are very short on motive power, for one thing.

Mr. SEVERANCE: Have you less motive power than you had then?

Mr. WELLS: Less available motive power; I should have put it that way.

Mr. SEVERANCE: What do you mean by "available motive power"?

1426 Mr. WELLS: Out of the shops.

Mr. SEVERANCE: Have you bought any new locomotives since that time?

Mr. WELLS: No sir, not delivered.

Mr. SEVERANCE: You have not added anything to your motive power, then, in the last year?

Mr. WELLS: No sir.

Mr. SEVERANCE: Who told you about the protests made by the Santa Fe and the Southern Pacific? Was it Mr. Gillett?

Mr. WELLS: It came from his department; either Mr. Gillett or Mr. Sloan.

Mr. SEVERANCE: And they objected to the fact that you were giving such quick service, citrus fruit service?

Mr. WELLS: Yes sir.

Mr. SEVERANCE: And did they state they did not want to give as fast service as that?

Mr. WELLS: That I could not say.

Mr. SEVERANCE: Did your business in the shipment of citrus fruits largely increase while those trains were on?

Mr. WELLS: That I could not say.

Mr. SEVERANCE: Do you not know, as a matter of fact, that the business was being largely turned over to you or offered to you because of that fast service?

Mr. WELLS: I have no doubt it had something to do with it, yes, sir.

Mr. SEVERANCE: Then your business fell off again afterwards, when you reduced your schedule?

Mr. WELLS: When we were compelled to, yes, sir.

Mr. SEVERANCE: When you were compelled to reduce your schedule?

Mr. WELLS: And when I say "compelled," I mean by physical possibility.

Mr. SEVERANCE: Oh, yes, I understand. Now, you say you got that information from Mr. Gillett, or Mr. Sloan. Can you say which man told you?

Mr. WELLS: No, sir, I could not. It was most likely Mr. Gillett.

1427 Mr. SEVERANCE: You have talked to Mr. Gillett, on the subject, have you not?

Mr. WELLS: Very often.

Mr. SEVERANCE: So that Mr. Gillett is and has been, either by getting complaints directly, or having them come through his department, thoroughly familiar with the fact that the protest was made by the other lines?

Mr. WELLS: I should think so—oh, yes.

Mr. SEVERANCE: I think that is all I care to ask Mr. Wells. I would like, however, to have this statement or table which he has produced marked Exhibit 1 to his testimony.

The statement was marked "Exhibit No. 1, R. E. Wells' Testimony.

Mr. DUNNE: That is all, Mr. Wells.

Commissioner LANE: That is all, Mr. Wells.

Mr. KELLY: Mr. Commissioner, under the circumstances I would like to ask Mr. Clark just one question.

Commissioner LANE: Yes. You can stay right there, Mr. Clark.

J. Ross CLARK recalled for further examination.

Mr. KELLY: Mr. Clark, in your examination yesterday, you spoke about the Salt Lake road having put in force from Los Angeles to Utah common points certain rates. Can you state what those rates were before the opening of the Salt Lake line, and what rates the Salt Lake line put into Utah common points, and whether they have been maintained from that time forward, or changed?

Mr. CLARK: I can furnish a sheet showing the rates that were in force before the opening of the Salt Lake road and the present rates.

1428 Mr. KELLY: The difference between the rates which prevailed from Los Angeles to Utah common points prior to the opening of the Salt Lake road and the rates you first put in in reaching that point, are something like 61 or 62 cents a hundred on first class, and the classes below graded accordingly.

Mr. CLARK: About 60 cents, yes sir.

Mr. KELLY: About 60 cents?

Mr. CLARK: Yes sir.

Mr. KELLY: These rates applied to Los Angeles and to Southern California, did they?

Mr. CLARK: They did.

Mr. KELLY: Then later has a reduction in like rates again been made by the Salt Lake road?

Mr. CLARK: Yes sir, to be effective, as I was informed by the traffic department, and according to the sheet, on March 2nd.

Mr. KELLY: And how much of a reduction is that, stating the difference between the first class again?

Mr. CLARK: This sheet will give it.

Mr. KELLY: About 18 cents a hundred, is it?

Mr. CLARK: About 18 cents a hundred, yes sir.

Mr. KELLY: I will just offer this sheet, which shows the rates as they were originally, and as they have been changed since.

Mr. CLARK: And as they are today.

Mr. KELLY: And as they are today, or will be when the new tariff filed with the Commission become operative. That will be Clark Exhibit No. 2.

(The sheet was marked "Exhibit No. 2, J. Ross Clark's testimony.")

Mr. KELLY: That is all, Mr. Clark.

Mr. SEVERANCE: I would like to ask Mr. Clark just one or two questions in connection with these reductions.

Commissioner LANE: Proceed.

Mr. SEVERANCE: Mr. Clark, these are reductions on class rates, are they not?

Mr. CLARK: And commodity rates.

Mr. SEVERANCE: Where do you see any commodity rates
1429 noted there? I see only "Class rates" mentioned.

Mr. CLARK: The first five of them—yes, they are all class rates.

Mr. SEVERANCE: They are all class rates?

Mr. CLARK: Yes sir; you are right.

Mr. SEVERANCE: And the traffic moving on class rates is not a large traffic, is it—the traffic moving from here to Salt Lake common points and Utah common points?

Mr. CLARK: I should say it is, outside of first class. There is not a great deal of that, but beyond that, I should say there is a good deal of traffic.

Mr. SEVERANCE: Can you give an idea of the percentage of your total earnings that is produced from the class shipments?

Mr. CLARK: I cannot, no sir.

Mr. SEVERANCE: Is it not a fact that your commodity rates, covering things like citrus fruits, and things like that, contain the bulk of your revenue, the revenue of your road?

Mr. CLARK: I should say it is larger than the class rate.

Mr. SEVERANCE: Are these class rates that you put in force when your line was opened, May 1, 1905, the same rates that prevailed by the Southern Pacific from San Francisco to Utah common points?

Mr. CLARK: I understand so, yes sir.

Mr. SEVERANCE: They are just the same, are they?

Mr. CLARK: I understand they are just the same, yes sir.

Mr. SEVERANCE: The citrus fruit rate, however, was not cut down, was it?

Mr. CLARK: It was not disturbed.

Mr. SEVERANCE: Not disturbed. When did you decide upon this new schedule of rates which is to become effective the 2nd of March.

Mr. CLARK: Not a great while ago.

Mr. SEVERANCE: About when?

Mr. CLARK: Well, within 30 days, I should say.

Mr. SEVERANCE: Within a week?

1430 Mr. CLARK: No sir. The new rate has been published and is effective March 2nd.

Mr. SEVERANCE: That is to be 30 days?

Mr. CLARK: That is to be 30 days.

Mr. SEVERANCE: How long before the 2nd of February, or rather the 3rd of February, did you decide upon that reduction?

Mr. CLARK: I can't answer that question. The General Traffic Manager has charge of that.

Mr. SEVERANCE: Did the Southern Pacific at the same time make a similar reduction from San Francisco?

Mr. CLARK: I understand they have some time ago made a similar reduction.

Mr. SEVERANCE: Oh, they have? You are following in their wake.

Mr. CLARK: They put in a new rate and reduced the rates first.

Mr. SEVERANCE: And you are following in their footsteps?

Mr. CLARK: We have to, if we expect to get any of that business.

Mr. SEVERANCE: How long ago did they put in that new rate?

Mr. CLARK: I can't tell you when it was effective; some little time ago, as I understand.

Mr. SEVERANCE: Do they have in the same class rate that you have, by way of Sacramento to Utah common points from Los Angeles?

Mr. CLARK: As I understand—what is your question?

Mr. SEVERANCE: Do the Southern Pacific maintain the same class rates that you do from Los Angeles to Utah common points by way of Sacramento?

Mr. CLARK: I understand not.

Mr. SEVERANCE: No, they do not. They have not reduced their rates, have they, from Los Angeles to Utah common points since you put in the schedule of May 1st, 1905, unless they have done it very recently?

1431 Mr. CLARK: I am afraid they have on some commodities; not on the classes.

Mr. SEVERANCE: I mean on the classes?

Mr. CLARK: I understand not, on the classes.

Mr. SEVERANCE: So that the Southern Pacific has seen fit to retire from the Utah business, so far as class business is concerned?

Mr. CLARK: Physical conditions practically compel them to do so.

Mr. SEVERANCE: Some conditions compel them to, anyway?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: So the Southern Pacific are not competitors of the Salt Lake road for Utah common points traffic from Los Angeles?

Mr. CLARK: I should say they are.

Mr. SEVERANCE: How are they, if their rates are higher than yours and their line 500 miles longer?

Mr. CLARK: I don't know that they get any business.

Mr. SEVERANCE: That is, you mean that their rails are still there?

Mr. CLARK: Yes sir.

Mr. SEVERANCE: But if their line is 500 miles longer, and their rates are higher, they are not very energetic competitors, are they?

Mr. CLARK: They are not likely to get much of it, and it is not expected that they would.

Mr. SEVERANCE: So that the situation is that the Harriman lines have decided to let the Salt Lake, of which they own half the stock, do the business from Los Angeles to Utah common points?

Mr. CLARK: No understanding, no.

Mr. SEVERANCE: And not interfere with it by sending anything around by Sacramento?

Mr. CLARK: No understanding.

Mr. SEVERANCE: Well, but from their actions; you said yesterday certain things were to be inferred from their actions. Is that another case of the same kind?

Mr. CLARK: That won't apply to this.

Mr. SEVERANCE: Oh, all right. That is all.

1432 Mr. KELLY: Something was said a short time ago about shortness of motive power, Mr. Clark. Have any steps ever been taken by the management of the Salt Lake road to remedy that? I will just ask you to state briefly what you have done by way of getting new motive power, and the delivery thereof.

Mr. CLARK: We have a contract with the Baldwin Locomotive Works for 32 new engines. Five of them are on the way now, and have been shipped within a week or ten days, and seven more of them will be shipped early this month some time, and the balance will come on later.

Mr. SEVERANCE: Is it your intention to reinstate that six day citrus fruit service, when this new power comes?

Mr. CLARK: No, Mr. Severance

Mr. KELLY: Why not?

Mr. CLARK: Because it is too expensive.

Mr. KELLY: Before Mr. Clark leaves the stand, I desire to offer a sheet showing the members of the Board of Directors of the San Pedro line on July 1, 1903, in accordance with a request that has been made of Mr. Clark. That will be Clark's Exhibit No. 3.

(The sheet is marked "Exhibit No. 3, to J. Ross Clark's testimony").

THOMAS H. PHILLIPS, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Phillips, where do you live?

Mr. PHILLIPS: Los Angeles.

Mr. SEVERANCE: What is your business?

Mr. PHILLIPS: Fruit business.

Mr. SEVERANCE: What are your initials, Mr. Phillips?

Mr. PHILLIPS: T. H.

Mr. SEVERANCE: And what do you say your business is?

1433 Mr. PHILLIPS: Fruit business.

Mr. SEVERANCE: And vegetables?

Mr. PHILLIPS: I am not particularly connected with the vegetable business now. I was prior to November 1st last.

Mr. SEVERANCE: What fruit company are you connected with?

Mr. PHILLIPS: I am Traffic Manager of the California Citrus Union, Los Angeles, and of the Earl Fruit Company, Sacramento.

Mr. SEVERANCE: Will you state the amount of your shipments per annum from Southern California points?

Mr. PHILLIPS: No sir, I could not state that, the amount of our shipments exactly. Our shipment is about 20 per cent. of the Southern California output. The exact number of cars I could not tell.

Mr. SEVERANCE: You ship about 20 per cent. of them?

Mr. PHILLIPS: About 20 per cent. of them, yes sir.

Mr. SEVERANCE: And over what lines do you ship?

Mr. PHILLIPS: We ship over them all—the California Citrus Union, you mean.

Mr. SEVERANCE: Yes.

Mr. PHILLIPS: We ship our citrus fruits over them all, the Santa Fe, the Salt Lake, and the Southern Pacific.

Mr. SEVERANCE: Can you tell how much of your business was shipped last year over the Salt Lake?

Mr. PHILLIPS: About 175 cars—the Citrus Union you are still speaking about?

Mr. SEVERANCE: Yes, I am speaking of the Citrus Union, and I am speaking of the Southern California business.

Mr. PHILLIPS: Yes sir.

Mr. SEVERANCE: What is the time that you get from here to Chicago, on shipments by these various lines?

Mr. PHILLIPS: This season or——

Mr. SEVERANCE (int'g): Take this season, yes.

Mr. PHILLIPS: Well, we have—I made an average from
1434 the 1st of November, when the season commenced, up to the present time, and we are averaging about 12½ days by the Salt Lake and the Union Pacific, and about 13 days by the Santa Fe.

Mr. SEVERANCE: How was it last year?

Mr. PHILLIPS: Last year we made much better time.

Mr. SEVERANCE: How much better?

Mr. PHILLIPS: Very much better. We made via the Southern Pacific, El Paso, in connection with the Rock Island, 6 days to Kansas City and 7½ to Chicago.

Mr. SEVERANCE: Now, do you move——

Mr. PHILLIPS (int'g & cont'g): I mean to say—I would like to qualify that. There are, of course, exceptions to that. There was some that took longer, but they made that time pretty regularly for quite a long while.

Mr. SEVERANCE: Are you moving fruit shipments to the east by way of Sacramento now?

Mr. PHILLIPS: No sir.

Mr. SEVERANCE: Everything that goes north goes Salt Lake, does it?

Mr. PHILLIPS: Everything that goes north?—no sir.

Mr. SEVERANCE: I mean, everything going by the Union Pacific.

Mr. PHILLIPS: Everything going by the northern gateway goes by the Salt Lake and Union Pacific.

Mr. SEVERANCE: On what tracks are your packing houses located, chiefly?

Mr. PHILLIPS: Well, we have some—we are an exception to the other packers in that we have more warehouses on the Southern Pacific tracks than we have on any other tracks.

Mr. SEVERANCE: And from what warehouses do you get these fruits that go by the Salt Lake route?

Mr. PHILLIPS: From the packing houses on the Salt Lake and on the Southern Pacific.

Mr. SEVERANCE: What is the rate from here to Chicago and eastern points on oranges?

Mr. PHILLIPS: $1.25 per hundred pounds; 90 cents a box.

1435 Mr. SEVERANCE: What is the rate on lemons?

Mr. PHILLIPS: $1.00 per hundred pounds.

Mr. SEVERANCE: What was your business before you became Traffic Manager of the Citrus Union?

Mr. PHILLIPS: I was in the railroad business 22 years.

Mr. SEVERANCE: With what companies?

Mr. PHILLIPS: With the Union Pacific 13 years; with the Oregon Railway & Navigation Company 4 years; with the Canadian Pacific one year, and with the C. M. & St. P. one year, and the Southern Pacific about 4 years.

Mr. SEVERANCE: In the traffic department?

Mr. PHILLIPS: Yes sir.

Mr. SEVERANCE: What is the reason, Mr. Phillips, for lemons carrying a lower rate than oranges, if you know?

Mr. PHILLIPS: I don't know. I don't know particularly. They call it an emergency rate on lemons, but I could not give you any reason.

Mr. SEVERANCE: A little louder please.

Mr. PHILLIPS: I say they put that rate of $1.00 in on lemons as an emergency rate.

Mr. SEVERANCE: When?

Mr. PHILLIPS: Well, it has been in all this season, and I think it was in all last season.

Mr. SEVERANCE: What was the emergency that lasted so long?

Mr. PHILLIPS: I couldn't tell you.

Mr. SEVERANCE: Who dubbed that an emergency rate?

Mr. PHILLIPS: That is what it was called by the railroad company.

Mr. SEVERANCE: Is there anything in the nature of the two kinds of commodities, oranges and lemons, that from your experience as a railroad man would entitle lemons to a lower rate than oranges?

Mr. PHILLIPS: No, I don't know any particular reason. Lemons are harder to carry than oranges are.

1436 Mr. SEVERANCE: Harder to carry, you say. Why? Because they are more perishable than oranges?

Mr. PHILLIPS: Yes sir, more perishable, more tender.

Mr. SEVERANCE: Still there is a 25 cent lower rate on lemons than on oranges, as you have said?

Mr. PHILLIPS: Yes sir, there is a difference of 25 cents.

Mr. SEVERANCE: The rates are the same, I see, by all the lines?

Mr. PHILLIPS: Yes sir. I would like to say that when I say I do not know the reason for that difference in the rate, I, of course, could not give the reasons for the railroad men giving us that emergency rate on lemons. They could explain that better themselves. But, of course, I have an opinion of why it may have been done. It may have been done to encourage the California lemon industry as against the foreign shipments of lemons to this country.

Mr. SEVERANCE: As against the foreign shipments of lemons?

Mr. PHILLIPS: The foreign shipments of lemons, yes sir.

Mr. SEVERANCE: Lemons were being imported, were they?

Mr. PHILLIPS: Yes sir. There are lemons being imported from Sicily, and several years ago they were being imported very largely from Sicily. The California lemon is now getting the upper hand of the foreign lemon.

Mr. SEVERANCE: That competition, as far as you are advised, put down the rate, did it?

Mr. PHILLIPS: I judge that is the reason it was done, yes sir.

Mr. SEVERANCE: But, so far as the cost of service is concerned or the nature of the commodity, as far as being perishable and difficult to handle is concerned, you know of no reason why one should require a lower rate than the other?

Mr. PHILLIPS: No sir.

1437 Mr. SEVERANCE: How have you been treated in the matter of getting cars this year?

Mr. PHILLIPS: We have not been able to get sufficient cars to get the fruit to market.

Mr. SEVERANCE: What has been the extent of the shortage?

Mr. PHILLIPS: Well on to 2000 cars at the present date—between two and three thousand cars.

Mr. SEVERANCE: That is, you are short between two and three thousand cars?

Mr. PHILLIPS: We are short between two and three thousand cars up to this present time as compared with last season.

Mr. SEVERANCE: Is that entirely because of shortage of cars?

Mr. PHILLIPS: I could not say it was entirely from that cause, but it is very largely from that cause. We have had difficulty in getting cars this whole season, from the very beginning, from the first of November.

Mr. SEVERANCE: From which road have you had the most difficulty?

Mr. PHILLIPS: We have had the most difficulty with the Southern Pacific road.

Mr. SEVERANCE: And less with the Santa Fe and Salt Lake?

Mr. PHILLIPS: Well, we have had a great deal of difficulty with the Salt Lake, too. We have had less difficulty, though we have had difficulty all around, in getting cars from the Santa Fe than we have had from the Southern Pacific and Salt Lake.

Mr. SEVERANCE: What is the result of this shortage to you? What is the result to your business?

Mr. PHILLIPS: A very great loss. We have got oranges in our packing houses now ready to ship that we can't get cars to ship them in. It means a very heavy loss.

Mr. SEVERANCE: What efforts have you made to get cars.

Mr. PHILLIPS: I have pretty near slept with the railroad men day and night, trying to get them.

1438 Mr. SEVERANCE: Have you had to haul oranges or citrus fruit by team?

Mr. PHILLIPS: Yes sir.

Mr. SEVERANCE: State under what circumstances?

Mr. PHILLIPS: Well, when we have packing houses that are within a few miles of each other on the different lines of the Southern Pacific and Santa Fe and Salt Lake, and we have had oranges packed and in our packing houses, and orders for them, the oranges sold and we could not get the cars from the Southern Pacific, if we had a Santa Fe packing house within 7 or 8 or 9 miles, we would haul the fruit over to the other packing house, if we could get cars there. We have had that happen in both. We have hauled from West Orange to Orange, and we have hauled on different hauls—from Pomona, and so forth.

Mr. SEVERANCE: Mr. Phillips, in shipping over the Salt Lake road from houses located on the Southern Pacific track, will you state whether during the present season the representatives of the

Southern Pacific have made any objection to the shipments going that way, going by Salt Lake—where you routed the goods over the Salt Lake road, and those goods come from packing houses on Southern Pacific tracks, does Mr. Graham, the representative of the Southern Pacific people, or any of his people, make any objection—during the present season?

Mr. PHILLIPS: During the present season?

Mr. SEVERANCE: Yes.

Mr. PHILLIPS: No sir, not during the present season.

Mr. SEVERANCE: But they used to?

Mr. PHILLIPS: Last season Mr. Graham called at my office and made very serious objection to my routing citrus fruits originating on the Southern Pacific line over the Salt Lake line. But I would like to state that it has been our rule, our practice in past years, not to begin routing our shipments by the Southern Pacific and Sacramento until the 1st of March, and his protests made last year were made after the 1st of March. We have shipped all our ship-
1439 ments heretofore, practically, by the Southern Pacific, El Paso, and Rock Island, because we got the best service that way.

Mr. SEVERANCE: Until this present season?

Mr. PHILLIPS: Until this present season, yes sir.

Mr. SEVERANCE: But Mr. Graham has made no objection this present year to your routing via Salt Lake instead of routing via El Paso?

Mr. PHILLIPS: Mr. Graham called on me this year and told me he would expect to get business after the 1st of March the same as before.

Mr. SEVERANCE: Said he would after the 1st of March, but not until then?

Mr. PHILLIPS: No, sir, he didn't say anything about that; that is this year.

Mr. SEVERANCE: Did you send over the Salt Lake road any of these shipments that went so fast a year ago?

Mr. PHILLIPS: Yes sir.

Mr. SEVERANCE: How many train-loads did you send, about?

Mr. PHILLIPS: Well, we didn't send train-loads especially, ourselves. We assisted the Exchange and others in making up train-loads. For instance, I would give 10 or 15 cars towards making up a train of 25 cars.

Mr. SEVERANCE: Of what advantage is that quick service to the orange industry?

Mr. PHILLIPS: A very great advantage. Every day gained is a big advantage in shipping oranges east.

Mr. SEVERANCE: For what reason?

Mr. PHILLIPS: Well, oranges are a perishable product, and the quicker we can get them to their destination and sold and our draft paid, the more money we are likely to have for our growers, and that is beneficial to them and to the industry in Southern California. If we can get a car into Chicago in 7 days, and delivered to a consignee, and he pays his draft, and it should go to pieces on the eighth

day that loss would be with him and not with the California
1440 growers. Therefore every day counts on an orange shipment, or on any other perishable goods.

Mr. SEVERANCE: Do you recall how long that train was kept in service?

Mr. PHILLIPS: That service? Those trains? Oh, I don't remember the exact number of trains. It seems to me that it was just four or five trains. They made as low as 5½ days to Chicago, one train.

Mr. SEVERANCE: 5½ days?

Mr. PHILLIPS: Yes sir. But after the decision of the Interstate Commerce Commission—of the Supreme Court, rather—we never got as good service after that as we did before.

Mr. SEVERANCE: That is, the service seemed to drop off after that decision as to routing?

Mr. PHILLIPS: Not as to routing, no sir.

Mr. SEVERANCE: Which decision do you mean?

Mr. PHILLIPS: The decision in which the growers had the routing. They have never interfered with our routing since. Whether incidentally or not, I don't know, but since then we have never got as good service as we did before that.

Mr. SEVERANCE: It may have been coincidence.

Mr. PHILLIPS: It may have been coincidence. Since then the routing has never been interfered with.

Mr. DUNNE: Mr. Phillips, you suggested that Mr. Graham told you this year that he would expect business after March, via Sacramento and Ogden?

Mr. PHILLIPS: He told me that, yes sir.

Mr. DUNNE: Is that the time of year when the northward movement of oranges is usually made?

Mr. PHILLIPS: Has been, yes sir.

Mr. DUNNE: Now, in this same year or season, did the Southern Pacific take any of your shipments over its rails other than by the northern gateways? Did you send any by El Paso and the Rock Island?

Mr. PHILLIPS: This year?

Mr. DUNNE: Yes.

Mr. PHILLIPS: Oh yes. We are sending them now.

Mr. DUNNE: What I want to know is, how the shipments
1441 that you sent by the Salt Lake and the shipments that you sent by the Southern Pacific, El Paso, and the Rock Island, this year, compared as to their respective volumes?

Mr. PHILLIPS: I can only speak, of course, for our own companies. I am sending two days in a week via the Southern Pacific, El Paso, and the Rock Island, and two days in the week via the S. P., T. & P., and M. K. & P., and two days in the week by the Salt Lake and Union Pacific.

Mr. DUNNE: In which direction does the greater volume of the shipment move?

Mr. PHILLIPS: At the present time?

Mr. DUNNE: Yes. In other words, does the Salt Lake get the bulk of the movement, or does the bulk of it go by way of El Paso?

Mr. PHILLIPS: Well, Mr. Dunne, the bulk of it, according to my running sheets, would go by El Paso. But, on account of the peculiar and abnormal car conditions at the present time, I am routing wherever I can get cars.

Mr. DUNNE: But under normal conditions, you say the greater part of your business would move by El Paso?

Mr. PHILLIPS: Four days to two.

Mr. DUNNE: Four days to two?

Mr. PHILLIPS: Yes sir.

Mr. DUNNE: That is all.

Mr. SEVERANCE: That is all, Mr. Phillips.

Mr. KELLY: Just one word. Can you tell how many packing houses there are on the Southern Pacific lines on this Southern California citrus belt?

Mr. PHILLIPS: I can tell how many we have.

Mr. KELLY: How many have you?

Mr. PHILLIPS: We have 49 packing houses on the Southern Pacific, 42 on the Santa Fe, and 3 on the Salt Lake.

Mr. KELLY: 49 on the Southern Pacific, 42 on the Santa Fe, and 3 on the Salt Lake?

1442 Mr. PHILLIPS: 49 on the Southern Pacific, 42 on the Santa Fe, and 3 on the Salt Lake, yes sir.

Mr. DUNNE: That is all.

Mr. SEVERANCE: By the way Mr. Phillips, have you received any notice not to pick oranges?

Mr. PHILLIPS: Yes sir.

Mr. SEVERANCE: From whom?

Mr. PHILLIPS: From the Southern Pacific.

Mr. SEVERANCE: When?

Mr. PHILLIPS: Last Friday, I believe.

Mr. SEVERANCE: How long is that embargo for, or was there anything said about how long?

Mr. PHILLIPS: It was not said how long—until further notice.

Mr. DUNNE: That is a question of car supply?

Mr. PHILLIPS: That is a case of car supply.

Mr. DUNNE: That is all.

F. Q. STORY, having been duly sworn, testified as follows:

Mr. SEVERANCE: Where do you live, Mr. Story?

Mr. STORY: Alhambra.

Mr. SEVERANCE: What is your business?

Mr. STORY: Various business, but for the purposes of this, I am President of the Alhambra Fruit Growers' Exchange, and of the Semi-Tropic Fruit Exchange, and The California Fruit Growers' Exchange.

Mr. SEVERANCE: You are engaged in shipping fruits?

Mr. STORY: We are engaged in shipping fruits, yes sir.

Mr. SEVERANCE: What is the California Fruit Growers' Exchange?

Mr. STORY: The California Fruit Growers' Exchange is composed of various Exchanges which are composed of sub-exchanges,

and the head exchange is known as the California Fruit Growers' Exchange.

Mr. SEVERANCE: What percentage of the fruit growers, that is, the growers of citrus fruits in Southern California, ship by your Exchange?

1443 Mr. STORY: The last two years, about 47 per cent.; three years ago it was between 44 per cent. and 45 per cent.

Mr. SEVERANCE: What lines do you ship over, Mr. Story?

Mr. STORY: We ship over all the lines.

Mr. SEVERANCE: Do you remember this fest train service that has been spoken of, by the Salt Lake road?

Mr. STORY: I do, yes sir.

Mr. SEVERANCE: Did you have any shipments on those trains?

Mr. STORY: We had a certain number.

Mr. SEVERANCE: Did you have enough to warrant the railroad people in maintaining them?

Mr. STORY: No sir, I did not.

Mr. SEVERANCE: You never did?

Mr. STORY: I would say that would belong more to our General Manager.

Mr. SEVERANCE: That is Mr. Woodford?

Mr. STORY: Mr. Woodford, yes sir.

Mr. SEVERANCE: Will you state what advantage there is to the fruit growers in having a service of 6 days to Chicago, rather than 9 or 10 days?

Mr. STORY: Well, at the time of the holidays, it makes a great difference; it makes a difference frequently of from one to two days, because we can pick our fruit two days later—that is, the difference between 7 days and 9, we will say—it allows us to pick the fruit two days later and two days longer, and get that much additional fruit to the market. We can't begin to pick until a certain date, until the fruit is in condition to be picked. Now, if it is carried through in 7 days, we get two days additional picking that we can get into the market at the holiday prices. If that fruit is delayed two days longer, it gets into the market too late to bring those prices, and the prices are different, all the way from one to two hundred dollars a car, and sometimes even more. At other times than the holiday times, it makes a difference in regard to the decay. Fruit in

1444 a season like this, when it once begins to decay, two or three days will make a difference in the value of fruit $100 or more.

Mr. SEVERANCE: Mr. Story, can you tell how your business last year was divided in percentages as between the three lines?

Mr. STORY: Between the Santa Fe and the Southern Pacific?

Mr. SEVERANCE: Between the Santa Fe, Southern Pacific and Salt Lake.

Mr. STORY: I don't know just the percentage. Largely it goes according to the roads on which our associations have their packing houses. We have in the neighborhood of 70 associations—80 I should say, about 80 associations, and it goes very largely upon the line upon which the association has its particular packing house.

Mr. SEVERANCE: That is not an inflexible rule, is it?

Mr. STORY: No, it is not.

Mr. SEVERANCE: Have you any figures in your office which show the division of the total fruit shipments by the three lines last year?

Mr. STORY: I think we may have, but I am not sure about that.

Mr. SEVERANCE: Mr. Woodford would know about that, would he?

Mr. STORY: Yes sir, Mr. Woodford would know about that.

Mr. SEVERANCE: Better than you?

Mr. STORY: Yes sir.

Mr. SEVERANCE: Were you in Los Angeles at the time Mr. McCormick and Mr. Munroe were here?

Mr. STORY: Yes sir.

Mr. SEVERANCE: Did you have any conversation with those gentlemen, or either of them?

Mr. STORY: I did.

Mr. SEVERANCE: What was the conversation?

Mr. STORY: My conversation with them was of a general nature, along general lines in regard to business, certain things
1445 which we desired. We impressed upon them the desirability of quick transit. We impressed upon them the necessity of having the cars as we needed them. All of which they showed an inclination, in fact, did everything in their power to grant to us. I will say in regard to the cars especially we were in great need at that time for our shook. We had a great deal of difficulty in obtaining those cars, and I would like to state that I believe those gentlemen did everything in their power to see that we had our cars, in order that we might get our shook into our various packing houses.

Mr. SEVERANCE: Over what lines of road did Mr. Munroe solicit the shipments?

Mr. STORY: He did not solicit any shipments of me whatever.

Mr. SEVERANCE: How is that?

Mr. STORY: He did not solicit any shipments of me whatever.

Mr. SEVERANCE: Oh, he did not solicit shipments from you. You merely had this talk with him about getting cars?

Mr. STORY: Yes, sir; in a general way.

Mr. SEVERANCE: What have you to say as to the rates on citrus fruits between here and the east, Mr. Story?

Mr. STORY: From my point of view, they are entirely too high.

Mr. SEVERANCE: Why?

Mr. STORY: Well, they are so high that, take it from the growers' point of view, I believe that fully one-half of Southern California for two-thirds of the last 10 years has made little or nothing off of their oranges. I think the railroads can afford to reduce the rates. They are too high from that point of view.

Mr. SEVERANCE: What is the minimum per carload now?

Mr. STORY: The minimum per carload is 384 boxes, of about 80 pounds, I think, which makes about 28,000 pounds, or something like that.

1446 Mr. SEVERANCE: And about how much does that amount to a car, at $1.25 a hundred?

Mr. STORY: I will have to figure it out; I can't say offhand.

Mr. SEVERANCE: You will have to figure it out. All right, we won't stop for that. Do you know what the total shipments amount to in carloads from this region?

Mr. STORY: The last year it was about 28,000 carloads out of California, and the year before about 30,000, and they estimate about 30,000 this year.

Mr. SEVERANCE: How do rates now compare with what they were 7 or 8 years ago?

Mr. STORY: The rates are the same, with the exception that the minimum has been increased; I believe the estimated weight of the box has been increased some, too.

Mr. SEVERANCE: That was what I was going to ask you about.

Mr. STORY: And we have to put in a very much larger number of boxes to the car.

Mr. SEVERANCE: How was the service then as to time, as compared with what it is now?

Mr. STORY: Formerly it was very much better than what it is now.

Mr. SEVERANCE: How much better?

Mr. STORY: Well, to New York, anywhere from 4 to 6 days, I should say, or 3 to 6 days.

Mr. SEVERANCE: What was the difference, if any, in the size of the trainloads that were made up formerly?

Mr. STORY: When the rate was originally made, I think 10 cars was considered a trainload, or there were sent at times that number of cars forward; 10 to 12 cars.

Mr. SEVERANCE: What is the trainload now?

Mr. STORY: As many as they can haul, I think.

Mr. SEVERANCE: By the way, do the railroads pay damages for delays in making deliveries?

Mr. STORY: For delays, you say?

Mr. SEVERANCE: Yes. I ask you if they pay you for delays in deliveries, the same as they do on livestock?

1447 Mr. STORY: If it is manifest delay, if it can be shown to be their fault, they will pay—they are not anxious to do it.

Mr. SEVERANCE: I suppose not, but they do pay for that kind of thing?

Mr. STORY: They do pay to a certain extent, yes sir.

Mr. SEVERANCE: For how long a time—how long is it necessary there should be a delay before they will pay?

Mr. STORY: I think that depends upon——

Mr. KELLY (int'g): I confess, Mr. Commissioner, I can hardly see the materiality of this.

Commissioner LANE: I do not myself.

Mr. SEVERANCE: This is just a word upon the subject. If there is any professional objection, I will withdraw it.

Mr. DUNNE: You indicate that you have just one question. He said they were paid for delays.

Mr. SEVERANCE: He said they were paid for delays, yes, and I asked him how long a delay would there be before they can collect damages. That is the only question I want to ask him upon that.

Mr. DUNNE: All right.

Mr. SEVERANCE: How long do they allow you, Mr. Story? When does the penalty attach?

Mr. STORY: Well, I think it would depend on how long the delay is, and what occasioned the delay. If the delay was occasioned by something for which they were not accountable, I don't think they would allow anything on our claim. Mr. Woodford can answer that better than I can.

Mr. SEVERANCE: Very well. I will excuse you then.

Mr. DUNNE: If the railroad company is not to blame for the delay, you say they do not make any payment—if they are not at fault?

Mr. STORY: That is the way I understand it, but I would prefer to have Mr. Woodford answer the question.

Mr. DUNNE: But you have gone on the record as making a
1448 statement in regard to that matter. Where it is proved that they are at fault, they have paid damage claims, have they not?

Mr. STORY: So I understand.

Mr. DUNNE: Is not the payment of those claims based upon damage to the property resulting from the delay.

Mr. STORY: It is.

Mr. DUNNE: That is all.

Mr. SEVERANCE: That is all.

Commissioner LANE: Do you understand, Mr. Story, that they will pay, for instance, for fruit that is in the warehouse today upon which they cannot furnish cars?

Mr. STORY: I have never known a claim of that nature to be paid.

Mr. DUNNE: All he means is that they pay when there is a delay in the transportation.

Mr. STORY: A delay in the transportation, yes.

Commissioner LANE: A delay in the transit?

Mr. STORY: A delay in the transit, yes sir.

Mr. SEVERANCE: That is all, Mr. Story. We will call Mr. Woodford.

B. A. WOODFORD, having been duly sworn, testified as follows:

Mr. SEVERANCE: Mr. Woodford, what is your business?

Mr. WOODFORD: General Manager of the California Fruit Growers' Exchange.

Mr. SEVERANCE: That is the same company of which Mr. Story is the President.

Mr. WOODFORD: Yes sir, the same company of which he is President.

Mr. SEVERANCE: How long have you been in the fruit business?

Mr. WOODFORD: I have been in Southern California 18 years, but in the shipping of fruit about 12 or 14 years—13 years.

1449 Mr. SEVERANCE: Mr. Story stated that you shipped about 47 per cent. of the fruit crop last year. Is that about your idea?

Mr. WOODFORD: Yes sir, last year and the year before.

Mr. SEVERANCE: How about it this year?
Mr. WOODFORD: I think we will ship more.
Mr. SEVERANCE: Over what lines?
Mr. WOODFORD: All the lines.
Mr. SEVERANCE: How do you divide it?
Mr. WOODFORD: We don't divide it.
Mr. SEVERANCE: Who divides it?
Mr. WOODFORD: Well, the location of the packing houses largely divides it?
Mr. SEVERANCE: Is that always so?
Mr. WOODFORD: Not always.
Mr. SEVERANCE: Well, what are the instances in which it is divided otherwise than according to the location of the packing houses?
Mr. WOODFORD: Well, we have—many of our shipments originate on the Santa Fe, and we wish the fruit to move to the northwestern non-competitive points, like Seattle or Portland, and of course that moves Southern Pacific rather than Santa Fe. And at times the Santa Fe has had large quantities of fruit move out of this country, when it would look as if they had more than their facilities—than they had facilities for, and such shipments have been moved by other lines.
Mr. SEVERANCE: What arrangements do you make to have it moved by other lines, or what arrangements do the railroads make to have it moved by other lines?
Mr. WOODFORD: I don't know what arrangements are made, that is, I don't know what arrangements the railroads make. We don't make any.
Mr. SEVERANCE: You don't make any arrangements?
Mr. WOODFORD: No sir; we permit it to be done.
Mr. SEVERANCE: That is what I want to get at. Then fruit that originates on one line is at times moved over a competitive line, that is, we will say that fruit originating on the Santa Fe is moved
1450 by the Southern Pacific, and fruit that originates on the Southern Pacific is moved by the Santa Fe.
Mr. WOODFORD: Very seldom anything originating in the Southern Pacific goes by the Santa Fe.
Mr. SEVERANCE: Or the Salt Lake?
Mr. WOODFORD: Yes sir, or the Salt Lake.
Mr. SEVERANCE: Or the Salt Lake at the request of the Santa Fe.
Mr. WOODFORD: Yes sir.
Mr. SEVERANCE: Have you any houses located on the Salt Lake line?
Mr. WOODFORD: I think we have 4 or 5; something like that.
Mr. SEVERANCE: Out of how many?
Mr. WOODFORD: Out of less than 100; probably 80 houses.
Mr. SEVERANCE: And what percentage of your shipment goes over the Salt Lake?
Mr. WOODFORD: Well, I can't tell you that. I haven't made up a record of our shipments. I think, according to the published reports of the railroads, that the Salt Lake last year had about 10 per cent. of

the citrus fruit traffic, and the Santa Fe and the Southern Pacific each about 45 per cent. But that is not our association's line of business alone.

Mr. SEVERANCE: I understand. That is all the business. Those reports were sent out by the railroads, were they not?

Mr. WOODFORD: I think they are published daily, the shipments.

Mr. SEVERANCE: And it figured 45 per cent. to the Santa Fe and the Southern Pacific, that is, to each of those roads, and 10 per cent. to the Salt Lake?

Mr. WOODFORD: Yes sir, something like that.

Mr. SEVERANCE: When you ship on the Salt Lake road, where does that fruit originate?

Mr. WOODFORD: On the Salt Lake, or on the Southern Pacific, or on the Santa Fe.

Mr. SEVERANCE: Did you see Mr. Munroe when he was out here?

1451 Mr. WOODFORD: I did.

Mr. SEVERANCE: Did he have any talk with you about moving traffic over the Salt Lake and Southern Pacific?

Mr. WOODFORD: He did. He was anxious for shipments.

Mr. SEVERANCE: Have you shipped that way since then?

Mr. WOODFORD: Very little fruit has gone that way since then. Our shipments have moved largely by the Santa Fe, or south by El Paso.

Mr. SEVERANCE: Is that on account of the weather conditions?

Mr. WOODFORD: Climatic conditions. We begin to move fruit north the last of February or first of March.

Mr. SEVERANCE: By "north," which routes do you mean it moves over?

Mr. WOODFORD: I mean going through the Ogden gateway.

Mr. SEVERANCE: Of this 10 per cent. that the Salt Lake moved last year, of the total shipments, can you state whether the whole or a large percentage of that originated on their own rails?

Mr. WOODFORD: I think a very small part of it originated on their own rails.

Mr. SEVERANCE: A very small part of it, you say?

Mr. WOODFORD: That is my opinion of the matter, yes sir.

Mr. DUNNE: Do you mean the Salt Lake rails?

Mr. WOODFORD: The Salt Lake rails.

Mr. SEVERANCE: It came off of the other lines.

Mr. WOODFORD: Yes sir.

Mr. SEVERANCE: What percentage of the packing houses in this district are on the Santa Fe rails?

Mr. WOODFORD: I can't tell you that. About 60 per cent. of all the fruit that is packed in warehouses originates, I think, on the Santa Fe.

Mr. SEVERANCE: That is what I want to get at.

1452 Mr. WOODFORD: Some packing houses may pack more fruit than others.

Mr. SEVERANCE: I understand that. But the fact is that about 60 per cent. out of the total of the citrus fruits raised here is tributary to the Santa Fe road?

Mr. WOODFORD: Yes sir.

Mr. SEVERANCE: Still, when it comes to moving it to market, last year the Santa Fe moved about 45 per cent. of the total shipments, the Southern Pacific about 45 per cent., and the Salt Lake about 10 per cent.?

Mr. WOODFORD: Yes sir, approximately, according to their published reports.

Mr. SEVERANCE: Mr. Woodford, have you anything to say on the subject of the freight rates that are now charged and were formerly charged?

Mr. WOODFORD: Well, the freight rate on oranges has been the same for approximately 20 years, $1.25 a hundred pounds.

Mr. SEVERANCE: 20 years, you say?

Mr. WOODFORD: Yes sir, approximately. That is, for all points east of the east line of Colorado.

Mr. SEVERANCE: Is there any difference in the rate by reason of the change in the boxes, the weight of the boxes?

Mr. WOODFORD: The estimated weight has been increased from 70 to 72 pounds in these last years, and the minimum has been increased from 20,000 pounds originally to very close to 28,000 pounds to the car now.

Mr. SEVERANCE: Does this increase in the estimated weight of the boxes have a tendency to slightly increase the freight rate on the product?

Mr. WOODFORD: By two-seventieths, yes sir.

Mr. SEVERANCE: So that the rate, instead of having been lowered, has been increased by 2/70?

Mr. WOODFORD: In that manner.

Mr. SEVERANCE: In that way?

Mr. WOODFORD: Yes sir.

1453 Mr. SEVERANCE: When did that change in the estimated weight of the boxes begin?

Mr. WOODFORD: I think that must have been 7 or 8 years ago.

Mr. SEVERANCE: That has been kept at the same figure since?

Mr. WOODFORD: Yes sir.

Mr. SEVERANCE: What have you to say as to the fairness of this rate, from the standpoint of a shipper?

Mr. WOODFORD: From the standpoint of the grower, and as compared with the rate on other California products, I think the orange rate is too high.

Mr. SEVERANCE: As compared with what other products?

Mr. WOODFORD: Well, celery, or apples.

Mr. SEVERANCE: And lemons?

Mr. WOODFORD: Well, there was a special reason for the reduction in the lemon rate, and I would not like to cite that as an instance. The railroads granted the lemon rate of $1.00 largely for the same reason that a protective tariff is given, to encourage the industry. The people were budding over their lemon trees, and were going out of the lemon business, and they had had several hard years, and were increasing their orange acreage, and decreasing their lemon acreage,

and the railroads and the growers got together with the idea that the dollar rate would help that situation, and I think it has.

Mr. SEVERANCE: What is the rate on celery?

Mr. WOODFORD: It varies. It is not a blanket rate.

Mr. SEVERANCE: It is not a blanket rate?

Mr. WOODFORD: No sir.

Mr. SEVERANCE: But the rate on oranges is a blanket rate for all territory east of where—the Missouri River?

Mr. WOODFORD: East of the eastern boundary of Colorado, except certain southeastern territory and Canadian territory, where there is still a higher rate than $1.25.

1454 Mr. SEVERANCE: You say the celery rate varies. Take it to Colorado common points. Do you ship celery there, or does it all go farther east?

Mr. WOODFORD: I am not familiar with the movement of celery. We don't ship any.

Mr. SEVERANCE: Then why did you make the comparison with celery?

Mr. WOODFORD: The celery rate to Cleveland, Ohio, I understand, is $1.08 a hundred, and the center of distribution of our citrus fruits is somewhat west of Cleveland, Ohio, and we pay $1.25 flat all over that country.

Mr. SEVERANCE: Is there a difference in the way citrus fruits are moved and celery has been moved?

Mr. WOODFORD: Celery practically moves entirely under ice, I think, refrigeration, and a few of our oranges move under ventilation without ice.

Mr. SEVERANCE: Do you remember the time that the Salt Lake road ran those fast trains?

Mr. WOODFORD: I do.

Mr. SEVERANCE: What was the effect on the traffic of the Salt Lake, if you know?

Mr. WOODFORD: We were anxious to give them all the traffic we could, on account of that fact.

Mr. SEVERANCE: Why ?

Mr. WOODFORD: On account of the time, approximately 6 days to Chicago.

Mr. SEVERANCE: Have you ever had any talk with their officials about reinstating that time?

Mr. WOODFORD: Indirectly. Mr. Dezell, my assistant, has been handling that part of it.

Mr. SEVERANCE: It never has been reinstated, has it?

Mr. WOODFORD: Not to my knowledge.

Mr. SEVERANCE: How are your shipments this year? About how long does it take to get them through to Chicago?

Mr. WOODFORD: Well, via El Paso, and Rock Island, the Southern Pacific and Rock Island, I think we have been getting
1455 through about the 9th day from loading, recently, and via the Santa Fe, probably a couple of days slower, about 11 days to Chicago.

Mr. SEVERANCE: I think that is all.

Mr. DUNNE: Mr. Woodford, do you consider the rate on lemons high?

Mr. WOODFORD: It is high enough.

Mr. DUNNE: Do you consider it a reasonable rate?

Mr. WOODFORD: Why, yes, I think it is a reasonable rate.

Mr. DUNNE: Do you consider the rate upon celery a reasonable rate?

Mr. WOODFORD: I don't know much about the celery business.

Mr. DUNNE: The celery rate applies only as far as Chicago, does it not?

Mr. WOODFORD: I think they have a graduated rate. It varies.

Mr. DUNNE: I refer to the 90 cent rate. It won't take celery east of Chicago, will it?

Mr. WOODFORD: I presume not. I don't know that there is a 90 cent rate to Chicago.

Mr. DUNNE: You understand that the rate of $1.25 on oranges is a blanket rate for all points from the Missouri River east?

Mr. WOODFORD: Or from the east of the eastern boundary line of Colorado.

Mr. DUNNE: Do I understand you to say that very few cars move over the Santa Fe rails taking oranges from the packing houses, taking oranges from the packing houses on Santa Fe rails, move from those houses on to the Southern Pacific rails?

Mr. WOODFORD: I didn't say that, no sir.

Mr. DUNNE: I mean the other way, Mr. Woodford?

Mr. WOODFORD: Just the reverse.

Mr. DUNNE: Very few cars move from Southern Pacific rails, taking oranges from Southern Pacific packing houses, if I may so describe them for convenience, and are transported on the Santa Fe rails to destination?

Mr. WOODFORD: Very seldom is that done.

1456 Mr. DUNNE: But you have seen a good many cars shipped in the reverse way?

Mr. WOODFORD: Yes sir.

Mr. DUNNE: Now, Mr. Woodford, points in Texas, Montana, Louisiana, Washington—points of that kind would be served, would they not, by Southern Pacific rails?

Mr. WOODFORD: Certainly. You can reach Texas points and Louisiana points by Santa Fe rails also.

Mr. DUNNE: Is not this question of the orange rate a question not so much of the amount of the rate as a question of service—of an expedited service?

Mr. WOODFORD: It is both.

Mr. DUNNE: Sir?

Mr. WOODFORD: Both; both are valuable.

Mr. DUNNE: Is it not principally an expedited service? Is not the other consideration merely incidental, Mr. Woodford?

Mr. WOODFORD: No sir, I should not say that. You might have a $3.00 rate, and it surely would not be incidental.

Mr. DUNNE: Well, but this is a $1.25 rate.

Mr. WOODFORD: A $1.25 rate means a good deal to us.

Mr. DUNNE: I ask you this question: If a $1.25 rate with an expedited service would not be generally satisfactory to the growers and shippers?

Mr. WOODFORD: No sir, it would not. It is too high.

Mr. DUNNE: Were you here at the time of the hearing before the Interstate Commerce Commission of the orange rate case?

Mr. WOODFORD: I was here, but I was not present at the hearing. I was here in Los Angeles.

Mr. DUNNE: Did you hear any statements made upon the lines I have just suggested, by the shippers themselves?

Mr. WOODFORD: I think the shippers themselves stated that the service was a great point, but I think they also stated that the rate was a great point.

1457 Mr. DUNNE: That is your understanding, is it?

Mr. WOODFORD: That is my understanding, yes sir.

Mr. DUNNE: Very well. I think that is all.

Mr. SEVERANCE: That is all, Mr. Woodford.

Commissioner LANE: Have you any more witnesses?

Mr. SEVERANCE: I have a great many more witnesses, but their testimony will be cumulative. I do not care to detain your Honor with them.

Commissioner LANE: Are there any more that go into the relation, or rather into the question of the intercorporate relation of the Southern Pacific and the Union Pacific.

Mr. SEVERANCE: There are railroad men subpœnaed, but I do not want to take the time, under the circumstances.

Commissioner LANE: Have you any witnesses that you want to call, Mr. Dunne?

Mr. DUNNE: No, we do not care to examine any witnesses.

Mr. SEVERANCE: I would like your Honor to make a statement with reference to the discontinuing of the hearing at this point, because there are a great many witnesses here under subpœna.

Commissioner LANE: Yes, there are a number of witnesses here that are under subpœna from the Commission. I am informed by Mr. Severance that their testimony would be largely cumulative, that they would testify practically to the same effect as the witnesses that have preceded. I am imperatively called to Washington tonight, so that it will be impossible for us to continue, as we had anticipated, to-morrow morning. But I believe from the statements made by Mr. Severance and Mr. Dunne that all of the ground has been covered that it was expected might be covered. Therefore this hearing at this time will be adjourned to meet at New York on the 25th of this month. I am also informed that there are gentlemen here waiting to consult with me regarding anticipated complaints, complaints which they anticipated filing with the

1458 Interstate Commerce Commission, one from a coast point, and another from an interior point. Let me say to both of those groups of gentlemen that the form of filing complaints with the Commission is extremely simple. You present your facts, and, if you desire, you can send them to me and they will be put in the shape of a complaint, and the complaint remitted to you with the

proper parties defendant named, and service will be made upon them. Those complaints will be heard at our earliest convenience, and after service is made upon the railroad company. This hearing is now adjourned.

(An adjournment was at this point taken, to meet at New York at 10 o'clock A. M. of Monday, the 25th day of February, 1907.)

1459 In the Matter of the Consolidation and Combination of Carriers, Relations Between Such Carriers, and Community of Interest Therein, Their Rates, Facilities and Practices.

Before the Interstate Commerce Commission.

NEW YORK, *February* 25, 1907.

The Commission met pursuant to notice, at Room 70 in the Post Office Building.

Present:

Commissioners:

Knapp, (Chairman).
Clements,
Prouty,
Harlan,
Lane.

Mr. Kellogg and Mr. Severance, for the Interstate Commerce Commission.

Messrs. Lovett, Milburn, Cravath and Evarts, for the Union Pacific Railroad Company.

The CHAIRMAN: Before taking up the inquiry which has been assigned for further hearing this morning the Commission takes occasion to make an announcement regarding the stenographic reports of its proceedings. We have heretofore had stenog-
1460 raphers in our employ who made reports of our different hearings, but the great increase in that work under the amended law, and the special investigations, ordered by the Congress, and the difficulty of securing fairly competent men, has led the Commission to make a change. We have accordingly made arrangements with Messrs. Hulse & Smith of Washington, and the Law Reporting Company of this city, under which they are hereafter to make reports of all public hearings and proceedings before the Commission in every part of the country. They have undertaken to do this under the direction of our official stenographer, Mr. John J. McAuliffe, and to assure us first class and up to date work in every respect.

Ordinarily where hearings are held in the principal cities, they will arrange to furnish daily copies. The arrangement with them includes the furnishing of extra copies to those who may desire them at the rate of 12½ cents per page, of approximately 200 words.

We desire to be distinctly understood that no one is under any obligation to take an extra copy of the testimony, but the arrangement has been made with the view of accommodating those who

may desire copies, and at a price which is believed to be fair and reasonable. No person employed by the Commission will have any interest whatever in the proceeds of these extra copies, but they will be furnished, as I stated, through the stenographers with whom the arrangement has been made and upon request to that end.

Now, Mr Kellogg, if you are ready to proceed, we will take up the hearing assigned for this morning.

Mr. KELLOGG: I will call Mr. Harriman.

Judge LOVETT: We expect him here in a moment.

Mr. SEVERANCE: While we are waiting for Mr. Harriman, I put in evidence, with the consent of Judge Lovett, the resolutions of the Union Pacific Railroad Executive Committee, under date of May 29, 1906, with reference to the purchase by the Union Pacific from Mr. E. H. Harriman of certain stock of the St. Joseph
1461 & Grand Island Railroad Company, amounting to about 37 per cent. of that stock, which includes the report of the committee appointed to consider the question and a description of the property and certain reasons which are developed in the resolution why it is advisable to secure this property. That may be marked as an exhibit.

The paper was received in evidence and marked Harriman Exhibit 1, of this date.

EDWARD H. HARRIMAN, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Mr. KELLOGG: Mr. Harriman, you are president of the Union Pacific Railroad?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: You have been chairman of the Board of Directors since about 1900?

Mr. HARRIMAN: Chairman of the Executive Committee.

Mr. KELLOGG: Chairman of the Executive Committee.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: You are also President of the Southern Pacific, the Oregon Short Line, and the Navigation Company.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Are you chairman of the Board of Directors of the Southern Pacific Company?

Mr. HARRIMAN: Of the executive committee.

Mr. KELLOGG: Of the executive committee?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: You took that position shortly after the acquisition of the stock of the Southern Pacific by the Union Pacific Company, didn't you?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Since that time you have acted as chairman of the executive committee?

Mr. HARRIMAN: Yes.

1462 Mr. KELLOGG: And after the retirement of Mr. Hayes as president of that company?

Mr. HARRIMAN: As president, yes, sir.

Mr. KELLOGG: Yes.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: So that we may not duplicate things that have been put in before, I will ask you in a general way if about January, 1901, or during the winter of 1901, the Union Pacific Railroad Company issued or provided for the issue of $100,000,000 of convertible bonds for the purpose of acquiring stocks in other railway companies?

Mr. HARRIMAN: Well, I don't think that is hardly the way to put it. We issued $100,000,000 of convertible bonds primarily to pay for the Southern Pacific, which had been purchased first not generally to purchase the securities of other railroads.

Mr. KELLOGG: $40,000,000 of those bonds were sold to Kuhn, Loeb & Co., to pay for the first 750,000 shares of the stock of the Southern Pacific Company purchased, was it not?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: And the cost of that stock, with the commission on the bonds and the commission on the purchase, was, according to a statement furnished by your company, $41,866,627?

Mr. HARRIMAN: Yes, sir. I suppose that is right.

Mr. KELLOGG: Yes, that is correct. That included the commission on the bonds and the commission on the purchase of the stock, did it not?

Mr. HARRIMAN: If the statement so shows, I presume it did. I could not say from recollection just what it was.

Mr. KELLOGG: I understand, Mr. Harriman, you could not guarantee the accuracy of these figures, but that is correct, according to the statement furnished us. Out of those bonds you also used $61,000,000 for the purchase money certificates to buy the Northern Pacific stock, or about that sum, did you not?

Mr. HARRIMAN: I think about that, yes.

1463 Mr. KELLOGG: The other $27,000,000 invested in the Northern Pacific stock was furnished by the Oregon Short Line Company, was it?

Mr. HARRIMAN: Well, if the statements so show, I have no doubt it was.

Mr. KELLOGG: About $27,000,000 more.

Mr. HARRIMAN: Well, I don't know exactly that.

Mr. KELLOGG: That was about the balance of the purchase, was it not?

Mr. HARRIMAN: Does not the statement show that? I cannot carry that in my head.

Mr. KELLOGG: Yes, the statements show that.

Mr. HARRIMAN: Mr. Lovett, I don't want to go through in detail all these statements——

Mr. KELLOGG: You are not going to.

Mr. HARRIMAN: They have been made up in the office.

Mr. LOVETT: Mr. Mahl, the comptroller, prepared them.

Mr. HARRIMAN: If you want me to verify this, so that I can certify they are the ones, I don't want to do that, but I will try to tell from my own recollection exactly what I know about these transactions.

Mr. KELLOGG: That is what I want. We do not expect you to remember all the details, of course.

Mr. HARRIMAN: It is a long time ago, and whatever financing was done, was done as well as we could do it at that time.

Mr. KELLOGG: In a general way, then, the $100,000,000 of convertible bonds were used in the first instance to purchase the Southern Pacific and Northern Pacific stock?

Mr. HARRIMAN: That is my recollection.

Mr. KELLOGG: The balance, whatever it was, which it shows to be about $27,000,000 was taken care of by the Oregon Short Line?

Mr. HARRIMAN: I think that was so.

Mr. KELLOGG: That $100,000,000 of bonds, with the exception of about $500,000, has been converted into Union Pacific common stock, has it not?

1464 Mr. HARRIMAN: That is so.

Mr. KELLOGG: So we will call that the $100,000,000.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: There is outstanding, in lieu of those bonds, $100,000,000 of Union Pacific common stock, which has been used to purchase stocks in these other railroads?

Mr. HARRIMAN: That in round numbers is about right.

Mr. KELLOGG: The Oregon Short Line, about July, 1902, issued in the first instance its participating bonds, providing for $100,000,000 of those by the mortgage. You recall that?

Mr. HARRIMAN: Was that in the first instance? I think the convertible bonds were issued before the participating bonds, were they not?

Mr. KELLOGG: The convertible bonds were Union Pacific, they were issued first.

Mr. HARRIMAN: I see, that is so.

Mr. KELLOGG: Following that, the Oregon Short Line issued or provided for about $100,000,000 of participating bonds.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: And afterwards, in about 1905, or 1904—which was it?

Mr. LOVETT: 1905.

Mr. KELLOGG: In 1905, the Oregon Short Line Company issued its refunding bonds to take up its prior participating bonds.

Mr. HARRIMAN: Yes, sir; I believe that is so.

Mr. KELLOGG: So that the participating bonds are not now outstanding, as I understand it, none of them?

Mr. HARRIMAN: That is so.

Mr. KELLOGG: Of those refunding bonds, $100,000,000 were issued.

Mr. HARRIMAN: Authorized.

Mr. KELLOGG: Authorized, yes.

Mr. HARRIMAN: Yes.

1465 Mr. KELLOGG: There has been issued—Judge Lovett says that in November the balance of the old convertible bonds were redeemed, so that there is the $100,000,000 now all redeemed, and $100,000,000 of common stock all outstanding of the Union Pacific Company?

Mr. HARRIMAN: That is so—one minute, if you want to be exact on that, I don't think there is $100,000,000 of stock outstanding.

Mr. LOVETT: No, the bonds were redeemed at 2½ premium, and the stock issued against them.

Mr. HARRIMAN: I think there is just a little less than $100,000,000.

Mr. KELLOGG: Well, it is within a few hundred thousands of $100,000,000.

Mr. HARRIMAN: Yes, I think so.

Mr. KELLOGG: We will call it $100,000,000 for the purpose of the inquiry; the statements will show it. The Short Line Company provided for $100,000,000 of refunding bonds to take up its participating bonds.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: And of that $100,000,000 of refunding bonds there have been sold through Kuhn, Loeb & Co. to the public $45,000,000 which are outstanding?

Mr. HARRIMAN: Well, if the statements so show, of course that must be so.

Mr. KELLOGG: Well, it is about $45,000,000, as you understand it?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: The balance of those bonds are owned by the Union Pacific, the $55,000,000.

Mr. HARRIMAN: I think that is so too.

Mr. KELLOGG: So that you have now outstanding $110,000,000, or substantially $100,000,000 of common stock of the Union Pacific and $45,000,000 of the bonds of the Oregon Short Line which have been issued to purchase stocks in other Railroad companies.

Mr. HARRIMAN: Well, now, is that so?

Mr. KELLOGG: Yes, I think so.

1466 Mr. HARRIMAN: That $45,000,000, I don't think all of that was used to pay for stock; that was issued for some other purpose, I think, probably.

Mr. KELLOGG: Well, it may have been used for other purposes, but other moneys of the Short Line were used for buying stock.

Mr. HARRIMAN: Well, were they?

Mr. KELLOGG: Yes, I think so.

Mr. HARRIMAN: You have the statement there. My recollection is that they were not, Mr. Kellogg. I think that the participating bonds were used for the purpose of paying the balance of the cost of the Northern Pacific, and then the refunding bonds were issued to take up those participating bonds.

Mr. LOVETT: I suggest these statements about which you are in-

terrogating be offered in evidence and placed in the testimony so that we can follow them.

Mr. KELLOGG: Yes, I will offer them. It was about $27,000,000 that the Short Line provided for to purchase——

Mr. HARRIMAN: I think that is about correct, so that there is about $127,000,000 of either stock or bonds in existence somewhere, the proceeds of which were used to pay for Southern Pacific and Northern Pacific, isn't that right?

Mr. KELLOGG: Yes, I think so.

Mr. HARRIMAN: I think that is right.

Mr. KELLOGG: After that the Southern Pacific—or Short Line bought $15,000,000 par value of the Southern Pacific stock in addition to its $75,000,000, didn't it?

Mr. HARRIMAN: That is so, yes.

Mr. KELLOGG: At about $65 a share?

Mr. HARRIMAN: If the statement so shows it is so.

Mr. KELLOGG: After that it bought $18,000,000 of the preferred stock when it was issued by the Southern Pacific, *pro rata* to its stockholders?

Mr. HARRIMAN: That is so; that is, it took its share of whatever it was entitled to under the owning of $90,000,000 of stock.

1467 Mr. KELLOGG: And the total amount paid for the Northern Pacific stock was in the neighborhood of $83,000,000?

Mr. HARRIMAN: Now, let me see; is that what it shows there?

Mr. KELLOGG: Yes, about that?

Mr. HARRIMAN: $18,000,000 for the preferred and the balance for the common.

Mr. KELLOGG: In any event, the entire hundred million of capital stock of the Union Pacific Company has been used to purchase stock in other railways?

Mr. HARRIMAN: Now, I don't want you to get it around that way, unless later on you show it.

Mr. KELLOGG: Is not that a fact?

Mr. HARRIMAN: The proceeds of the hundred millions of convertible bonds turned into stock were used for the purpose of purchasing whatever the Southern Pacific report and whatever the Northern Pacific report, plus the sum of the refunding bond. Now, whether we provided, from the issue of those bonds, the money necessary to take up that eighteen millions of preferred stock of the Southern Pacific, I do not know. That is all shown probably, in the annual reports of those years. We had advanced—one minute now, Mr. Kellogg. I think you will get the thing worked out. When we bought the Southern Pacific, we advanced to it, for the purposes of improving its property, something like eighteen or twenty million dollars.

Mr. KELLOGG: Yes sir.

Mr. HARRIMAN: Now, then, that was repaid to us by the Southern Pacific at the time they issued their preferred stock. So I think our subscription to the eighteen millions of preferred stock of the Southern Pacific about balanced what they owed us. But whether we issued——

Mr. KELLOGG: But would not——

Mr. HARRIMAN: One minute. I do not want to tie it down to just the securities. Whether we issued these refunding bonds
1468 for the purposes of advancing that money to the Southern Pacific or not, I couldn't tell you.

Mr. KELLOGG: You certainly issued those refunding bonds to buy the common stock and the Northern Pacific stock, did you not?

Mr. HARRIMAN: The refunding bonds?

Mr. KELLOGG: I do not mean the refunding bonds. I mean the convertible bonds.

Mr. HARRIMAN: The convertible bonds.

Mr. KELLOGG: And they were converted into common stock?

Mr. HARRIMAN: Yes sir.

Mr. KELLOGG: So that common stock was issued?

Mr. HARRIMAN: Let me go back a moment.

Mr. KELLOGG: Just a moment now. Common stock was issued and was outstanding for the purpose of purchasing stocks in other railroads.

Mr. HARRIMAN: That is what it resulted in.

Mr. KELLOGG: You have——

Mr. LOVETT: One moment, Mr. Kellogg. Let him answer.

Mr. KELLOGG: Excuse me. Answer in any way you desire.

Mr. HARRIMAN: In the first place, my recollection is that we authorized the issue of the hundred millions convertible bonds, forty millions of which were used to pay for the Southern Pacific stock purchase. The other sixty millions were held for the purposes of the corporation. That is my recollection. It was not specifically issued at the time it was issued, to pay for Northern Pacific and Southern Pacific.

Mr. KELLOGG: But your statement here shows that it actually was used, sixty millions, to buy the Northern Pacific stock.

Mr. HARRIMAN: You said it was issued for that purpose. It was issued for the purposes of the corporation. It might have been used for any other purpose.

Mr. KELLOGG: Oh, certainly; but it was used for that purpose, was it not?

Mr. HARRIMAN: There is no doubt about that.

1469 Mr. KELLOGG: Now, more than forty-five millions of the Short Line money was used to buy stock in other companies, altogether?

Mr. HARRIMAN: Now, wait a minute. We bought about twenty-seven million. It was used to pay for Northern Pacific and Southern Pacific, was it not, and eighteen millions—you can figure it that way, if you like. Eighteen millions was used to pay for the Southern Pacific preferred.

Mr. KELLOGG: And a large amount to pay for the common stock of the Southern Pacific, fifteen millions bought after that.

Mr. HARRIMAN: In addition to that.

Mr. KELLOGG: So that forty-five millions of Short Line money was used to buy stocks in other railroads. Is not that true?

Mr. HARRIMAN: You use that expression. I want to specifically

tie this down to the transaction that we had. We had not in mind the question of the purchase of stocks in other railway companies. We had in mind simply the purpose of acquiring Southern Pacific stock, and afterwards, of acquiring Northern Pacific stock. We had not in mind, nor did we, I believe, use that money for the purchase of any other railroad stocks. It was not general.

Mr. KELLOGG: Mr. Harriman, I did not ask you particularly whether the bonds were issued in the first instance for that purpose, but I say more than forty-five millions of this money was used to purchase——

Mr. HARRIMAN: To buy Southern Pacific and Northern Pacific. Yes, sir; that is right.

Mr. KELLOGG: So that if there are to-day outstanding one hundred and forty-five millions of the securities of those railroads, the Union Pacific and the Short Line, more than that amount has been used to buy stocks in other railroad companies.

Mr. HARRIMAN: To buy Southern Pacific and Northern Pacific; that is right.

Mr. KELLOGG: Now, since July 1st, it appears—I show you a statement, Mr. Harriman, which was furnished by Mr. Mahl,
1470 your comptroller, of the stocks purchased since July 1st and the totals of the cost thereof, added up from his statement.

Mr. HARRIMAN: Do you want me to explain that?

Mr. KELLOGG: I just want to ask you one or two questions. In the first place, I want to offer that exhibit, No. 2, in evidence.

Paper received in evidence and marked "Harriman, Exhibit No. 2."

Mr. KELLOGG: That, I will explain, Mr. Harriman, is the additions made from this statement, but not made by Mr. Mahl, and subject to correction as to their accuracy.

Mr. HARRIMAN: I think they are probably about right.

Mr. KELLOGG: From that statement it appears that the cost to the Union Pacific and Short Line Companies of stocks acquired since July 1st, 1906, amounts to approximately, $131,000,000.

Mr. HARRIMAN: It appears so.

Mr. KELLOGG: Is that substantially right?

Mr. HARRIMAN: I think that is about right.

Mr. KELLOGG: Is it not a fact, Mr. Harriman, that since the purchase of those stocks the market price thereof has decreased about eleven million dollars.

Mr. HARRIMAN: Possibly.

Mr. KELLOGG: What do you think about it?

Mr. HARRIMAN: I have not figured it up. Now, Mr. Kellogg, let me explain to you, will you?

Mr. KELLOGG: Yes sir.

Mr. HARRIMAN: In the first place, we had, as the result of the Northern Pacific purchase, $82,000,000 of Northern Securities stock, at a cost of about $79,000,000. Our annual report, our statements, all show that. Then we were forced to take, by the decision of the Supreme Court unjustly—it may have been legal—Great Northern

which we did not want, and a lesser amount of Northern Pacific that we had deposited with the Northern securities, and for which we received the Northern securities stock. At the time that
1471 stock, the Great Northern and the Northern Pacific was given to us—forced upon us,—it had a market value of about $100,000,000. I will go back just a minute. We had subscribed, in the meantime, to three millions of Great Northern stock, which had been offered to the stockholders, making the total cost of whatever Great Northern and Northern Pacific we had, about $82,000,000. Mr. Kellogg, if you will follow me, I can make this plain.

Mr. KELLOGG: I am listening to you, Mr. Harriman.

Mr. HARRIMAN: And that, when we took over the Great Northern and Northern Pacific, in exchange for our Northern securities stock, was worth in the market about one hundred million dollars. Instead of disposing of it at that time, we held it until the market price increased in value somewhere to near one hundred and forty-five million to one hundred and fifty million dollars. We sold some of it gradually as it went up, but at that value the returns from the Northern Pacific and Great Northern, were less than 3% on the stock that we held. Therefore, we concluded that it was better to sell those stocks and invest the same money in other securities, that would give us greater returns. So that, following out that line, we had sold enough of those stocks to realize $116,000,000. Are you trying to check that up?

Mr. KELLOGG: Yes sir.

Mr. HARRIMAN: We reinvested that in securities listed here other than Baltimore & Ohio, at a cost of about $85,000,000. We have on hand, remaining in the treasury of the Union Pacific, or the Oregon Short Line, Northern Pacific and Great Northern stock, at the present market value of about $30,000,000. So that that would make, with $116,000,000 of the value sold, and with that we have on hand, about $146,000,000. The Baltimore & Ohio stock purchased has not to be paid for until March and September.

Mr. KELLOGG: I hear you, Mr. Harriman.

Mr. HARRIMAN: Now, the difference between the cost of
1472 the other stocks, $85,000,000 and $116,000,000 already realized, is about $21,000,000. Is that right, or is it $31,000,000.

Mr. MAHL: $31,000,000.

Mr. HARRIMAN: $31,000,000. The stock of the Great Northern and the Northern Pacific we still have on hand, if sold at the present prices, would make that $61,000,000 received in excess of the amount already invested and paid for.

Mr. KELLOGG: Is that all you wish to say?

Mr. HARRIMAN: Now, one minute. We have to pay for Baltimore & Ohio, $45,000,000.

Mr. KELLOGG: $45,000,000.

Mr. HARRIMAN: So that the proceeds of the Northern Pacific and the Great Northern would realize something like $17,000,000 in excess of the cost of all the securities purchased; and the income

from those securities, instead of being as it was in the case of the Great Northern and Northern Pacific, about three million and a quarter, or three million and a half dollars, will approximate six million and a half dollars. So that if we had held Great Northern and Northern Pacific, we would have an investment realizing less than three million and a half dollars, and the market value would have been reduced very much more than the eleven million or ten million which you refer to as the difference between the market price of the securities and the market price of the Great Northern and Northern Pacific.

Mr. KELLOGG: Then if Northern Pacific and Great Northern maintain their present market price, you estimate your profits in that, at about $61,000,000?

Mr. HARRIMAN: Something like that.

Mr. KELLOGG: But if it continues to go down, and the other stocks that you have bought continue to go down, you may lose all your profits.

Mr. HARRIMAN: That is possible, but t the same time, if we had held up to this time,—we are not infallible.

Mr. KELLOGG: No, sir.

1473 Mr. HARRIMAN: We make mistakes.

Mr. KELLOGG: Certainly.

Mr. HARRIMAN: I have made many mistakes in my life and I presume you have; but we are using our best judgment. We had this investment in securities. The hundred million of stock was issued for the purpose of paying for those investments. We realized on those investments to the best advantage we could and reinvested in the securities which we thought were of the highest class, and the most interest to the Union Pacific.

Mr. KELLOGG: Then the investment of the Union Pacific in stocks depends, like any other stock investment concern, on whether the stocks go up or down, does it not?

Mr. HARRIMAN: I do not think so. I think it is a question of income. It is not always a question of capital, of a question of value.

Mr. KELLOGG: You have been selling stocks of the Northern Pacific, have you not?

Mr. HARRIMAN: What do you say?

Mr. KELLOGG: You are selling Northern Pacific stocks now?

Mr. HARRIMAN: Who says ye are?

Mr. KELLOGG: You have been this winter, have you not?

Hr. HARRIMAN: I think we have.

Mr. KELLOGG: I show you a statement——

Mr. HARRIMAN: Yes; we have sold some stocks this winter, or last Autumn, within the last few months, I don't know just when.

Mr. KELLOGG: I offer in evidence Exhibit No. 3.

Paper received in evidence and marked Harriman Exihibit No. 3.

Mr. KELLOGG: This exhibit shows that up to July 1st you had purchased $167,510,390 of securities, and sold $116,891,760? Do you think that is substantially correct? Those are stocks purchased prior to July 1st, 1906, and sold at all times?

1474 Mr. HARRIMAN: Yes; I see some of them go away back to 1901.

Mr. KELLOGG: Yes.

Mr. HARRIMAN (after examining exhibit 3): You have got this all tied up together, Mr. Kellogg. I have no doubt this is right, but of course those purchases that were made of other companies than Northern Pacific and Southern Pacific, were financed in another way?

Mr. KELLOGG: I understand. But you were stating about your investments. It is true then, that you have sold altogether, since 1901, $116,891,760 of stocks. That is true, is it not?

Mr. HARRIMAN: I think you would say since probably six months ago or eight months ago, not previous to 1906.

Mr. KELLOGG: Well, I see you sold——

Mr. HARRIMAN: Wait a minute. We had already financed and paid for the stocks other than Northern Pacific and Great Northern.

Mr. KELLOGG: That statement is correct, is it?

Mr. HARRIMAN: I suppose it is, sir.

Mr. KELLOGG: Now, then, if you will answer the question, Mr. Harriman. You have bought, according to this statement, $167,510,000 in round numbers, leaving it about $50,618,000; is that correct?

Mr. HARRIMAN: I have no doubt that is correct, according to that statement.

Mr. KELLOGG: So you bought, since July 1st, $131,000,000, about—since July 1st?

Mr. HARRIMAN: That is so.

Mr. KELLOGG: That makes $182,000,000. In addition to that you bought the Baltimore & Ohio stock, and the company ran in debt for that?

Mr. HARRIMAN: Not in addition to the $131,000,000. We bought since July 1st $85,000,000.

Mr. KELLOGG: $182,000,000, that makes—I beg your pardon?

Mr. HARRIMAN: Wait a minute. Since the 1st of July,

1475 we have purchased $85,000,000 of stock and paid for, and we have sold $116,000,000, leaving $31,000,000 in excess of the amount we bought.

Mr. KELLOGG: You have explained that once, Mr. Harriman. Now, if you will answer my question. Your purchases exceeded your sales by $50,000,000, do they not?

Mr. HARRIMAN: I cannot concede that, Mr. Kellogg, in the way that you put it.

Mr. KELLOGG: And you bought, since July 1st, $131,000,000?

Mr. HARRIMAN: Well, we have issued other securities than the ones you have been——

Mr. KELLOGG: I am simply asking you about your purchases and sales?

Mr. HARRIMAN: The other securities which we purchased were different from these securities that you list here.

Mr. KELLOGG: One moment. If you will answer my question. You have bought and paid $182,000,000 more for securities than the price received for those you have sold; isn't that true?

Mr. HARRIMAN: Is that so?

Mr. KELLOGG: Yes, sir, according to your statement.

Mr. HARRIMAN: Assuming the Baltimore & Ohio is paid for, you mean?

Mr. HARRIMAN: That is, we paid $182,000,000 more than realized.

Mr. KELLOGG: For securities. That is what your statement shows.

Mr. HARRIMAN: Let me see it.

(Mr. Kellogg hands statement to Mr. Harriman.)

Mr. KELLOGG: Take $116 from 167——

Mr. HARRIMAN: Well, that is $56,000,000. I thought you said we had paid $182,000,000 more for securities than we realized.

Mr. KELLOGG: How much more have you paid for securities including those you bought since July 1st?

Mr. HARRIMAN: Well, you have it here, that we purchased
1476 and all these securities that we purchased and financed prior to 1906, including those purchased in 1906, $167,000,000. Is that right?

Mr. KELLOGG: Yes, sir. Now, the other statement you hold in your hand shows what you sold at all times down to the present time?

Mr. HARRIMAN: Well, that is 116 from 167.

Mr. KELLOGG: Yes, sir. That leaves how much?

Mr. HARRIMAN: Oh, I see what you mean now. I beg your pardon.

Mr. KELLOGG: It leaves about $50,000,000.

Mr. HARRIMAN: We are getting the whole thing all right there.

Mr. KELLOGG: That leaves about $50,000,000.

Mr. HARRIMAN: About that.

Mr. KELLOGG: And since July 1st, you have bought $131,000,000 and paid for it?

Mr. HARRIMAN: No, $85,000,000.

Mr. KELLOGG: In securities; making $182,000,000, your purchases exceeded your sales.

Mr. HARRIMAN: That is the way it seems by that statement.

Mr. KELLOGG: And you claim your profits on the Northern Pacific deal if the stocks are taken at the present value is about $65,000,000?

Mr. HARRIMAN: We don't claim any profit.

Mr. KELLOGG: Well——

Mr. HARRIMAN: Now, wait a minute, Mr. Kellogg; let me have my way a little bit.

Mr. KELLOGG: You have it all your way, I think.

Mr. HARRIMAN: No, I don't.

Mr. KELLOGG: You always have.

Mr. HARRIMAN: I want this. All those securities that we purchased prior to the 1st of July, we purchased for the purpose of the corporation in connection with the corporation, not to be sold again, and have been used for the purpose of the corporation and financed in an entirely different way from the purchase of the North-

tern Pacific. The Northern Pacific has been treated entirely
1477 different on the books of the Allied Lines from the books of the other purchases made, and we have reinvested the proceeds of the sales of the Northern Pacific and Great Northern since the 1st of July to the best of our ability.

Mr. KELLOGG: I heard your explanation before, Mr. Harriman.

Mr. HARRIMAN: Well, I want to keep fastened down to it, because you are trying to tie me to 180-odd millions of purchases, which have gone out of my mind until you showed me the statement. They passed into the general fund of the Union Pacific and financed and paid for and still other property——

Mr. KELLOGG: Now, Mr. Harriman, it is a fact, isn't it——

Mr. HARRIMAN: It is a fact; I have conceded that. But I want to just claim this; I don't want to give a wrong impression, because there are other people than you or I here—that we have been speculating in securities; because we haven't.

Mr. KELLOGG: I haven't used the word "speculate."

Mr. HARRIMAN: Well, that is the inference, that we have been buying securities for the purposes of selling again.

Mr. KELLOGG: Now, am I correct as to the figures, which is $182,000,000?

Mr. HARRIMAN: I think that is right.

Mr. KELLOGG: Now, you have not been buying securities, you say, for speculation?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: Then do I understand that the stock of the Illinois Central, of the Baltimore & Ohio, of the Chicago & Alton, of the New York Central and the Northwestern and the Milwaukee are for permanent investment or control?

Mr. HARRIMAN: They are certainly not for control. They couldn't control, therefore, through the reinvestment of the proceeds——

Mr. KELLOGG: Are they for permanent investment, or for sale again?

1478 Mr. HARRIMAN: They are for income from the proceeds, reinvestment of the proceeds of the Great Northern & Northern Pacific.

Mr. KELLOGG: I know, but are they for permanent investment, or do you expect to sell them again?

Mr. HARRIMAN: I have no expectation about it. I never thought of that; it never crossed my mind. It is for the purpose of receiving six millions and a half of dollars a year instead of three millions and a half.

Mr. KELLOGG: Then you consider that a permanent investment? May I so call it?

Mr. HARRIMAN: That is what we concluded.

Mr. KELLOGG: Now, you stated a short time ago that you have substantially $145,000,000 of the securities of the Union Pacific and Short Line, and that you have purchased stocks in excess of that amount. You have also outstanding obligations of $45,466,960, for the purchase of the Baltimore & Ohio, have you not?

Mr. HARRIMAN: Yes, sir, that is right.

Mr. KELLOGG: I offer in evidence a letter of September 14, 1906, which I desire to read to the Commission.

Letter received in evidence and marked Exhibit 4 to Mr. Harriman's testimony.

(Mr. Kellogg reads the letter to the Commission.)

Mr. KELLOGG: Then you have paid $9,723,528 cash?

Mr. HARRIMAN: Yes sir.

Mr. KELLOGG: And there are as preferred payments about $36,393,000—about that?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: So that you have outstanding in securities those obligations for which you have used to purchase stock, substantially $180,000,000 of securities of the Union and Short Line Company?

Mr. HARRIMAN: According to my explanation, that is correct.

Mr. KELLOGG: From whom was this stock purchased, of the Pennsylvania Railroad Company?

Mr. HARRIMAN: No, I think that was purchased from Kuhn, Loeb & Co., as shown by the records.

1479 Mr. KELLOGG: Well, did Kuhn, Loeb & Co. get it from the Pennsylvania?

Mr. HARRIMAN: That you must ask them.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: I have absolutely no knowledge.

Mr. KELLOGG: Did you have any conference with the Pennsylvania Company about the purchase of their stock interests?

Mr. HARRIMAN: Yes, sir—no, I had no conference with them as to that purchase, but—let me recollect now—you put that question pretty clearly, and I want to get it right.

Mr. KELLOGG: Certainly; I want to give you plenty of time.

Mr. HARRIMAN: I had one conference with Mr. Cassatt at Bar Harbor. It was an offhand visit; I was up there and called on Mr. Cassatt. I believe that we talked about the Baltimore & Ohio, and possibly—I am sure we did—and possibly the purchase by us of the stock they had sold to Kuhn, Loeb & Co.

Mr. KELLOGG: Do you know how much stock they had, the——

Mr. HARRIMAN: Not exactly, no.

Mr. KELLOGG: About how much did you understand?

Mr. HARRIMAN: I think about the same as we purchased. Their statements all show that. I presume they do.

Mr. KELLOGG: I have no doubt. When was this conversation with Mr. Cassatt?

Mr. HARRIMAN: I think it was—I am not sure—it was either the first part of September or in August.

Mr. KELLOGG: And the stock, I notice, was bought immediately after that, on September 14th, by this correspondence?

Mr. HARRIMAN: Well, what of that?

Mr. KELLOGG: I will show it to you.

Mr. HARRIMAN: That may be. It is undoubtedly right.

Mr. KELLOGG: I simply want to show it to you. Did you and Mr. Cassatt talk about the price of the stock?

1480 Mr. HARRIMAN: I think not.

Mr. KELLOGG: You did not?

Mr. HARRIMAN: I think not. I don't recollect that we did. I think not.

Mr. KELLOGG: Were there any conditions to that sale from the Pennsylvania Company through Kuhn, Loeb & Co., to your company?

Mr. HARRIMAN: From the Pennsylvania, you say?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: No, none whatever.

Mr. KELLOGG: Do you know whether there were any conditions, other than expressed in this letter between Kuhn, Loeb & Co., and your company, for that sale of stock?

Mr. HARRIMAN: No; there were none.

Mr. KELLOGG: Was there any understanding, directly or indirectly, that the Pennsylvania was to have the right to buy this stock back?

Mr. HARRIMAN: No, not from us.

Mr. KELLOGG: You never had any talk with Mr. Cassatt about that?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: Nor would anyone else, as far as you know?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: You did not?

Mr. HARRIMAN: No; it was a clean transaction as far as we were concerned.

Mr. KELLOGG: It was bought as a permanent investment, also, of the Union Pacific, or to acquire a connection?

Mr. HARRIMAN: Well, it was an investment, made, say, in a connecting line.

Mr. KELLOGG: Where does it connect with the Union Pacific?

Mr. HARRIMAN: Well, I should correct that. It is not a connecting line; it is a continuous line through other companies.

Mr. KELLOGG: You had undoubtedy in your mind the Illinois Central.

1481 Mr. HARRIMAN: The Illinois Central and Northern and St. Paul.

Mr. KELLOGG: As the connections between the Baltimore & Ohio and the Union Pacific, but as you call a connecting line, a line that you know?

Mr. HARRIMAN: It is a continuous line, you might say.

Mr. KELLOGG: With other companies?

Mr. HARRIMAN: Through other companies, yes.

Mr. KELLOGG: Now, I notice, Mr. Harriman, among other purchases in this statement is the purchase of 103,000 shares of the Chicago & Alton Railway Company—I guess the Consolidated Company.—Chicago & Alton Railway Company, 103,431 shares, for $8,823,000, and $123,781,000?

Mr. HARRIMAN: That is undoubtedly correct.

Mr. KELLOGG: That is as you understand it.

Mr. HARRIMAN: As I recollect it, that is right.

Mr. KELLOGG: That stock seems to have been bought about October and November, 1904; is that correct?

Mr. HARRIMAN: I think that is so.

Mr. KELLOGG: Who sold that stock to the Union Pacific Company?

Mr. HARRIMAN: Kuhn, Loeb & Co.

Mr. KELLOGG: Was there a circular sent out asking for a deposit of stock of the Chicago & Northern Railroad Company for the purpose of selling it?

Mr. HARRIMAN: My recollection is that Kuhn, Loeb & Co. issued a circular asking for a deposit of Chicago & Alton preferred, to be left in their hands to be sold under the control—I believe it was under the control, or under conference with a committee.

Mr. KELLOGG: Who was the committee?

Mr. HARRIMAN: Myself—I beg pardon for putting myself first—I should have said Mr. Stuart.

Mr. KELLOGG: We do it.

Mr. HARRIMAN: And Mr.—you have it there—I think it was Mr. Mitchell and myself—John A. Stuart, John J. Mitchell, and myself, was it not?

Mr. KELLOGG: Yes, sir.

1482 Mr. KELLOGG: I offer in evidence an agreement dated December 23, 1903, for the deposit of Chicago & Alton stock.

Received in evidence and marked Exhibit 5 to Mr. Harriman's testimony.

Mr. KELLOGG: Under this agreement the preferred stock owners of the Chicago & Alton Railway Company, I believe in a general way, are assumed to deposit their stock with the bankers, Kuhn, Loeb & Co., subject to sale?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: The price to be fixed by John A. Stuart, Edward H. Harriman, and John J. Mitchell?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: Did you fix the price at which that stock was sold to the Union Pacific Company?

Mr. HARRIMAN: I joined in it.

Mr. KELLOGG: You joined in it?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: What was the price fixed? 86½ was it?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: 2½ per cent. commission.

Mr. HARRIMAN: Well, we didn't pay 2½ per cent. commission.

Mr. KELLOGG: Well, taken out of that. 86½ was the gross sum paid?

Mr. HARRIMAN: Net price to the Union Pacific.

Mr. KELLOGG: Net price to the Union Pacific, yes, sir. How much did the owners of the stock get?

Mr. HARRIMAN: 84.

Mr. KELLOGG: Have you the list of stockholders who deposited their stock with Kuhn, Loeb & Co.?

Mr. HARRIMAN: I have not.

Mr. KELLOGG: Do you know any of them?

Mr. HARRIMAN: In a general way.

Mr. KELLOGG: Can you give the names of them?

Mr. HARRIMAN: I don't think I could from recollection. There are a great many.

Mr. KELLOGG: Who has the list?

1483 Mr. HARRIMAN: There are a great many; there may have been 100.

Mr. KELLOGG: Who has the list?

Mr. HARRIMAN: That I don't know; that I had nothing to do with.

Mr. KELLOGG: You fixed the price.

Mr. HARRIMAN: I didn't fix the price.

Mr. KELLOGG: I mean you and the committee?

Mr. HARRIMAN: The committee fixed the price.

Mr. KELLOGG: Did you own any that was so deposited?

Mr. MILBURN: Now, if your Honor please, that raises a question which I desire to present to the Commission. It is one which may arise in various forms, and I may as well present the matter, which I shall do very briefly now, so that the Commission can have before it exactly what is in our minds on the subject.

We appreciate the range of this investigation. It is defined in the order which underlies it.

Looking at the matter from our point of view, we have from the beginning endeavored to guide ourselves by a policy of providing for the use of counsel all the information within our possession bearing on the subject. We have extended every facility that was within our power, every document, paper, entry or minute bearing on any transaction of the Union Pacific and its allied lines.

We have appreciated that this was an inquiry to ascertain what interest it had acquired in other companies, what interest it held in other companies, what relations it held and bore through these acquisitions to other railroad companies, with a view to determining the effect of such ownership or control upon interstate commerce—upon rates, upon facilities, but, fundamentally, upon interstate commerce, which is the great subject that is confided to the jurisdiction and care of this Commission. And, therefore, I repeat all the informa-

1484 tion bearing on the stock which have been acquired, the various reasons for the acquisition, some for the control of properties like the Southern Pacific, to become a permanent part of the system; some as investment of funds, as Mr. Harriman has explained. We say those have all been presented here—the price that was paid, the parties with whom the purchase was made by the company. There might be a question as to whether we haven't gone beyond really the scope of the investigation, gone into some matters that do not and cannot bear at all upon interstate commerce, which is the polestar of this and every investigation. But for these reasons, which the Commission will appreciate, our attitude has been one of—if I may say it—the most liberal view, and not of a contracted view; because it has been the desire from the beginning, of Mr. Harriman, as the highest official of these railroads, to lay—to have the transactions of the railroads, their operations in acquiring these properties, known to the public as they were, and that thereby the vast mass of scandal and gossip might be buried forever.

Now, we come into another range, and that is not the price that was paid for these stocks by the company, not who was the vendor, who sold these stocks to the company—that is, the party from whom it was acquired,—but what individuals had sold to the vendor.

Mr. SEVERANCE: That is the real question now.

Mr. MILBURN: We will see when I get to that point.

Now, may it please the Commission, it is right there that I want to ask the Commission whether any matter is raised which bears upon the function of this Commission, on the scope of this investigation, or upon the question of interstate commerce? I cannot see that it does; I cannot see that it does, from whom the stock was acquired. The fact that stock has been acquired, is held and is owned, may be regarded as taking the view of this investigation, the liberal view which I have expressed, as a pertinent matter; because it shows that the Union Pacific system owns these stocks, and such power as that ownership gives.

1485 On the question whether the price that was paid for it would come within the scope of the investigation, because that is not a matter of interstate commerce, that is not a transaction of this company, what it pays for property is not a transaction which is involved in any way in interstate commerce, or constitutes interstate commerce, that I can see. Who the individuals were who sold to the company is not that I can see, a pertinent matter with reference to interstate commerce for the scope of this investigation, the scope of this inquiry, that this commission is conducted. In other words, I say that there is a line; on one side of that, are matters which are related to part of what transactions of interstate commerce that are within the jurisdiction of this Commission. I say on the other side of this line, are the private affairs of individuals. Now, I say, for instance, if any matter—if I individually have sold to a railroad corporation, directly or indirectly, that is not a transaction of interstate commerce in any sense whatever. That is a matter of my private business, no matter what my relations in life may be, and that is not a power which has been or could be conferred upon this Commission. It has a power to go into those transactions, which are spoken of as the private transactions of individuals when they are not transactions of interstate commerce.

Now, I avail myself of this opportunity to raise this question for the consideration of the Commission. I need not say that I know the Commission is desirous of confining itself to the investigations within the powers and limits of the Commission; I know that is its desire, and that is why this question is raised. I need not say to the Commission that there are a lot of matters pertaining to railroad affairs, pertaining to railroad matters, pertaining to railroad transactions, the transactions of railroad companies, that are not interstate commerce, and that has work enough on its hands in dealing with interstate commerce matters not to deal with those mat-

1486 ters that are not in any sense and cannot be interstate commerce, or interstate commerce transactions.

Therefore I say here, in regard to this particular matter, the only pertinent proposition, the only pertinent fact, is that the Union

Pacific Railroad acquired so many shares—preferred shares—of the Alton Railroad, at a certain price, and there is the only transaction that can remotely bear upon interstate commerce, but, as I say, that question I am willing—I don't argue. We will pass it. We will assume that it did. But not more than that can bear upon interstate commerce. Bearing upon interstate commerce, that may be an interstate commerce transaction, that the Union Pacific did acquire those shares of stock, and it has them. Now, then, the thing is, what is the bearing of that on interstate commerce,—that it bought those shares of stock, that it holds those shares of stock, and that it paid for them. Whom it bought them from whether from A, B, C, D or E, whether from one man or another, whether from one man to another, is not a matter within the domain of interstate commerce, and I respectfully ask the Commission to consider this question and to limit this investigation to matters of interstate commerce, and not to extend them into matters irrelevant to interstate commerce, and that are really private affairs of individuals.

The CHAIRMAN: Your suggestion, Mr. Milburn, seems to have drawn the distinction between corporate transactions of Union Pacific in this case and what you choose to call the transactions of private individuals. But can it be said that these are the transactions of private individuals. May the executive officers of the railroad company purchase this stock of another railroad company and then sell that stock to the company through the executive officers, and preclude inquiry into the transaction because they are private individuals.

Mr. MILBURN: Just take the very question put by the Chairman, may an executive officer of a corporation acquire stock and sell it to the corporation? That is the question which the Chair-
1487 man puts. Well, I say that is not Interstate commerce. That is not interstate commerce from any conceivable point of view. I say that under the law of the land he can, and can legally do it, under certain circumstances. I say, under the law of the land that whether he can or not, depends upon the facts of the particular transactions, as they may be raised by a party entitled to do it. The books are full of transactions between officers of corporations and corporations——

The CHAIRMAN: It is not a question of the legality of the transaction, but of his right to conceal it.

Mr. MILBURN: To conceal it.

The CHAIRMAN: Yes, to refuse to disclose its terms.

Mr. MILBURN: Let me put that in another way. I am called before this body, and I am asked some questions about my affairs which I deem to be my private affairs. I raise the objection. You would not express that I was seeking to conceal anything. The question is not whether I am making an argument of concealment, but whether that is a subject about which this Commission within its legal powers, will inquire. There is a vast mass of subjects—I must be right in that position—connected with railroads, and connected with a railroad of State creation and State regulation, and of

State powers, as to what it can do, that cannot possibly come within the domain of this Commission.

The CHAIRMAN: The Chairman did not intend to use the term in any offensive sense, or as implying any criticism, but only to suggest whether a transaction of that kind is one of which disclosure may be properly refused.

Mr. MILBURN: I think the test of that is this, is it a Federal question? a matter of interstate commerce? Is there any remedy?

Com'r PROUTY: Before this Commission can fix a reasonable rate on the Union Pacific Railroad it must know how much money it earns and what it does with it, must it not?

1488 Mr. MILBURN: Well, that is one of the factors.

Com'r PROUTY: That is one of the things it should know. Cannot it ascertain whether that money has been spent in a legitimate way, or whether it has been given to the executive officers of the company?

Mr. MILBURN: Not that I see, sir, that that is a matter that has anything to do with transportation, with a view of fixing a rate. If you were fixing a rate, can we come in and show that we have hundreds of millions of securities out?

Com'r PROUTY: That is what you always do, it is what every railroad does.

Mr. MILBURN: But, would you take it into account, I mean, if it does not represent value? Of course, it can be shown.

Com'r PROUTY: That is what we are trying to find out, whether it represents value or not.

Mr. MILBURN: Well, you know what you have got.

Com'r PROUTY: If the money of the company has been given away to its president and its officers the securities do not represent value. That is why it is a proper question to ask.

Mr. MILBURN: I think that is determined—you know what you have got. You know you have got those shares of Alton stock. Whether or not they were worth what was paid for them does not depend at all upon whether A, B or C sold it to the Union Pacific. If the Union Pacific makes a purchase, there is the market price of the article. Did it pay more or did it pay less? Now, it is utterly immaterial as bearing upon that proposition, whether I sold it to the Union Pacific, or anybody else sold it to the Union Pacific. If the transaction is within your jurisdiction, you have got it. Now, if this Commission has the jurisdiction to inquire into every transaction of every railroad in the United States, that is another proposition.

Com'r PROUTY: That depends a little bit on who fixes the market price. If you can manipulate this market and fix the market price in that way, and then the man who fixes the market price,

1489 sells his own stock for that price that is one transaction.

Mr. MILBURN: I think, may it please the Commission, that perhaps there is a good deal of thought about manipulating price which does not exist.

Com'r PROUTY: And there is a good deal of thought about it that does exist.

Mr. MILBURN: That may be suspected or may be charged. There is a whole world of rumor and accusations and a whole world of statements very far from the real state of facts. God help us from being judged by what is represented here as being the things that are done.

The CHAIRMAN: If I understand Mr. Harriman, he stated that he or his associates of the Committee, fixed the price at which the stocks should be purchased, and you say that we may not inquire as to whether he was one of the persons who were selling that stock.

Mr. MILBURN: I say so, sir, because if the Chairman will bear my distinction in mind, you are going to hold that you have a right to inquire into every transaction of every railroad. That is one thing. If you are limited to Interstate commerce, if your investigations concern interstate commerce, that is another thing. Now, there is where I draw my line. I do not see—I submit that no one can intelligently after reflection and considering the matter, put such matters as that within the domain of interstate commerce. Now, if you were here exercising a visitorial power, and then if you had the power to call upon individuals, in such a matter, it would be different; but I beg to draw the deep and fundamental distinction between that relation to transactions and the subject which is confided to the care of this Commission. I say this inquiry is not an inquiry pertaining to Interstate Commerce, and I would like the Commission not to decide this—it is a serious question—not to decide it without consideration.

Com'r HARLAN: On whose behalf do you make this objection?

On behalf of the persons who sold the stock or on behalf of
1490 the company who bought the stock?

Mr. MILBURN: Well, I don't know that I have quite analyzed—my retainer here is for the Union Pacific Railway and its allied lines. If it were necessary to say that I appear for Mr. Harriman in this matter, I will appear for him, you know. I had not considered myself as appearing here personally for Mr. Harriman. I take it that I appear here for the Pacific Railroads. Now then in that appearance, I draw the attention of the Commission to the fact that the question put is one which does not concern interstate commerce and should not be put. That is a question that I raise. It is a very important one.

Com'r CLEMENTS: If the individual by reason of his official connection with the railroad company is able to sell stocks for more than their market value and that is reflected in the capitalization of any road, in the shape of stock or bonds which must be made good, if good at all, be earnings, does not that come directly into bearing with the interstate question, with the rights of shippers?

Mr. MILBURN: Does it make any difference who the individual is, who sells at an over-valuation?

Com'r CLEMENTS: If the individual's relations were such to the railroads that he was enabled by his official relations to affect a higher capitalization than that which would be represented by actual value, then it is not a material matter, as to whether it was done by an individual who was also an official and whose official

position enabled him to do the thing which he could not or might not be able to do otherwise?

Mr. MILBURN: I think that is a very proper and material matter, if you are investigating into this corporation, under the exercise of a visitorial power, or under the exercise of the power of the creator, or the corporation. But it makes no odds, so far as interstate commerce is concerned, whether it was an officer who sold if you assume such a condition as that, or another individual. We are not here investigating the practices of railroad management
1491 separate and distinct from interstate commerce. That is the point of my objection.

Com'r CLEMENTS: One of the express purposes of the law included in its authority to the Commission, to investigate and keep itself informed in regard to all these matters, is with reference not only to existing laws and existing remedies, but additional laws for the better direction and remedying of bad practices. Now, might that not make it material and within the scope of the Commission's authority?

Mr. MILBURN: Every practice or anything bearing on interstate commerce, there is the irradicable line. Now if this was to investigate with reference to enacting some law with reference to the corporation of the State of its creation we might have another question.

Com'r CLEMENTS: Does not the capitalization of roads engaged in interstate commerce, have a direct bearing on interstate questions of a reasonable rate?

Mr. MILBURN: I suppose it does, to some extent. That is another question from the one we are discussing, of capitalization. I suppose it has some bearing. I imagine very much less than a great many people think.

Com'r CLEMENTS: Do not all these transactions bear upon capitalizations?

Mr. MILBURN: I do not see so, not the one I am discussing. I am not objecting here to the ascertainment by the Commission of the fact that the Union Pacific has acquired so much Chicago & Alton stock, and that it paid for it so much money. Now, I have not objected to that. There is the fact. If that is over capitalization, why then, it speaks for itself. It is here. If the market value of Alton stock is known, if that was more than it was worth, then I suppose there may be some what you would call over capitalization, to the extent of that margin, although the facts that you have there—if it bears on interstate commerce, you have those facts. But
1492 when you come to go behind that fact, to ascertain whether A, B, C, D, or E, sold that stock, whether A, B, C, D, or E was an officer, then I say you are entering a domain which is not the domain of interstate commerce.

Com'r CLEMENTS: If it was conceded to be an evil over capitalization, and it was brought about by methods like this and you were going to suggest a method to cure it and prevent it, would you not be better able to do it if you knew all about it, whether it was done through officials, or individuals?

Mr. MILBURN: I cannot trace any connection, even a remote one,

any logical connection between those facts. If you are going to legislate about over-capitalization—why, we had years ago all and vastly more than the information needed for legislating on that subject—if you are going to legislate on the relations of officers to corporations, still the limits of the Federal constitution taken, and there could be nothing there, no legislation that would be outside of this power to regulate commerce. I am aware how extensive the power to regulate commerce has become, but still I think we have to pause now and then, to determine whether there are not some limits to interstate commerce, and that interstate commerce does not, as yet comprehend the whole domain of human conduct. I want the Commission—It is a question of principle that I am raising here; I am raising it after careful thought, raising it after serious consideration, and raising it with a full belief and full conviction, so far as I am concerned, that I am absolutely right about it; of course I would not raise it here—my personal opinion I am not tendering to the Commission as having any more weight than that of a lawyer practicing before you, but I state these things for the reason that I believe you have a very grave question before you, and one that has got to be determined.

The CHAIRMAN: Do you make any difference, Mr. Milburn, between the question addressed to Mr. Harriman, the president of the Union Pacific, and a member of the committee which fixed
1493 the price at which the Alton stock was purchased, and a similar question addressed to John Doe who had no other interest in the transaction than to accept the offer which might be made for his stock.

Mr. MILBURN: I draw no distinction, first in principle, if your Honor please, and next, in regard to the main question which I raised. Now, corporations have to deal with their officers. There is no legal prohibition on any such matter as that, but the legal propositions involved in a transaction of that kind are not propositions of interstate commerce. That is what I want to bring home to the Commission. Why, such transactions are going on and such transactions have been before our courts and sustained over and over again, as your Honors know. In dealings, corporations often enough have to deal with their officers. The State of creation might complain and stockholders might raise a question, but that is not a question that makes the transaction a question of interstate commerce.

The CHAIRMAN: It is not the question of the legality of such a transaction, of the right of such gentlemen to sell their own stock to a corporation of which they are executive officers, but whether they shall be excused from stating the facts in this inquiry. That is the question.

Mr. MILBURN: The point that I raise is whether they have any power to go into it. Supposing you—as I say, I can conceive conditions, I can conceive a court or a body in cases in which in a multitude of actions, that is a proper inquiry, but this is an administrative body, it is a body of the most extraordinary power of anybody I believe existing in this or any other country; you can reach out your arm and bring anybody before you; you can go into any-

body's office and take hold of his papers—not outside of the Orient do such extraordinary powers exist. Now then you bring this man and that man and the other man before you and go right into his affairs, and you can go into his papers, and your officers can
1494 go into his office and open his books and demand to see everything that is most private. I say, exercising such extraordinary powers, this Commission will be careful in laying down the lines of this inquiry, they are on the right side of its powers and which are not. Now you have all those powers with respect to interstate commerce, but I submit you have not those powers with respect to matters and transactions which are not interstate commerce, and I submit that the question which is asked here is not a matter of interstate commerce.

The CHAIRMAN: Mr. Kellogg, what have you or Mr. Severance to say to the objections raised by Mr. Milburn?

Mr. KELLOGG: As to the last statement of the counsel that such powers as this honorable Commission exercises are not known to any country outside of the Orient, I disagree with him. The Commission are exercising no greater powers than are exercised by the English Commission, and not as great. The Commission are exercising powers of inquiry not exceeding the powers of any court to send for papers and individuals. They are exercising no powers beyond the strict limits of the constitution.

Mr. MILBURN: I did not say they were.

Mr. KELLOGG: You stated they were exercising powers not known to any country outside of the Orient.

Mr. MILBURN: Extraordinary powers.

Mr. KELLOGG: The powers they are exercising are powers known to every civilized country.

Mr. MILBURN: I have not heard of them.

Mr. KELLOGG: Well, I am not to blame because you have not heard of them.

That is mere talk. The question is whether the Commission under its power of inquiry, under the interstate commerce act, into the management, as he says, of interstate railways, or railways engaged in interstate commerce, and over interstate commerce has a right to inquire into capitalization, or watered stock, as it is commonly known, excessive bond issued, prices paid, reasons
1495 governing those prices, speculation in stocks, as Mr. Harriman called it—I did not—purchasing sale of stocks, anything bearing upon the general management of interstate railroads for two purposes: First, the control over rates of such railroads, arriving at a reasonable rate, what the railroad ought to earn, involving its issue of stocks, bonds, securities of all kinds, and its management, whether that management has been frugal, proper or improper, for the purpose not only of fixing rates, and regulating rates, protecting the stockholders as well as the public, but that you may be informed, and that Congress may be informed, and that you may report, and for corrective legislation, and for other purposes.

Those seem to me to be the plain, simple powers of the Commission as fixed by the law and as construed by the Supreme Court of the United States.

Now, then, take the question at issue. It cannot be possible that the power of the Commission in inquiry is confined to the fact as to whether the Union Pacific paid the market price in Wall Street of Alton stock, whether it used its surplus for that purpose, or whether it did not. We intend to show that the Alton road was inflated beyond all reason, a most conspicuous example of the days of inflation, and we believe its stock is not worth a dollar. We wish to know under what circumstances the stock was bought by the Union Pacific in this most remarkable transaction of the purchase of $130,000,000 or $140,000,000 of stock; that is what this inquiry is for.

It seems to us we are not going into the private affairs of private individuals. It seems to us when a committee is given the absolute power to fix the price of stock, ten millions of par value which the Union Pacific is about to purchase, and its president is one of those persons—absolutely fix the price as appears by this contract—that whether he was interested also as a seller as well as a purchaser, becomes material as bearing upon the reasonableness of the price paid by the Union Pacific Company, so that your Honors may be
1496 informed as to the management of that road, and it bears upon interstate commerce as much as state commerce.

Why, the position of counsel would be this: Congress has a right, and the only right, to correct abuses of interstate commerce. Its jurisdiction is exclusive of the power of the States. The States cannot legislate upon the subject at all. What is a reasonable rate for interstate commerce, what is a reasonable earning upon the capitalization of roads in interstate commerce, is exclusively in the power of Congress and not of the States.

If the position of the gentleman is correct, the States are limited to this inquiry as to the management of their railroads so far only as it affects State commerce. And there is no power under Heaven that can inquire whether interstate railroads have a reasonable capitalization, acquired and put out in a reasonable and proper manner, as one of the elements for fixing rates.

Why, Congress may limit the rate a railroad may earn. Congress may prohibit an interstate railroad from acquiring stock in the Chicago & Alton road, or in any other road, from acquiring a parallel or competing road, or any interest therein. These are things Congress may do; and you wish to know, I take it, what the Union Pacific has been doing—the most gigantic system of stock purchases ever known in American railroads.

Mr. MILBURN: May I, before the Commission reaches a decision, mention one fact which I did not perhaps dwell upon, or did not state as it might have been stated? That is in regard to the question of the rates. The value of the properties, everything that enters into transportation, of course, is a great factor in determining what are rates; but if a State which creates a railroad corporation sees fit, within such powers as are left to the States to authorize, one of its own railroad corporations, to acquire stock in other corporations, and the railroad corporation does acquire stocks in other rail-
1497 road corporations, the rise and fall, of values of the investments, or in the action of that power, is not a matter that

would enter into rate making, whatsoever. If the State creating the Union Pacific saw fit to authorize it to hold stocks in vessels on the Atlantic and on the Pacific, the rates on the Union Pacific Railroad would not be affected by anything connected with the stocks in those steamship companies. The rates of the Union Pacific cannot possibly be affected one way or the other. The fixing of rates by this Commission would not be affected by what happens to the investments in New York Central or Baltimore & Ohio. Those are stocks acquired under a power granted by the State to acquire stocks in other railroad corporations. They are a branch of this business or a branch, you might say, of those operations by themselves. The fortunes of those stocks do not enter into what is a rate for the transportation of freight on the Union Pacific Railroad by the employment of the property of that railroad, and the facilities which constitute the rate.

The CHAIRMAN: How about the rates on the Chicago & Alton?

Mr. MILBURN: It is precisely the same way with the Chicago & Alton. The rates on the Chicago & Alton are dependent, so far as this factor is concerned, upon the physical properties, facilities and everything entering into the appliance or machine which does the work for which the rate is remuneration. I do not see how the rate-making power can be involved, in the slightest degree.

Now, only one more observation. I appeal to a matter that is more known to your Honors than to me. My knowledge of it is such experience as I have had before you, and also what I have read of your proceedings and deliberations, and I know of no line of inquiry like this ever having been engaged in by this Commission in its existence.

Mr. SEVERANCE: May I say a word, Mr. Chairman, in view of your invitation?

Mr. CHAIRMAN: Yes.

1498 Mr. SEVERANCE: I do not think we should be concluded from any investigation by reason of the suggestion just made by my friend, Mr. Milburn, that the Commission has not heretofore gone into such a field. I do not think such a situation has been heretofore presented. Until this investigation began, it has been the conception, I think, of the lawmakers of this country and of the country generally, that railroad corporations were organized to run railroads, and not for general financial purposes.

Now, the Union Pacific, having seen fit to depart from the ordinary line of business, if I may use that expression, for which railroad corporations are organized, we have here presented this situation: Upon the credit of the Union Pacific Railroad, which credit is given to it by its line of road and the earnings of that line, they have been able to float $100,000,000 of common stock, which is outstanding in the hands of the public, upon which presumably dividends will have to be paid, and $45,000,000 of bonds of the Oregon Short Line. Those are outstanding and have been used, or perhaps it would be more accurate to say, the proceeds or an equal amount of money have been used in the acquisition of stocks of various kinds, including these stocks.

These roads have but one treasury, into which all funds go and

out of which all dividends come. All classes of business they transact are necessarily interlaced, one class with the other. In the reports which you require to be made to the Commission, you require a list of stocks owned, prices paid, dividends received, stocks sold and everything of that sort, and the Union Pacific road has complied with the provisions of the law and with the rules of your Honors, and has made such reports.

Now, it is not a fact that any transaction in which this road engages through its officers, and it can only act through its officers, which weakens or lessens its capacity for future usefulness as a railroad corporation, its ability to float additional securities, if
1499 necessary, to double-track its road, and all that sort of thing, is a proper subject of investigation.

In the case of Smyth *v.* Ames, your Honors will recall that the Supreme Court laid down the rule as to what things should be taken into account in fixing rates. Capitalization was one of the things, and bonds outstanding. Is it not proper and is it not essential that you should trace the purposes for which those stocks and bonds were used, and see whether they represent the proper securities, or whether they represent wind or nothing?

Of course, I do not make the suggestion that this has been done in this case, but suppose, for instance, Mr. Harriman had deliberately looted the treasury of a lot of money, and taken it out without putting anything in place of it. Is it possible that when this road is bankrupted by such proceedings as that, and when the question of rates comes up, this Commission cannot go into all the transactions of the road, into the condition of the treasury, into what occasioned that condition, in order to fix——

Com'r PROUTY: Would it make any difference whether Mr. Harriman did it, or whether anybody else did it? In other words, if you show the fact, is not that all you are entitled to show?

Mr. SEVERANCE: I think it makes a little difference, because if it is related to the property, he is acting for the property in doing it.

Mr. MILBURN: I desire to say just one word. Mr. Severance took the extreme case that Mr. Harriman had looted the treasury. Could you find an indictment in a Federal Court on that showing? It is any Federal Court have the power to try him for that offense? It is not a Federal question.

Mr. SEVERANCE: Oh, no.

Mr. MILBURN: That is just the question that is here.

The CHAIRMAN: We appreciate the importance of the question raised, and we desire to confer among ourselves with reference to it. The decision of the Commission will be postponed until after recess.

1500 Mr. KELLOGG: I can go on with the examination on another point.

The CHAIRMAN: Yes.

Mr. KELLOGG: Mr. Harriman, when did you first become connected with the Chicago & Alton Railroad?

Mr. HARRIMAN: It is all there. I think it was 1899.

Mr. KELLOGG: 1899. Yes, that is correct.

Mr. HARRIMAN: Mr. Kellogg, wouldn't you like me to tell you about the Chicago & Alton transactions?

Mr. KELLOGG: I am going to ask you about that, but I prefer to have you answer my questions.

Mr. HARRIMAN: All right, sir.

Mr. KELLOGG: I will give you all the opportunity to explain, Mr. Harriman. Prior to 1898, Mr. Blackstone had been the president and had managed the affairs of that corporation for a number of years, had he not?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: The road had paid an average of 8 per cent. dividends, or over, had it not?

Mr. HARRIMAN: Eight per cent. or more; yes.

Mr. KELLOGG: It was stocked and bonded and had obligations out of all kinds of substantially $39,000,000. Is not that true?

Mr. HARRIMAN: I think so. The reports will show that, whatever it was.

Mr. KELLOGG: And the reports show the value of that property to be $39,000,000, about the same price? That is, their balance on their books showed a value of perhaps $39,000,000, and obligations of $39,000,000, or substantially that?

Mr. HARRIMAN: Yes. They were selling in the market for 40—50.

Mr. KELLOGG: In 1899 you organized a syndicate, to buy the Chicago & Alton stock, did you not?

Mr. HARRIMAN: Let me see. Was I the one that did that? I think so; I had a hand in it anyway.

Mr. KELLOGG: I think you did. That syndicate was composed of yourself, Mr. Mortimer Schiff, George J. Gould and James Stillman, was it not?

1501 Mr. HARRIMAN: I am not sure about Mortimer Schiff.

Mr. KELLOGG: Was it some representative of Kuhn, Loeb & Co.?

Mr. HARRIMAN: Whatever was done was published at the time, and I presume you have all those papers. There was no concealment of what was done.

Mr. KELLOGG: I understand that. I am only asking the general questions, Mr. Harriman. The statement shows that George J. Gould acquired 54,534 shares of the stock, E. H. Harriman, 54,535, Mortimer Schiff 54,535, and James Stillman 54,535. That is substantially correct, is it not?

Mr. HARRIMAN: I think so.

Mr. KELLOGG: There may have been a few shares in the names of directors. In other words, this syndicate acquired all but about $436,000?

Mr. HARRIMAN: About 97 per cent., if I recollect right.

Mr. KELLOGG: About 97 per cent., that is right, of the capital stock of the Chicago & Alton Railroad Company. That capital is about $21,000,000, is it not, par value?

Mr. HARRIMAN: I think it was $22,000,000.

Mr. KELLOGG: Well, $22,000,000, par value. You became presi-

dent of the company immediately thereafter, did you not, and were president for a short time, perhaps a year.

Mr. HARRIMAN: That I don't recollect, that I have ever been president of the Chicago & Alton.

Mr. KELLOGG: The record shows you were president until Mr. Felton became president?

Mr. HARRIMAN: That may have been.

Mr. KELLOGG: You were chairman of the Board of Directors or of the Executive Committee, or both—both I think—until October last, were you not?

Mr. HARRIMAN: That is so.

Mr. KELLOGG: And during that time you had charge of the financial operations of the railroad company, did you?

1502 Mr. HARRIMAN: Through the executive committee and board, yes, or subject to their control.

Mr. KELLOGG: The property was bonded at that time, at the time you bought it, for about eight and a half millions, was it not?

Mr. HARRIMAN: Something like that; eight and a half or nine millions.

Mr. KELLOGG: Yes; somewhere about eight and a half or nine millions. You immediately placed a mortgage of $40,000,000 upon the property, did you not?

Mr. HARRIMAN: Yes, and sold $32,000,000 out of it.

Mr. KELLOGG: You sold those $32,000,000 of bonds to the stockholders for $650 a bond, did you not, or 65 cents on the dollar?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: And this syndicate got substantially all of the bonds, all but about $436,000?

Mr. HARRIMAN: Was it that syndicate? I think there was a subsequent syndicate formed, composed of 100 different individuals.

Mr. KELLOGG: No, I think the bonds were divided among that syndicate.

Mr. HARRIMAN: That is, it was divided with the stockholders, whoever they were.

Mr. KELLOGG: Yes, but the syndicate——

Mr. HARRIMAN: Yes, I know, but that does not bear on this question. It is a question whether they did not represent a large number of subscribers to a syndicate other than themselves.

Mr. KELLOGG: I do not know anything about that.

Mr. HARRIMAN: I think the records show that.

Mr. KELLOGG: The record shows that the bonds were sold——

Mr. HARRIMAN: To the stockholders.

Mr. KELLOGG: To the stockholders, of which these four men whom I mentioned got substantially all?

Mr. HARRIMAN: They were the largest holders, yes.

Mr. KELLOGG: Eight millions of those bonds have not been sold, have they?

1503 Mr. HARRIMAN: I think they have been pledged.

Mr. KELLOGG: They have been pledged as collateral security to a $5,000,000 note of the railway company?

Mr. HARRIMAN: That is so.

Mr. KELLOGG: Then $32,000,000 of those bonds were sold and substantially all of them went to these four gentlemen?

Mr. HARRIMAN: Went to the stockholders.

Mr. KELLOGG: They were stockholders, were they?

Mr. HARRIMAN: Went to the stockholders.

Mr. KELLOGG: Well, these men were the stockholders, principally, were they not? There were no other stockholders except of small amounts.

Mr. HARRIMAN: You have shown that. They had 97 per cent. They were the stockholders.

Mr. KELLOGG: You sold some of those bonds immediately thereafter, did you not?

Mr. HARRIMAN: I think not.

Mr. KELLOGG: Is it not a fact that this syndicate, yourself, Mr. Schiff, Mr. Gould and Mr. Stillman sold $10,000,000 in round numbers, to the New York Life Insurance Company?

Mr. HARRIMAN: Not to my knowledge.

Mr. KELLOGG: For 96?

Mr. HARRIMAN: Not to my knowledge.

Mr. KELLOGG: You do not know anything about that?

Mr. HARRIMAN: No, sir; I had nothing to do with it.

Mr. KELLOGG: Who did sell them?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: I presume Kuhn, Loeb & Co.

Mr. KELLOGG: They were sold for the benefit of the company, were they not?

Mr. HARRIMAN: Mr. Kellogg, if you want to give me a chance to tell you about the Chicago & Alton, all right; I will tell you, but if you do not, you will get a wrong inference.

Mr. KELLOGG: I do not think so. I will give you all the opportunity in the world to explain. I want to know if Kuhn, Loeb & Co., representing the syndicate of these four men, did not
1504 sell, to the New York Life Insurance Company in 1899, $10,000,000 of these bonds for 96?

Mr. HARRIMAN: Now, I don't know whether they did or not.

Mr. MILBURN: That answers it.

Mr. KELLOGG: You do not know?

Mr. HARRIMAN: I don't know whether they did or not.

Mr. KELLOGG: You do not know that?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: Did you ever hear of it?

Mr. HARRIMAN: It is a long time ago, and I know those bonds were sold, to the New York Life. I had nothing whatever to do with it.

Mr. KELLOGG: They were sold for the benefit of your syndicate, were they not?

Mr. HARRIMAN: I don't know whether they were, or whether it was the general syndicate.

Mr. KELLOGG: Did you sell your bonds?

Mr. HARRIMAN: Some of them.

Mr. KELLOGG: Did you not sell them all?

Mr. HARRIMAN: I think I did.

Mr. KELLOGG: And $10,000,000 of them went to the New York Life, did they not?

Mr. HARRIMAN: I don't know whether they did or not.

Mr. KELLOGG: $10,000,000 of them were sold for 96, were they not?

Mr. HARRIMAN: I think they were. I don't know whether they were my bonds or not.

Mr. KELLOGG: And thereby the stockholders, you gentlemen, reaped a profit of over $300 a bond? Is that correct?

Mr. HARRIMAN: On your statement, that is correct.

Mr. KELLOGG: Is it a fact?

Mr. HARRIMAN: Well, I will tell you afterwards.

Mr. KELLOGG: All right. Did you sell, or did the syndicate sell to the Equitable Life Insurance Company a million of those in August, 1900?

Mr. HARRIMAN: That I don't know.

1505 Mr. KELLOGG: For 92?

Mr. HARRIMAN: That I don't know.

Mr. KELLOGG: Did you hear about it?

Mr. HARRIMAN: I don't know whether I did or not.

Mr. KELLOGG: Did you hear of a sale, on July 22, 1901, of $750,000 for 92, or 88?

Mr. HARRIMAN: That I don't know. Is that 1901?

Mr. KELLOGG: 1901.

Mr. HARRIMAN: What were the dates of the other sales?

Mr. KELLOGG: August 12, 1900, $1,000,000 to the Equitable Life for 92.

Mr. HARRIMAN: What was the other one, the New York Life?

Mr. KELLOGG: The New York Life bonds were sold October 17, November 1, November 22, and November 15th, 1899.

Mr. HARRIMAN: No.

Mr. KELLOGG: For 96?

Mr. HARRIMAN: No.

Mr. KELLOGG: Do you think that is substantially correct?

Mr. HARRIMAN: I don't know; you have the dates.

Mr. KELLOGG: Do you know for about what those bonds sold on the market during that time?

Mr. HARRIMAN: I do not.

Mr. KELLOGG: You know they had a market value in Wall Street?

Mr. HARRIMAN: What, before they were issued, at the time they were issued?

Mr. KELLOGG: After they were issued.

Mr. HARRIMAN: Or contracted to be sold? I don't think they had any market value.

Mr. KELLOGG: As a matter of fact, the 3 per cent. bonds have been quoted in Wall Street and were quoted in Wall Street between 1899 and 1903, from 83 to 96, were they not?

Mr. HARRIMAN: I don't know. You know that better than I do.

Mr. KELLOGG: Do you know of any sales?

1506 Mr. HARRIMAN: I don't remember any sales at all.

Mr. KELLOGG: To whom did you sell your bonds?

Mr. HARRIMAN: I sold them to Kuhn, Loeb & Co.

Mr. KELLOGG: All of them.

Mr. MILBURN: If the counsel has public records, I submit they should be shown to the witness.

Mr. HARRIMAN: They are all there. I don't see what the purpose of this is. It is all a matter of public record. Everything in the Chicago & Alton was known to the public and to the stockholders at the time the transactions were made.

Mr. KELLOGG: But the stockholders consisted of four men.

Mr. HARRIMAN: One minute. I have had something to think of besides Chicago & Alton since 1898 and 1899.

Mr. KELLOGG: I have no doubt of it.

Mr. HARRIMAN: I have had something to think about besides the market price of Chicago & Alton stocks and bonds. If the New York Life or Equitable Life or any other Life, individuals or corporation, bought bonds at higher prices than they ought to, I had nothing whatever to do with it.

Mr. KELLOGG: The question is, I think, whether the Alton road sold them at a lower price than they ought to. If these bonds were quoted in the market from 83½ to 96 for three years after they were issued, you would not consider 65 cents on the dollar——

Mr. HARRIMAN: As between the stockholders and the——

Mr. KELLOGG: Wait a minute. You would not consider $65 a fair price for them, would you?

Mr. HARRIMAN: That is another question. I think that is entirely out of the line of what you are trying to get at, apparently.

Mr. KELLOGG: You did not sell——

Mr. HARRIMAN: Wait one minute. We gave the stockholders the right to subscribe a certain issue of 3 per cent. bonds, those

1507 bonds to be used for the purpose of taking up a certain amount of old 7 per cent. bonds, and providing money to improve the property.

Mr. KELLOGG: Yes sir.

Mr. HARRIMAN: Now, one minute, and to realize, the money to be distributed to stockholders from accumulated profits. Those are all the three things.

Mr. KELLOGG: I will get at those items in a moment. I show you a statement from the books of the Chicago & Alton Railroad, "Extract of minutes of meeting of Board of Directors, Chicago & Alton Railroad Company, held September 7, 1899. The treasurer presented a statement as to the subscriptions received to the bonds of the company under the circular issued to the stockholders dated June 27, 1899, to wit."

Mr. HARRIMAN: This is the correct list, is it not?

Mr. KELLOGG: I think it is. You have seen it in the last few days, have you not?

Mr. HARRIMAN: No, I have not seen it before.

Mr. KELLOGG: Have you not looked over the statement prepared by the comptroller of the Chicago & Alton?

Mr. HARRIMAN: I have not.

Mr. KELLOGG: Well, it is correct, is it?

Mr. HARRIMAN: I don't know whether it is or not.

Mr. KELLOGG: Will you look and see?

Mr. HARRIMAN: I have not seen the list, Mr. Kellogg.

Mr. KELLOGG: Very well. It purports to give the total number of shares of the Chicago & Alton Railroad as 222,102 and as owned by George J. Gould, 54,534, and the same amount by each one of the other three gentlemen, yourself, Mr. Schiff and Mr. Stillman, and the amount of the $40,000,000 subscribed by each, amounting to $39,978,360 altogether, and you gentlemen subscribed for substantially all of it.

Mr. HARRIMAN: $39,000,000?

Mr. KELLOGG: Yes, originally subscribed for.

Mr. HARRIMAN: Oh, yes.

Mr. KELLOGG: And you four gentlemen owned substantially all the stock?

1508 Mr. HARRIMAN: We were the Chicago & Alton Railroad, practically.

Mr. KELLOGG: That is it; and you sold those bonds to yourselves for 65 cents on the dollar?

Mr. HARRIMAN: We sold them to the stockholders, whoever they may be. I don't know whether other people were interested in mine or not.

Mr. MILBURN: I do not think you want, Mr. Harriman, to give the impression, in view of what he has said, that those four gentlemen were the only gentlemen interested in this whole matter. They were simply the representatives of a large syndicate who had these interests.

Mr. KELLOGG: That does not appear to be so on the books. If Mr. Harriman wants to give the names of the syndicate, I have no objection.

Mr. MILBURN: No; it is simply not to have a wrong impression. The questions, as Mr. Kellogg puts them, are tying Mr. Harriman down to the statement that these four gentlemen owned so many shares of stock and took so many bonds.

The fact is, as Mr. Harriman began to state, when he referred to a general syndicate but was not allowed to complete it—not intentionally, of course, but as I understand the fact to be—that they were simply representatives of a large body of men and carrying those shares for them, those men constituting what he calls the general syndicate. If that is the fact, it should appear.

Mr. SEVERANCE: Mr. Harriman stated just a moment ago that those four men were the road.

Mr. MILBURN: They had the legal title to the stock; there is no question about that.

Mr. HARRIMAN: They were stockholders of record.

Mr. KELLOGG: If Mr. Harriman wishes to explain who the syndi-

cate were, and go into that, he has a full opportunity to do it. He is perfectly able to take care of himself.

Mr. MILBURN: I have no doubt of it. He probably can take care of both of us, but I do not think that is the attitude he is
1509 occupying, Mr. Kellogg. I think he is not taking care of anybody, but is here to state the matter. I think it is fair on the part of counsel to put his questions in another way, because Mr. Harriman can sit there and simply say Yes or No. The whole of the record will be the counsel's talk, Mr. Harriman saying Yes or No to it. It is not fair for counsel, even for a short time, to leave the impression that four gentlemen were the whole thing, when they were representatives. I would say it is fair to have the fact in here.

The CHAIRMAN: Your suggestion is that although these four gentlemen owned, so far as the record shows, 97 per cent. or more of the stock of the Chicago & Alton, they were not the equitable owners of all of it?

Mr. MILBURN: That is the idea.

The CHAIRMAN: And that there was in fact a larger number of people who shared in this transaction?

Mr. MILBURN: This matter has been investigated before, and it is one of the best known facts that there was a large syndicate, of which they were the representatives and carried the legal title. I simply say it would be sort of fair to give Mr. Harriman the opportunity to say that, and not have it appear here that it was the four men individually who owned it.

Mr. KELLOGG: Who composed that syndicate, Mr. Harriman?

Mr. HARRIMAN: I don't remember. There was a large number.

Mr. KELLOGG: Who has the list?

Mr. HARRIMAN: That I don't know.

Mr. KELLOGG: Who had it at the time?

Mr. HARRIMAN: I presume Kuhn, Loeb & Co. had a record of everything.

Mr. KELLOGG: But so far as the record shows, you four gentlemen owned substantially all the stock?

Mr. HARRIMAN: Yes, sir; we were the stockholders of record.

Mr. KELLOGG: You may give that list any time you desire.

1510 Mr. HARRIMAN: Mr. Kellogg, you know 1898 and 1906 are two different times.

Mr. KELLOGG: I will give you a chance to show the difference in times after you get the facts.

Mr. HARRIMAN: But after you have drawn out an impression other than that which will be proven by the facts.

Mr. KELLOGG: I shall not draw out anything which is not shown by the books that you kept or had kept under your direction.

Mr. HARRIMAN: I am not disputing the books.

Mr. KELLOGG: I have a complete statement here made up by the comptroller, and which has been checked up by the comptroller of the Union Pacific Railroad, has it not?

Mr. MILBURN: We are not questioning any of those statements.

Mr. HARRIMAN: Why not jump to what you want to prove? I will help you to do it.

Mr. KELLOGG: All right, sir. Thank you very much. I want to prove that you sold those bonds, after having bought them for 65 cents on the dollar, for some other price. What price did you get?

Mr. HARRIMAN: Well, suppose we had not sold them?

Mr. KELLOGG: The fact is what I want, not suppositions. What price did you get for them?

Mr. HARRIMAN: That I couldn't tell you.

Mr. KELLOGG: You do not know?

Mr. HARRIMAN: No, sir; I do not.

Mr. KELLOGG: You got more than 65?

Mr. HARRIMAN: There is no doubt about it.

Mr. KELLOGG: Where are the books that show the price?

Mr. HARRIMAN: That I don't know.

Mr. KELLOGG: Who kept them?

Mr. HARRIMAN: That I don't know.

Mr. KELLOGG: Who were the syndicate managers?

1511 Mr. HARRIMAN: Wait a minute. That I don't remember.

Mr. KELLOGG: You do not remember?

Mr. HARRIMAN: No; it is a long time ago and I don't remember.

Mr. KELLOGG: It is only six or seven years ago.

Mr. HARRIMAN: You can find it all out. It is a matter of record.

Mr. KELLOGG: It is not a matter of record by the Chicago & Alton books, is it? Where is it a matter of record?

Mr. HARRIMAN: It is a matter of record in the published circulars at the time, and I presume you have copies of them.

Mr. KELLOGG: We have no circulars showing the price you get for those bonds, other than those sold to the New York Life and the Equitable Life, whatever.

Mr. HARRIMAN: Yes, sir; and you don't know whether I sold my bonds to somebody else previous to that time, or whether I was interested in that sale.

Mr. KELLOGG: No sir.

Mr. HARRIMAN: Neither do I.

Mr. KELLOGG: That is what I want to find out.

Mr. HARRIMAN: You can't prove it by me.

Mr. MILBURN: We are perfectly willing to have it appear in the record that they were sold for over 90. Does that satisfy you?

Mr. HARRIMAN: You can't prove by me that I sold my bonds for over 90, because I don't remember whether I did or not.

Mr. KELLOGG: You and your counsel will have to fix that up between you.

Mr. HARRIMAN: No; you are the man I am talking to.

Mr. KELLOGG: I want to know what price the syndicate, these four gentlemen, realized for the $32,000,000 of bonds which they bought at 65?

Mr. HARRIMAN: You have got to go to somebody else to prove that. You can't prove it by me.

1512 Mr. KELLOGG: Tell me where to go.

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: Very well. You did get more than 65, did you not?

Mr. HARRIMAN: I presume I did, or I wouldn't have sold them. I would have kept them.

Mr. KELLOGG: You did get more than 75, did you not?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: You do know that a large amount of them were sold to the New York Life for 96, do you not?

Mr. HARRIMAN: Only by published statements, made public.

Mr. KELLOGG: Do you keep any personal books that will show your profits on the Chicago & Alton?

Mr. HARRIMAN: I do not.

Mr. KELLOGG: Did you ever have any books that will show your profits on those bonds?

Mr. HARRIMAN: I presume I did—no; I think not. I think I was too busy attending to other matters.

Mr. KELLOGG: You did not keep account of a little matter of $2,000,000?

Mr. HARRIMAN: Yes; a little matter of two millions doesn't amount to much one way or the other.

Mr. KELLOGG: Now, Mr. Harriman——

Mr. HARRIMAN: Wait a minute. You have been dealing with the same large figures. You are on two sides of this, Mr. Kellogg.

Mr. KELLOGG: Perhaps.

Mr. HARRIMAN: You have just come from Minnesota. You were arguing there the other way.

Mr. KELLOGG: All right; go ahead. You can say anything you please.

Mr. HARRIMAN: I wish I had you on my side.

Mr. KELLOGG: I do not think you need me. Now, Mr. Harriman, I simply want to know where I can get the evidence to show——

Mr. HARRIMAN: You have got to hunt it from somebody else.

1513 Mr. KELLOGG: Do you know these bonds sold in the market from 1899 to 1903——

Mr. HARRIMAN: Now, I am willing to acknowledge that because you told me so. They are matters of record there, the sales of these bonds, and nobody disputes the fact that they sold in the market from 90 to 95 or 96, or from 80, as you say, to 96, that is a matter of record of which I took no cognizance whatever, and would not have thought of it again had you not brought it up.

Mr. KELLOGG: If these bonds did sell on the market for over 90, you would hardly consider that the Chicago & Alton R. R. Co.——

Mr. HARRIMAN: I will say this to you. If I did not want bonds, and they sold at 90 or over, I would have been very apt to have sold them.

The CHAIRMAN: Did we understand you to say, Mr. Harriman, that you do not now recollect how many of these bonds you owned?

Mr. HARRIMAN: Were actually mine, and what I got for them. I do not.

The CHAIRMAN: And you have no books from which you can ascertain that fact?

Mr. HARRIMAN: I don't believe I have.

Mr. KELLOGG: Out of the proceeds of that $40,000,000 of bonds, or the proceeds of $32,000,000 which were sold, $6,669,180 was paid to the stockholders as a dividend, was it not?

Mr. HARRIMAN: That is so.

Mr. KELLOGG: 30% dividend, on the capital stock of the Chicago & Alton Railroad Company.

Mr. HARRIMAN: That is so.

Mr. KELLOGG: Out of the proceeds of those bonds there were paid $973,477 of the coupons due on the prior lien bonds, were there not?

Mr. HARRIMAN: Now wait a minute.

Mr. KELLOGG: I will identify the transaction so that you will understand it.

Mr. HARRIMAN: It was a transaction which we used, whatever the amount of bonds was, to fund the outstanding higher
1514 rate of interest bonds and the interest thereon, as I recollect it. That is, not the overdue interest by the interest that would accumulate on the bonds if held until maturity.

Mr. KELLOGG: $973,477 of coupons from the prior lien bonds were paid out of this mortgage and carried in the treasury of the Chicago and Alton Railroad, and ultimately charged to the assets or credited to the assets of the company and charged in this capital account.

Mr. HARRIMAN: Now, Mr. Kellogg, didn't those high rate of interest bonds have several years yet to run, and was not the value of those bonds on the basis of that rate of interest computed, and is not this $970,000 odd that you speak of, an adjustment of the interest between the par of the bonds and the interest that would have had to be paid on them if they ran to maturity?

Mr. KELLOGG: I think not.

Mr. HARRIMAN: That is my recollection of it.

Mr. KELLOGG: It appears to be interest on the prior lien bonds paid out of the proceeds of this mortgage, carried in the treasury of the Chicago & Alton R. R. Co., as an asset and in 1905 credited to assets of the corporation as an asset, and charged in its liabilities in capital account.

Mr. HARRIMAN: Do you want an explanation of that?

Mr. KELLOGG: Well, I want to understand how it happens that a debt of the company became assets and swelled its capital.

Mr. HARRIMAN: I can't explain it to you. There must have been some mistake about it. I think it was carried during that time as a matter of interest on the books of the company by some mistake.

Mr. KELLOGG: That $40,000,000 mortgage was made to take up those prior lien bonds.

Mr. HARRIMAN: And the interest thereon—that is, computed to maturity.

Mr. KELLOGG: As a matter of fact——

1515 Mr. MILBURN: I suppose Mr. Mahl would know in regard to the bookkeeping department.

Mr. HARRIMAN: I think so.

Mr. KELLOGG: Wait a minute. $973,477 of it was not paid and charged off but was paid and went into the assets of the company.

Mr. HARRIMAN: What do you want to show? Perhaps I will concede it.

Mr. KELLOGG: I want to show that the assets and liabilities of this company were swelled one million dollars by this transaction, or nearly one million dollars, is that true?

Mr. HARRIMAN: Well, that I don't know.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: No; I do not. I can tell you the general trend of all the Chicago & Alton transactions, but no specific transactions.

Mr. KELLOGG: If it is true that this forty million dollar mortgage, a part of it, was to be used to take up the prior lien bonds and interest, then after the forty millions of bonds had been sold, they would have represented the lien on the road instead of the prior mortgage—would they not—those bonds.

Mr. HARRIMAN: If they had been left in existence?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: Yes, sir; of course.

Mr. KELLOGG: As a matter of fact, the forty million of bonds have all been exhausted or pledged, and $973,000 of the prior lien coupons are still unpaid, are they not?

Mr. HARRIMAN: Upon my word, I can't explain that to you, if that is so.

Mr. KELLOGG: $973,000 has been charged to assets of that company which owed it, and goes into its capital account.

Mr. HARRIMAN: You will have to go somewhere else to find that out. I have no doubt somebody will tell you the intention of the issuing of that million dollars of three per cent. bonds was to take up the outstanding issues of 7s or 8s, certainly 7s, and pay
1516 the value of those bonds to maturity on a seven per cent. basis, and next after that, to provide the money with which to put the property in proper operating condition, and next, after that, to distribute to the stockholders the accumulated profits of the Chicago & Alton, or part of them.

Mr. KELLOGG: Now I will come to that accumulated profits business.

The CHAIRMAN: I understood you to say, Mr. Harriman, that those prior mortgage bonds amounted to nine million.

Mr. HARRIMAN: About nine million, but they were 7% bonds.

The CHAIRMAN: Were any considerable amount of those bonds owned by your and these gentlemen who subsequently owned the stock?

Mr. HARRIMAN: I don't remember. I don't think I had any interest in them at all.

The CHAIRMAN: Do you know whether the other three had any interest in them?

Mr. HARRIMAN: I don't think they did.

The CHAIRMAN: Do you remember how long those bonds had yet to run?

Mr. HARRIMAN: Several years, three or four years, I think; but the statements are here, and would show that.

Mr. KELLOGG: These coupons were taken up as they matured, were they not?

Mr. HARRIMAN: They ought to have been paid as they matured, Mr. Kellogg. There is some mistake about that transaction, which I don't know.

Mr. KELLOGG: Mr. Harriman, you do not think $973,000 would creep into the assets of this Company from its debts, and be capitalized without your knowing it, do you?

Mr. HARRIMAN: It evidently did, in that case.

Mr. KELLOGG: It got there, did it not?

Mr. HARRIMAN: It got there some way or other, on that statement as you put it.

Mr. KELLOGG: You say this mortgage was made par-
1517 tially to pay the stockholders the accumulated surplus?

Mr. HARRIMAN: Accumulated profits.

Mr. KELLOGG: As a matter of fact, the Chicago & Alton Railroad Company had paid its accumulated profits from year to year in the form of dividends at eight per cent. and over, had it not?

Mr. HARRIMAN: It had paid some of them.

Mr. KELLOGG: The books of the Chicago & Alton R. R. Co. showed no surplus of any considerable amount at the time you bought the property, did they?

Mr. HARRIMAN: That I don't remember.

Mr. KELLOGG: As a matter of fact, they showed less than $200,000, did they not?

Mr. HARRIMAN: The books may have——

Mr. KELLOGG: They did not show any $6,000,000 surplus, did it?

Mr. HARRIMAN: Mr. Kellogg, as I remember it, there was a recasting of the statements of the Chicago & Alton and it was shown that there had been appropriated out of income to the Chicago & Alton, and expended *it* on the road, more than $12,000,000.

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: And this syndicate, or this body of the stockholders, readjusted the finances of the Chicago & Alton and distributed to the stockholders about half of that amount which had gone into the property from profits.

Mr. KELLOGG: Now, when you took the property—I refer to you and your associates?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: I think you were the head man—you found no substantial surplus on the books for distribution among the stockholders?

Mr. HARRIMAN: I didn't examine the books.

Mr. KELLOGG: You do not remember any such thing, do you?

Mr. HARRIMAN: I don't remember anything about that.

Mr. KELLOGG: Immediately after you got the property,
1518 there was charged in the accounts of the company, $12,444,177.60, construction expenditures uncapitalized. Is that true?

Mr. HARRIMAN: I presume that is just what I refer to.

Mr. KELLOGG: Now, as a matter of fact, that was a mere estimate, was it not?

Mr. HARRIMAN: I don't think so. I think the figures there would show you. I don't know how they arrived at it.

Mr. KELLOGG: Is it not a fact that from year to year, during the management of the prior Chicago & Alton, whatever had been charged against its income and spent upon the road had been closed each year by the Board of Directors?

Mr. HARRIMAN: I presume so, but under the former management of the Chicago & Alton was drying up very fast, and so was the railroad itself.

Mr. KELLOGG: It certainly has not dried up since.

Mr. HARRIMAN: No, sir; it has not.

Mr. KELLOGG: There is water enough to satisfy anybody.

Mr. HARRIMAN: Yes; and business enough to satisfy.

Mr. KELLOGG: Would you think distributing $6,669,000 as a thirty per cent. dividend to the stockholders who had already had 8% would prevent it from drying up?

Mr. HARRIMAN: Combined with the other methods of financing which were adopted by the Chicago & Alton, yes.

Mr. KELLOGG: You did not feel as though it was a legitimate business for the railroad company to borrow money and pay it out in dividends, did you. Directly, I mean, without some other reason for it? Where it had not earned the money, I mean.

Mr. HARRIMAN: Where it had not earned it?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: But it had earned it.

Mr. KELLOGG: I mean if it had not earned the money,
1519 you would not consider it legitimate to borrow over six million dollars and distribute it?

Mr. HARRIMAN: Certainly not.

Com'r CLEMENTS: Mr. Kellogg, what is the date of that 30% dividend in that case?

Mr. KELLOGG: The 30% dividend was paid on May 7, 1900, shortly after the acquisition of the property by Mr. Harriman, and his syndicate, $6,669,180. It may have been declared before. I think it was.

Mr. HARRIMAN: Was that 1900 or 1899?

Mr. KELLOGG: Maybe that was 1899. Yes, it was 1899. I guess that is right.

Mr. KELLOGG: Now, that was declared, according to the resolution of the Board of Directors, out of net profits of the company earned and accrued prior to January 1, 1900? Is that correct?

Mr. HARRIMAN: If it so states, it is correct.

Mr. KELLOGG: I copied that from the resolution; I have not got the resolution here.

Mr. HARRIMAN: Undoubtedly that is correct.

Mr. KELLOGG: Now, as a matter of fact, when you took the road, its books showed no such surplus, did it?

Mr. HARRIMAN: The books were wrong.

Mr. KELLOGG: You proceeded then to correct the books, did you?
Mr. HARRIMAN: Certainly.
Mr. KELLOGG: Did you direct Mr. Felton to make an estimate?
Mr. HARRIMAN: I did not.
Mr. KELLOGG: He did make an estimate.
Mr. HARRIMAN: He did make an estimate.
Mr. KELLOGG: Now, let us see what that estimate was. Is the comptroller here? I would like the annual report for 1888, December 1st.
Mr. HARRIMAN: 1898, you mean?
Mr. KELLOGG: No, they went back twenty years with that surplus.
Mr. HARRIMAN: No, ten years.
1520 Mr. KELLOGG: Now, this $12,444,000—to be accurate $12,444,177.66, which we will call $12,444,000—was money which the Chicago & Alton Railroad had expended on betterments or improvements of its property during a long period in the past back of 1898, was it not?
Mr. HARRIMAN: No doubt about it.
Mr. KELLOGG: Or money which the original stockholders had lost in their investments, isn't that true?
Mr. HARRIMAN: What difference does it make whether it is original stockholders or stockholders then in existence; which the stockholders might have lost?
Mr. KELLOGG: But they did not happen to be the same men. Now, is it not the fact that in each year the moneys expended on the Chicago & Alton Railroad, according to their reports and the records of the Board of Directors, was voted by the directors and charged to operating expenses during the year in which it was expended?
Mr. HARRIMAN: Have you got the record of all that? I have never looked at the annual report.
Mr. KELLOGG: But you so understood it, didn't you?
Mr. HARRIMAN: I did not think about it.
Mr. KELLOGG: You understood, didn't you, that this $12,000,000 had already been charged against perating expenses?
Mr. HARRIMAN: I did not understand it at all. All I know was we went into the affairs of the Chicago & Alton and found that $12,000,000 of the profits of the company had been expended for improvements and additions to the Chicago & Alton Railroad.
Mr. KELLOGG: And that $12,000,000 had been paid out of the earnings of the company, hadn't it?
Mr. HARRIMAN: Of course it had.
Mr. KELLOGG: And while the company had paid 8 per cent. dividends; that is true, isn't it?
Mr. HARRIMAN: Yes. Eight and seven, I think.
Mr. KELLOGG: And was capitalized for $38,000,000 and carried its property on its books at $39,000,000? That is correct? I am speaking in round numbers?
1521 Mr. HARRIMAN: Yes.
The CHAIRMAN: We will suspend this and take a recess until 2 o'clock.

Recess.

After Recess.

The CHAIRMAN: Gentlemen, you may proceed.
Mr. KELLOGG: Take the stand, Mr. Harriman.

EDWARD H. HARRIMAN resumed:

By Mr. KELLOGG:

(The last question and answer were read by the stenographer.)

Mr. KELLOGG: Now, do you remember that on December 22, or in December, 1899, or at any time in 1899, the president of the road at that time made a report about this $12,444,000 that was then charged to capital account, Mr. Harriman?
Mr. HARRIMAN: I don't remember that, no.
Mr. KELLOGG: I show you a copy of a letter from Mr. Felton to the Board of Directors upon that subject.
Mr. HARRIMAN: What do you want me to do with this, Mr. Kellogg?
Mr. KELLOGG: I want to know if you remember that based on that report—if you will look at the end of the letter you will find a resolution—I wish to know if you remember that, based upon that report, the directors concluded or directed the restatement of that account so as to show that $12,444,000, as money expended for improvements and added to the capital of the road and to its indebtedness?
Mr. HARRIMAN: Wait a minute. This was the Board of Directors, this was, Messrs. Felton, Clowry, Doane, Hutchins, Hinckel and Chappel, is that right?
Mr. KELLOGG: Yes.
Mr. HARRIMAN: I was not at that meeting. Was I a member of the Board at that time?
Mr. KELLOGG: You were, I believe.
1522 Mr. HARRIMAN: I was a member of the Board?
Mr. KELLOGG: You wished to know if you were a member of the Board at that time?
Mr. HARRIMAN: Yes, I don't remember that circumstance at all.
Mr. KELLOGG: Yes, you were a member of the Board at that time.
Mr. HARRIMAN (reading): Resolved, that the report of the President as to the capital stock of the company is approved and ordered to be filed, and that the auditor is instructed to make such proper entries as may be necessary to conform the books of this company to the statement contained in such report and so that the balance sheet of the company shall truly show the cost of the additions to the company. Is that what you mean?
Mr. KELLOGG: Yes.
Mr. HARRIMAN: That is the resolution.
Mr. KELLOGG: Yes.
Mr. HARRIMAN: Now, I was not present at that meeting. I have no doubt if I was a director of the company, that I coincided therein.
Mr. KELLOGG: Well, that was after you bought the stock.
Mr. HARRIMAN: This is dated December 22nd, 1899.
Mr. KELLOGG: The stock was bought——
Mr. HARRIMAN: Is that right?

Mr. KELLOGG: Yes, the stock was bought in the winter of 1899 previous, was it not? Before April?

Mr. HARRIMAN: My recollection is that the negotiations for the purchase of the stock were in 1899, the autumn of 1898.

Mr. KELLOGG: Yes, and it was bought in the beginning of 1899.

Mr. HARRIMAN: And probably consummated at that time.

Mr. KELLOGG: I have here the date you were elected a member of the Board, if you desire it.

Mr. HARRIMAN: I was wondering why I was not there, that is all. It was an important meeting.

1523 Mr. KELLOGG: The records of the Board of Directors of the Chicago & Alton Railroad Company show that on April 7, 1899, there was a meeting adjourned from April 3rd, 1899, at which Mr. T. B. Blackstone, W. B. Blackstone and Morris K. Jessup resigned, and Edward H. Harriman, J. W. Doane and a Mr. Clowry were put in nomination and elected in their place.

Mr. HARRIMAN: That does not say I was a director on December 22, 1899.

Mr. KELLOGG: On December 31st, you also appeared as a director.

Mr. HARRIMAN: I was wondering why I was not present if I was a director.

Mr. KELLOGG: I don't know.

Mr. HARRIMAN: I was not there, according to this record.

Mr. KELLOGG: The record does not show you to have been present when that was presented.

Mr. HARRIMAN: Do you know whether that meeting was held in Chicago or New York?

Mr. KELLOGG: I don't remember now. I wish to know if you remember generally——

Mr. HARRIMAN: I remember generally the circumstances, as I said before, that the proceeds of those $32,000,000 of bonds was to be used for that purpose, for the purpose I stated, and that the recasting of the accounts of the company showed that the cost of the property was something like $12,000,000 greater than shown by the statements then in existence.

Mr. KELLOGG: Please mark these papers.

(Papers marked Exhibits 6, 6A, 6B, 6C.)

Mr. KELLOGG: I offer in evidence the letter of Mr. Pelton to the Board of Directors.

(Paper marked Exhibits, A, B, C, to Harriman's testimony.)

Mr. KELLOGG: And I wish to call the attention of the Commission to the following clause:

"A brief review of the policy of the company in the past may be interesting. I find that in the annual report of Decem-
1524 ber 21st, 1888, issued on behalf of the Board by Mr. Blackstone as President, it was reported to the stockholders that the company had never issued a share of stock or an obligation of any kind, that did not represent at its par value an equal amount of cash, or its full equivalent of property at the time actually received, and that the actual cost of the property was $11,750,000 in excess of the

capitalization of that time." Now I wish to show you that report of Mr. Blackstone made in 1889, for the year ending December 31st, 1888, and ask you if you ever saw that report?

Mr. HARRIMAN: No, sir; I did not.

Mr. KELLOGG: You never did?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: I wish to read from that report the clause referred to by the President:

"Taking into account the loss sustained by the original corporations which constructed that part of your lines between Joliet and Alton, and operated it until it passed from their hands to yours by foreclosure and sale under the original mortgages and the amount which your company has expended for additional property not represented by stocks or bonds, we find not only that your company has never issued a share of stock or an obligation of any kind that did not represent at its par value an equal amount of cash, or its full equivalent of property at the time actually received, but also that the original cash cost of your property, as nearly as it can be ascertained, was $10,989,878.15, or in round numbers $11,000,000, more than the par value of the total amount of stocks and bonds which your company has issued or assumed. To ascertain the difference between the original cost of your property and the amount of stocks and bonds for which your company is responsible now outstanding, $725,000 should be added to the amount above stated, being the amount of bridges and sinking fund bonds since paid and cancelled in place of which no stock or bonds have been
1525 issued, making a total of $11,750,000 excess of original cost over present capitalization. We may add that from the most accurate estimate we are able to make, your property in its present condition could not now be reproduced for a sum which would be equal to the total amount of stock and bonds used by your company now outstanding, the obligations it has assumed and $15,000,000 added thereto."

Now, Mr. Harriman, from that time on until you purchased the stock, a period of ten years, the property was managed by Mr. Blackstone, wasn't it?

Mr. HARRIMAN: So I understand.

Mr. KELLOGG: And during that time Mr. Blackstone, although he made this report to his directors, never capitalized that estimated expenditure and losses which the original stockholders of the company had made, is not that true?

Mr. HARRIMAN: Yes. But that is no evidence that he would not have done it at some future time.

Mr. KELLOGG: He never did do it, did he?

Mr. HARRIMAN: Well, he never had the opportunity.

Mr. KELLOGG: Well, he had ten years.

Mr. HARRIMAN: Yes, he might have had ten years and still not have done so. I don't see what bearing that has on this matter, however.

Mr. KELLOGG: Then as a matter of fact, the $12,444,000 which you added to the capital of the company and charged to value of

property, or credited to the value of property, was a part of its losses sustained by the original stockholders of the company under a foreclosure many, many years ago, was it not?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: Well, he so says, doesn't he?

Mr. HARRIMAN: Why do you say me? Do you refer to me personally?

Mr. KELLOGG: No, I am referring to you as the representative of the syndicate.

Mr. HARRIMAN: Well, as one of the representatives of the syndicate——

Mr. KELLOGG: Yes, I am speaking of you gentlemen.

1526 Mr. HARRIMAN: There were twelve or fourteen directors who divided the responsibility.

Mr. KELLOGG: Yes, they were directors who had no interest in the property, were they not?

Mr. HARRIMAN: I think very likely some of them had.

Mr. KELLOGG: But very little interest.

Mr. HARRIMAN: At any rate they were trustees, and that—I don't see what difference that makes; a trustee is a trustee.

Mr. KELLOGG: I am trying to get at under what theory you think that money lost by stockholders twenty years ago, and with a different set of stockholders could be now capitalized and paid out to a different set of stockholders?

Mr. HARRIMAN: They were stockholders; it does not make any difference whether it was a new set or an old set of stockholders; the rights of stockholders in corporations are the same, no matter what time they acquire their stock or dispose of them.

Mr. KELLOGG: Then you think the stockholders in 1899——

Mr. HARRIMAN: —Had the same rights as stockholders in 1888.

Mr. KELLOGG: Very well, but do you think the stockholders in 1899 had a right to capitalize as a part of the cost of that property and to pay out to themselves losses sustained by another corporation and another set of stockholders?

Mr. HARRIMAN: I don't understand that; all I know is that the president of the Chicago & Alton Railroad Company reported that the property had cost so much more than it was then capitalized at. This is in 1899 I am speaking about.

Mr. KELLOGG: Yes.

Mr. HARRIMAN: And following his report, the Board of Directors authorized an increase of the bonded debt, the proceeds of which were to be used in refunding to the stockholders the money which had been taken away or kept away from them.

1527 Mr. KELLOGG: Did you have anything to do with the making up of that report?

Mr. HARRIMAN: No.

Mr. KELLOGG: Did you consult with Mr. Felton about it?

Mr. HARRIMAN: No.

Mr. KELLOGG: Did you make any suggestion about it?

Mr. HARRIMAN: No.

Mr. KELLOGG: Did you direct the entry of the $12,444,000 to be credited?

Mr. HARRIMAN: I think not.

Mr. KELLOGG: You simply took advantage of it after it was done?

Mr. HARRIMAN: We acted—I acted as one of the Board of Directors upon the report made by the officers of the company.

Mr. KELLOGG: Now, referring to that Board as representative, I find Mr. C. H. Chappel was a member of that Board, with 100 shares of stock. That 100 shares of stock belonged to your syndicate, didn't it?

Mr. HARRIMAN: I don't know whether it did or not.

Mr. KELLOGG: Mr. R. C. Clowry, 100 shares; J. W. Doane, 100 shares; S. M. Felton, 100 shares; W. H. Hinckel, 100 shares; J. C. Hutchins, 100 shares. Every share of that stock belonged to this syndicate, didn't it?

Mr. HARRIMAN: Well, did it?

Mr. KELLOGG: I ask you.

Mr. HARRIMAN: Have you any reason to suppose it did?

Mr. KELLOGG: I ask you whether it did.

Mr. HARRIMAN: I don't know whether it did or not.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: No, I don't.

Mr. KELLOGG: Well, at whose request did they go on the Board?

Mr. HARRIMAN: I—we made up the Board of Directors, and I suppose they were selected because they were capable of conducting the affairs of the company.

1528 Mr. KELLOGG: You made up the Board of Directors yourself, didn't you?

Mr. HARRIMAN: No, I did not.

Mr. KELLOGG: Who did?

Mr. HARRIMAN: I suppose among the stockholders they selected these men to put in charge of the property.

Mr. KELLOGG: Well, who was Mr. C. H. Chappel?

Mr. HARRIMAN: He was the former Vice-President of the Chicago & Alton.

Mr. KELLOGG: And R. C. Clowry?

Mr. HARRIMAN: Well, he wasn't then, but he is connected with the Western Union Telegraph now—you know who they are just as well as I do, Mr. Kellogg.

Mr. KELLOGG: But I don't know as the Commission does. It is not being prosecuted for my benefit.

Mr. HARRIMAN: I will have a list made up and send it to the Commission if you want me to.

Mr. KELLOGG: All right. Mr. J. C. Hutchins was in the employ of the trust company, wasn't he?

Mr. HARRIMAN: I don't know whether he was then, but he is now one of the officers of the Illinois Trust Company, I think it is.

Mr. KELLOGG: And J. H. Hinckel?

Mr. HARRIMAN: I don't know who he was.

Mr. KELLOGG: And W. A. Simonson, of Chicago?

Mr. HARRIMAN: I don't remember who he was.

Mr. KELLOGG: And yourself and Mr. Schiff seem to have constituted the Board in 1899. Between 1888 and 1899, when this

$12,444,000 was so charged, it appears by that letter of Mr. Felton that various sums had been taken from the annual reports of the company which had been paid and appropriated by the directors for the purpose of the acquisition of property or the betterment of the road, and charged to operating expenses. I show you page 7——

Mr. HARRIMAN: I never have seen those reports.

Mr. KELLOGG: Never have?

Mr. HARRIMAN: No.

Mr. KELLOGG: You have no doubt, have you, that all this
1529 $12,444,000, except perhaps the losses of the original stockholders, had been paid out of operating expenses?

Mr. HARRIMAN: Well, unless Mr. Felton's report shows to the contrary.

Mr. KELLOGG: It does not show the contrary.

Mr. HARRIMAN: Well, whatever his report shows I believe it to be correct.

Mr. KELLOGG: Now, in addition to paying that, the company had paid over 8 per cent. dividends, and 7 and 8 per cent. upon its mortgage bonds, had it not?

Mr. HARRIMAN: Well, that all shows in the report.

Mr. KELLOGG: Yes.

Mr. HARRIMAN: I suppose that is so.

Mr. KELLOGG: Do you consider 8 per cent. dividend and that rate of interest on the bonds a fair rate of income for a railroad investment?

Mr. HARRIMAN: Now, wait a minute, I want to see. It depends upon the source from which the income comes. I should think an 8 per cent. dividend from sources of traffic might be considered a fair income for these times. It might not have been twenty years ago or thirty years ago.

Mr. KELLOGG: The stockholders of the Chicago & Alton for many years seem to have been satisfied with that; they did not vote any more.

Mr. HARRIMAN: Nor have they received any more since the stock was purchased by us.

Mr. KELLOGG: And immediately upon the purchase by you they got a 30 per cent. dividend in a lump sum, didn't they?

Mr. HARRIMAN: Yes, that is so—well, now, wait. Don't laugh about it, because it is all explainable.

Mr. KELLOGG: I am not laughing, Mr. Harriman, at all.

Mr. HARRIMAN: I thought you were smiling.

The CHAIRMAN: Mr. Harriman, it has been stated this morning, but I have forgotten, about when did you begin the purchase of the Alton stock?

Mr. HARRIMAN: Well, I don't know that there was any
1530 beginning, Mr. Knapp. I think we purchased it all together from a number of men who had gotten their stock together, and offered it to us. It was done through the medium of some agent.

The CHAIRMAN: It appears that you and three other gentlemen ultimately acquired 97 per cent. of the stock.

Mr. HARRIMAN: That is right.

The CHAIRMAN: The persons who sold that stock, I take it, sold it absolutely.

Mr. HARRIMAN: Oh, yes.

The CHAIRMAN: And if I recall, the preferred was sold at 200, and the common at 175.

Mr. HARRIMAN: That is my recollection, that is all shown in the circular letter. Here is the way we had it in our minds. We paid $39,000,000 for 97 per cent. of the stock and paid $3,000,000 for 56 miles of road which then formed the Chicago & Alton, so we had $42,000,000, subject to a lien of a higher rate of interest bonds of about $9,000,000. It was in our minds to see what we could do to raise the money to improve the property and put it in proper operating condition, and we adopted this plan of dividing the risk. We issued low interest bearing securities, the 3½% bonds which we sold, and this preferred stock which we afterwards sold, and the 3% of the railroad company part of the proceeds of which were used in the manner which I have already described.

The CHAIRMAN: Well, the precise point I want to be sure of was that the former owners of this stock parted with their title absolutely?

Mr. HARRIMAN: Yes.

The CHAIRMAN: So when you speak of certain persons who are associated with you four gentlemen, you do not mean those who were stockholders before that purchase?

Mr. HARRIMAN: I think some of the former stockholders are also interested in the syndicate, the larger syndicate, that is my impression.

The CHAIRMAN: You say that others were interested with you four gentlemen?

1531 Mr. HARRIMAN: Yes, if I remember, as far as my recollection goes, perhaps a hundred.

The CHAIRMAN: And who is able to tell us who those gentlemen were and what their respective interests were?

Mr. HARRIMAN: Well, there were some syndicate managers, and the records all show it, because there were circulars issued at that time, setting forth the exact facts, and all those circulars are obtainable, in one way or another. They have gone out of my mind. I had nothing to do with the drafting of them and have been thinking of a great many other things since, but I have got in my mind a general idea of how we acquired the Chicago & Alton and why we acquired it, and what disposition we made of it, and why we made it.

The CHAIRMAN: On the face of it it appears that in form, if not in fact, you and the three other gentlemen you have named had acquired at 200 for the preferred and 175 for the common stock, some 97 per cent. or thereabouts.

Mr. HARRIMAN: There is no doubt of that.

Mr. CHAIRMAN: Of the capital stock of the Chicago & Alton Railroad Company?

Mr. HARRIMAN: Yes.

The CHAIRMAN: And that thereupon you procured the execution of a mortgage by that company to secure $40,000,000 of 3% bonds?

Mr. HARRIMAN: That is right.

The CHAIRMAN: Of which $32,000,000 were sold at 65 to yourself?

Mr. HARRIMAN: To the stockholders, yes.

The CHAIRMAN: To these three other gentlemen?

Mr. HARRIMAN: That is right.

Mr. CHAIRMAN: And that you also——

Mr. HARRIMAN: No, not exactly that, of course whatever they were, it was all the stockholders.

The CHAIRMAN: But you four gentlemen at that time were stockholders of record to the amount of 97 per cent.?

1532 Mr. HARRIMAN: That is right, and the other 3 per cent.——

The CHAIRMAN: And you took 97 per cent. of the $32,000,000 of bonds at 65?

Mr. HARRIMAN: That is right.

Mr. CHAIRMAN: It also appears, as I understand it, that you thereupon declared a dividend of 30 per cent. upon the capital stock which you had thus purchased and paid that dividend out of the proceeds of these bonds which you had taken yourself at 65?

Mr. HARRIMAN: That is right, of those 3 per cent. bonds.

Com'r CLEMENTS: And after that the bonds were disposed of at 95.——

Mr. HARRIMAN: If you will let me, as soon as you get through I will tell you the whole thing that was in my mind, if you will give me that opportunity.

The CHAIRMAN: You will have every opportunity——

Mr. HARRIMAN: Perhaps this will be just as good and opportune a time as any other to state the result of the whole Chicago & Alton transaction.

Mr. KELLOGG: Well, I would prefer to ask some questions before we get to that.

The CHAIRMAN: You will have full opportunity. Mr. Kellogg has some plan of his own.

Mr. HARRIMAN: I thought perhaps he would like to have the facts.

Mr. KELLOGG: I do want all the facts. The 30% dividend would amount to about fifteen dollars or sixteen dollars a bond, wouldn't it, on the forty million of bonds—I mean fifteen or sixteen per cent. on the forty millions of bonds? The dividend was over six millions.

Mr. HARRIMAN: Yes, something like that.

Mr. KELLOGG: And the thirty per cent. was paid out of the proceeds of the 65?

Mr. HARRIMAN: I have so stated.

1533 The CHAIRMAN: I would like to know whether you regard the money to those gentlemen as stockholders or as the effect resulting on the purchase of those bonds, not at sixty-five, but at the difference.

Mr. KELLOGG: It would be the same thing.

Mr. HARRIMAN: No, I don't think so.

The CHAIRMAN: The transaction in form if not in fact was the distribution of a dividend.

Mr. HARRIMAN: That is what it was.

Mr. KELLOGG: Now, you just stated, I believe, to the Chairman,—I don't know as I understood correctly—that you turned over this stock, and a road of about 58 miles in length, to the new company,—the——

Mr. HARRIMAN: Railway Company.

Mr. KELLOGG: The Chicago & Alton Railway Company?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: The Chicago & Alton Railway Company was organized in the Spring of 1900, was it not?

Mr. HARRIMAN: Well, I don't remember that; I presume it was.

Mr. KELLOGG: You say that road cost about $3,000,000?

Mr. HARRIMAN: That is my recollection.

Mr. KELLOGG: Well, now, when the Chicago & Alton Railway was organized, you gentlemen—you four gentlemen—transferred to it all the stock, common and preferred, which you had bought, of the Chicago & Alton Railroad Company—that is, the common and preferred stock of the Chicago & Alton Railroad Company that you had bought?

Mr. HARRIMAN: Yes, sir; that is so.

Mr. KELLOGG: Amounting, as I believe, to about 34,722 shares of preferred and 183,224 shares of common stock.

Mr. HARRIMAN: That is right.

Mr. KELLOGG: You stated that you paid about $39,000,000 for this stock—I think you stated to the Commission?

Mr. HARRIMAN: $42,000,000, that is $39,000,000 for the stock; and we had an investment there of about $42,000,000.

1534 Mr. KELLOGG: That is, you paid $200. a share for the preferred stock and $175. for the common?

Mr. HARRIMAN: That is my recollection.

Mr. KELLOGG: The $200. for the preferred stock would amount to $6,944,400?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: And the balance was paid for the common stock. When that stock was placed in the treasury of the Chicago & Alton Railway Company, you made a mortgage upon it, did you not, for $22,000,000?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: And issued $19,439,000 par value of preferred stock and $19,542,800 par value of common stock?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: Making substantially, or a little less, than $40,000,000 of stock and $22,000,000 of bonds?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: I should have said about forty million dollars of stock and $22,000,000 of bonds.

Mr. HARRIMAN: So I understood you.

Mr. SEVERANCE: Mr. Kellogg said twenty by mistake.

Mr. HARRIMAN: Twenty of each.

Mr. KELLOGG: In other words, you capitalized the $39,000,000 of the preferred and common stock of the Alton for $63,000,000?

Mr. HARRIMAN: That is as you put it, yes.

Mr. KELLOGG: How would you explain it?

Mr. HARRIMAN: Do you want me to explain it now?

Mr. KELLOGG: What do you call that capitalization—bonds and stock?

Mr. HARRIMAN: I will explain it when you give me an opportunity.

Mr. KELLOGG: When you issue $62,000,000 of securities, that is capitalization.

Mr. HARRIMAN: Yes; but it depends on what rate of interest is charged against those securities.

Mr. KELLOGG: Yes; I will get to that. The $22,000,000
1535 of bonds bear three and one-half per cent, do they not?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: And the stock, whatever dividends of course they can earn. Now, in order to carry out that transaction, you gentlemen transferred your Chicago & Alton stock to a gentleman by the name of Stanton, did you not?

Mr. HARRIMAN: If that was the medium, I suppose we did. You have got all the records there.

Mr. KELLOGG: Some man who had no interest in it?

Mr. HARRIMAN: Some intermediary, I presume.

Mr. KELLOGG: Who had no interest in it at all, and you transferred this railroad which you sold to the new company for $3,000,000, to the same gentleman, didn't you?

Mr. HARRIMAN: If your record shows it there, there is no doubt about it.

Mr. KELLOGG: Then this gentleman, this intermediary, made a proposition to the Chicago & Alton Railway Company to sell it, 34,722 shares of the preferred stock of the Chicago & Alton Railroad Company for $10,000,000? and the new railroad for $3,000,000, making $13,000,000; is that correct?

Mr. HARRIMAN: If your record shows it, no doubt.

Mr. KELLOGG: Well, is that your recollection?

Mr. HARRIMAN: No, it is not my recollection.

Mr. KELLOGG: Well, I will show you. Are the books of the Chicago & Alton Railway Company here?

Mr. HARRIMAN: Mr. Kellogg, I am not disputing the facts if you have got the records there; it is undoubtedly correct, but as to my recollection of just the details, how the transaction was carried out, I have not got them on my mind; but I have got the whole thing clear on my mind as to general results.

Mr. KELLOGG: I show you the Resolution of the Board of Directors, if you will read it. Is the secretary or somebody who has charge of the records, from the Chicago & Alton Railroad Company here?

Mr. MILBURN: We don't dispute any of those records;
1536 counsel can assume they are all correct, so far as we are concerned. Mr. Harriman does not know the records them-

selves; they are from the books with which he had no connection. He can give his recollection of the transaction, but so far as these records are concerned, we are perfectly willing they should be introduced in evidence.

The CHAIRMAN: He does not dispute the facts assumed by the question, but he simply says he does not recollect.

Mr. HARRIMAN: I apparently was not a director of that company. My name is not there.

Mr. KELLOGG: Well, we will see about that. You seem to have been elected a director on that date, April 23, 1900.

Mr. HARRIMAN: I do not see my name among the Board of Directors that acted on that subject.

Mr. KELLOGG: I think that is quite right; you did not vote on that proposition. I don't know whether you were even present at that time; but what I asked was whether this gentleman, this intermediary, did make a proposition to the Chicago & Alton Railway Company.

Mr. HARRIMAN: I do not deny that, but I don't recollect it; I do not recollect the detail of the transaction, but I have got the general result.

Mr. KELLOGG: That $10,000,000 was for the preferred stock.

Mr. HARRIMAN: That is what you say, and the records show it; I am not disputing the record.

Mr. KELLOGG: I will show you the original record, so that you can say whether it is true or not.

Mr. HARRIMAN: I don't propose to say whether it is true or not, because I have no recollection of it.

Mr. KELLOGG: Very well, I will see.

Mr. HARRIMAN: I was not there and I have no recollection. I can tell you the general terms of how the Chicago & Alton matter was conducted.

Mr. KELLOGG: You seem to have been present at that meeting.

1537 Mr. HARRIMAN: At this meeting?

Mr. KELLOGG: At the meeting on April 23rd, and that was on April 23rd. I think you did not vote on that proposition.

Mr. HARRIMAN: I don't remember that I was there at all. No I was not there.

Mr. KELLOGG: Well, now, does the record——

Mr. HARRIMAN: You don't want me to carry this forever (referring to book)?

Mr. KELLOGG: No, sir; does the record show that on that date, this gentleman, Mr. Stanton, did make a proposition to the Chicago & Alton Railway Company to sell $10,000,000 of preferred stock, 34,822 shares of preferred stock, for $10,000,000, and the railroad for $3,000,000?

Mr. HARRIMAN: You have proved that by the record. You can't prove it by me.

Mr. KELLOGG: You have no recollection of this.

Mr. HARRIMAN: I have not any recolleteion of that part of it.

Mr. KELLOGG: That made $13,000,000, and the bonds—they sold, $22,000,000 of bonds were sold for $13,000,000?

Mr. HARRIMAN: So you say.

Mr. KELLOGG: Do you recollect it being sold for them?

Mr. HARRIMAN: No, I do not.

Mr. KELLOGG: As a matter of fact, were not these bonds turned over to your syndicate in payment of that $13,000,000?

Mr. HARRIMAN: The preferred stock and common stock and 3½ per cent. bonds of the railway company were turned over to whoever represented our syndicate, as I recollect it, for the Chicago & Alton Railroad, and preferred stock, and the 50-odd miles of line from Springfield to Grow—isn't that the name of the place?

Mr. MILBURN: No; Peoria.

Mr. HARRIMAN: No; Peoria—the Peoria line. It gave us
1538 our interest in the Peoria Terminal Company, I think—gave us an entrance into Peoria.

Mr. KELLOGG: I offer in evidence, as long as Mr. Harriman's recollection is not the same as the record, the record of the Chicago & Alton Railway Company, showing the following proposition:

"CHICAGO, *April* 3, 1900.

Meeting of the Board of Directors, Minutes of the Chicago & Alton Railway Company.

I hereby offer to sell, assign and transfer to your company 34,722 shares of the preferred capital stock of the Chicago & Northern Railroad Company, for the sum or consideration of $10,000,000, payable in cash, and 183,224 shares of the common capital stock of the Chicago & Alton Railroad Company, for the consideration of $19,449,000 par value of non-cumulative 5% preferred stock, and $19,542,800, par value of common stock of your company. The sale of said shares of the Chicago & Alton Railroad Company is to be made exclusive of all dividends declared thereon at any time within two years from the date hereof in respect or payable out of earnings and profits theretofore made or accumulated."

Mr. HARRIMAN: Mr. Kellogg, haven't you made a mistake in the rate of interest on that preferred stock? Four per cent., isn't it?

Mr. KELLOGG: What did I say?

Mr. HARRIMAN: I think you said 5.

Mr. KELLOGG: I meant four.

Mr. HARRIMAN: Four per cent.

The CHAIRMAN: From what record did you read?

Mr. KELLOGG: The Chicago & Alton Railway Company.

The CHAIRMAN: That appears to be a proposition made by somebody. Whose proposition was it?

Mr. KELLOGG: Lewis L. Stanton. He had no interest, did he?

Mr. HARRIMAN: I think not.

Mr. KELLOGG: Will the comptroller please turn me to the
1539 other record? I offer in evidence another resolution of April 23rd. Please mark it.

Paper marked Exhibit No. 7 attached to Mr. Harriman's testimony.

Mr. KELLOGG: I offer this Exhibit 7 in evidence. I omit reading the formal parts of it. Meeting of April 23rd:

"Resolved that this company issue twenty-two thousand (22,000) of its three and one-half per cent. First Lien Fifty Year Gold Bonds, and that the Farmers' Loan and Trust Company be authorized and requested to certify the same and to deliver the same to or upon the order of the president or any vice-president of this company; and further

"Resolved, that the said bonds be sold by the officers of the company for $13,000,000, and the proceeds used to fund the existing indebtedness of this company; and further

"Resolved that out of the proceeds of the sale of the said 22,000 three and one-half per cent. First Lien Fifty Year Gold Bonds, there be paid to Mr. Louis L. Stanton $3,000,000 thereof, to pay for that portion of the railways and property formerly of the St. Louis, Peoria and Northern Railway Company conveyed by said Louis L. Stanton to this company, and $10,000,000 thereof to pay for the 34,722 shares of the preferred stock of the Chicago & Alton Railroad Company purchased from him."

It is a resolution of the Board of Directors of the meeting of April 23rd, 1900.

I also offer in evidence from the original records of the meetings of the stockholders and Boards of Directors of the Chicago & Alton Railway Company the following proposition:

"To the Chicago & Alton Railway Company:

We hereby offer to sell, convey and transfer to your company for the consideration of $3,000,000, the railroad lines and property formerly of the St. Louis, Peoria & Northern Railway Company, lying within the intersection of the said railway with the tracks of
1540 the Chicago & Springfield Railroad Company, lying within the intersection of the said railway with the tracks of the Chicago & Springfield Railroad Company in the city of Springfield, with the equipment and appurtenances of said railway as evidenced in the proposed conveyance which I submit to your Board." Signed by the same party.

Mr. KELLOGG: Those resolutions were carried out, were they not?

Mr. HARRIMAN: I believe they were.

Mr. KELLOGG: That stock which these resolutions show you sold for $10,000,000 in cash, cost at $200, $6,944,400?

Mr. HARRIMAN: That is what you say.

Mr. KELLOGG: It cost $200 a share.

Mr. HARRIMAN: The common and preferred stock cost us together $39,000,000, and that would be at the rate of $200 for the preferred and $175 for the common.

Mr. KELLOGG: As a matter of fact, the people who deposited their preferred stock got $200 a share?

Mr. HARRIMAN: They did, and the others got $175. It was one transaction as far as we were concerned.

Mr. KELLOGG: After paying the 30 per cent. dividend upon it you sold it, according to that resolution, for $10,000,000; is that correct?

Mr. HARRIMAN: I don't know whether it was before or after. You have got the dates there.

Mr. KELLOGG: You got $10,000,000 for it and got the dividend besides.

Mr. HARRIMAN: We got securities of the Chicago & Alton Railway Company for all our holdings of the Chicago & Alton Railroad, both common and preferred, and the Springfield & Peoria line.

Mr. KELLOGG: The Springfield & Peoria line was bought in at $3,000,000, wasn't it?

Mr. HARRIMAN: Evidently so.

Mr. KELLOGG: Who owned it when it was bought in?

Mr. HARRIMAN: I think the same syndicate.

1541 Mr. KELLOGG: Yes. Mr. Gould, Mr. Schiff and Mr. Stillman.

Mr. HARRIMAN: I think so. I have no complete recollection of that, but I think it was in the same interest.

Mr. KELLOGG: That road had been built by the Laclede Construction Company, hadn't it?

Mr. HARRIMAN: That I don't remember.

Mr. KELLOGG: Do you know anything about the Laclede Construction Company?

Mr. HARRIMAN: I do not.

Mr. KELLOGG: Were you a stockholder in the Laclede Construction Company?

Mr. HARRIMAN: That I don't remember. I may have been; I may not; I am not sure.

Mr. KELLOGG: How did this syndicate acquire that road, which it sold to the Chicago & Alton Railway Company for $3,000,000?

Mr. HARRIMAN: Well, I could not answer that; it is a long time ago.

Mr. KELLOGG: As a matter of fact, that 58 miles of road cost less than $1,000,000, didn't it?

Mr. HARRIMAN: I believe not.

Mr. KELLOGG: Do you know what it cost?

Mr. HARRIMAN: I do not.

Mr. KELLOGG: About $17,000 a mile, wasn't it?

Mr. HARRIMAN: I don't remember. I don't know as I ever did know.

Mr. KELLOGG: Who built it?

Mr. HARRIMAN: Well, as far as I remember, it was under control of a man named Faiythorn and Mr. Adams.

Mr. KELLOGG: Well, who organized the St. Louis, Peoria & Northern road?

Mr. HARRIMAN: That is all matter of record; I couldn't tell you that.

Mr. KELLOGG: You were one of the syndicate that organized it, weren't you?

Mr. HARRIMAN: I was.

1542 Mr. KELLOGG: Weren't you?

Mr. HARRIMAN: The St. Louis, Peoria & Northern—yes, I think very likely I was. That is the line that we sold to the Chicago & Alton Railway, wasn't it?

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: I think so.

Mr. KELLOGG: And that line cost the St. Louis, Peoria & Northern Railway $1,460,000 in its bonds, didn't it?

Mr. HARRIMAN: Were there any bonds of the St. Louis, Peoria & Northern issued?

Mr. KELLOGG: Were there not; I ask you?

Mr. HARRIMAN: I don't know; I don't remember.

Mr. KELLOGG: You don't?

Mr. HARRIMAN: No.

Mr. KELLOGG: Those bonds were defaulted, were they not?

Mr. HARRIMAN: That I don't remember.

Mr. KELLOGG: How came you to acquire this St. Louis, Peoria & Northern Railroad which you sold to the Chicago & Alton?

Mr. HARRIMAN: I presume we bought the railroad or bought the securities of it, the same as we did the Chicago & Alton.

Mr. KELLOGG: You have no recollection of what you paid for it?

Mr. HARRIMAN: I have not.

Mr. KELLOGG: Who would know?

Mr. HARRIMAN: Well, I suppose the records; you have got the records there.

Mr. KELLOGG: I have no records of the St. Louis, Peoria & Northern Railway.

Mr. HARRIMAN: You just stated it cost so much, and I suppose you knew?

Mr. KELLOGG: I asked you if it cost $1,460,000 in the defaulted bonds of the St. Louis, Peoria & Northern Railroad?

Mr. HARRIMAN: I don't think I have ever had a railroad that defaulted on their bonds, or anything to do with one.

1543 Mr. KELLOGG: Well, you don't know what you paid for it then?

Mr. HARRIMAN: No, I do not; it is a small transaction and completely gone out of my mind. I only knew the general transaction of the whole Chicago & Alton and the line from Springfield to Peoria.

Mr. KELLOGG: It went into this company for $3,000,000.

Mr. HARRIMAN: I don't know. I am quite willing to concede that.

Mr. KELLOGG: Well, what did it go in for?

Mr. HARRIMAN: The Chicago & Alton Railroad stock and the line from Springfield to Peoria went into the railway company for so many securities.

Mr. KELLOGG: $22,000,000.

Mr. HARRIMAN: It went in for so many securities for the bonds

nd both classes of stock of the railway company, the whole amount f issue of their securities.

Mr. KELLOGG: As a matter of fact, was any money paid to this gentleman?

Mr. HARRIMAN: Paid to whom?

Mr. KELLOGG: The $10,000,000 paid to whatever his name was—Stanton?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: No.

Mr. KELLOGG: As a matter of fact, weren't the bonds sold to your syndicate, by the railroad—to your syndicate for $13,000,000?

Mr. HARRIMAN: That I don't know; I don't remember; you have got the records there and I have no doubt the records are correct. It was one means of getting at those securities.

Mr. KELLOGG: You have no recollection as to who bought those $22,000,000 of bonds?

Mr. HARRIMAN: I don't know that they were bought. They were exchanged, as far as my recollection is concerned.

Mr. KELLOGG: Who got them?

Mr. HARRIMAN: Exchanged for the stock of the Chicago
1544 & Alton Railroad and the line from Peoria to Springfield.

Mr. KELLOGG: Who got the $22,000,000 of bonds—who did they go to?

Mr. HARRIMAN: They went to the managers of the syndicate.

Mr. KELLOGG: The four men you mentioned?

Mr. HARRIMAN: Were they the managers of that syndicate?

Mr. KELLOGG: I don't know; they seem to have been the owners of the road.

Mr. HARRIMAN: They all represented it. If they were the managers of the syndicate it went to them.

Mr. KELLOGG: In other words, you four men organized the Chicago & Alton Railway Company, didn't you?

Mr. HARRIMAN: Well, did we?

Mr. KELLOGG: Well, did you or did you not?

Mr. HARRIMAN: I don't remember.

Mr. KELLOGG: You don't remember?

Mr. HARRIMAN: No;—or somebody did it for us.

Mr. KELLOGG: Who did organize it?

Mr. HARRIMAN: You have got the records; you have got the incorporators.

Mr. KELLOGG: Who directed its organization?

Mr. HARRIMAN: I suppose that we did, or we requested it. I have no recollection of the details of that transaction. You are trying to bring out we sold those 3½ per cent. bonds at less than they were worth. Suppose we did? We had a right to.

Mr. KELLOGG: I have not denied your right. I am trying to find out the facts.

Mr. HARRIMAN: I will tell you the facts when you give me a chance.

Mr. KELLOGG: You caused this road to be organized, and then the Chicago & Alton Railway Company——

Mr. HARRIMAN: I presume we did; it is sometime ago.

Mr. KELLOGG: And after it was organized you four men had all the stock, did you?

1545 Mr. HARRIMAN: We were the owners; we were the mediums through which it was done—do you know?

Mr. KELLOGG: I am asking you.

Mr. HARRIMAN: I don't remember whether we were or not.

Mr. KELLOGG: Who got all the stock of the Chicago & Alton Railway Company?

Mr. HARRIMAN: The stockholders of the Chicago & Alton Railroad Company and the owners of the line from Springfield to Peoria, and all the bonds.

Mr. KELLOGG: Wasn't the entire amount of the stock of the Chicago & Alton Railway Company then issued, issued to you four men?

Mr. HARRIMAN: Well, I don't remember whether it was or not.

Mr. KELLOGG: Weren't all of the bonds, of the $22,000,000 sold to you four men?

Mr. HARRIMAN: When it came to that point, I don't know where we stood, what our relations to it were. There may have been somebody else that was added.

Mr. KELLOGG: Weren't all the $22,000,000 bonds sold to you four men?

Mr. HARRIMAN: Well, I don't remember that.

Mr. KELLOGG: And didn't you four men sell the railway company the Peoria road for $3,000,000?

Mr. HARRIMAN: If we were acting for the syndicate, we four men, we sold the Peoria road and the Chicago & Alton stock to the Chicago & Alton Railway Company for its securities then issued. The whole thing was one transaction to my mind.

Mr. KELLOGG: Then you gentleman controlled the Chicago & Alton Railway Company and sold it to the Peoria road—is that correct?

Mr. HARRIMAN: I presume that is so.

Mr. KELLOGG: And you got the bonds for $13,000,000?

Mr. HARRIMAN: No, sir, we did not. That is the way you state it. We got the securities of the Chicago & Alton Railway Company for our holdings of the other property.

1546 Mr. KELLOGG: Then the resolution is not correct, is it?

Mr. HARRIMAN: I don't know whether that represents it or not. That may have been the medium of the Chicago & Alton Railway Company for carrying out that transaction.

Mr. KELLOGG: The resolution recites that the bonds were sold for $13,000,000.

Mr. HARRIMAN: But what difference does it make?

Mr. KELLOGG: I am asking you the facts; that is all.

Mr. HARRIMAN: There were $62,000,000 of securities given for the Chicago & Alton Railway Company and the Peoria & Springfield line. It doesn't make any difference about the form.

Mr. KELLOGG: That is subject to a $40,000,000 mortgage previously made.

Mr. HARRIMAN: That has got nothing to do with this. They

did not buy the $40,000,000 of bonds. They bought the Chicago & Alton Railroad stock, plus the Springfield & Peoria line, and issued $62,000,000 of securities, in round numbers.

Mr. KELLOGG: Issued $62,000,000 of securities against $39,000,000 of stock?

Mr. HARRIMAN: Nobody denies that.

Mr. KELLOGG: Those 3½ per cent. bonds sold on the market as high as 93, did they not?

Mr. HARRIMAN: Did they really?

Mr. KELLOGG: I ask you?

Mr. HARRIMAN: I don't remember that.

Mr. KELLOGG: Do you have any recollection what they sold at?

Mr. HARRIMAN: I have not, no.

Mr. KELLOGG: Do you know whether they sold at 93, 94—88?

Mr. HARRIMAN: I know they ranged up above 80—85—86. I did not know they went as high as 93. I said I did not know it—I don't remember. I must have known it at the time.

1547 Mr. KELLOGG: Then if, as a matter of fact, you gentlemen got those bonds for $13,000,000, you made a big profit on them?

Mr. HARRIMAN: I presume that is what we bought the Chicago & Alton Railroad Company for. We didn't buy it to lose money on it.

Mr. KELLOGG: Can you tell me where I can find out what the Peoria road of 58 miles cost?

Mr. HARRIMAN: No, I could not tell you myself. I don't remember how that transaction came out.

Mr. KELLOGG: Where are the books of the Peoria Road?

Mr. HARRIMAN: That I could not tell you.

Mr. KELLOGG: Who were the officers of it?

Mr. HARRIMAN: They are the officers of record. I don't remember that.

Mr. KELLOGG: You don't remember?

Mr. HARRIMAN: No, I do not.

Mr. KELLOGG: And you don't remember what those 58 miles cost?

Mr. HARRIMAN: I do not.

Mr. KELLOGG: Didn't cost $3,000,000, did it?

Mr. HARRIMAN: I don't know that I ever knew, it may not have, I doubt whether it did.

Mr. KELLOGG: You sold those bonds, didn't you—this syndicate?

Mr. HARRIMAN: Did we sell them to the syndicate?

Mr. KELLOGG: I ask you if the syndicate sold those bonds—the $22,000,000 of bonds?

Mr. HARRIMAN: I don't know; I don't think they did; not all of them.

Mr. KELLOGG: Have they got them yet?

Mr. HARRIMAN: I believe they have got some of them.

Mr. KELLOGG: How many did they sell?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: Through whom did they sell them?

Mr. HARRIMAN: That I don't remember.

Mr. KELLOGG: Who were the syndicate managers?

1548 Mr. HARRIMAN: Isn't that a matter of record?

Mr. KELLOGG: I don't think it is.

Mr. HARRIMAN: I don't remember. I know I was one of the syndicate, at first, and I don't remember whether I was one of the managers at this time or not.

Mr. KELLOGG: Who would know what those bonds sold for. I am talking about the 3½ per cent. bonds, what the syndicate got out of them?

Mr. HARRIMAN: I presume some of the syndicate have got some of the bonds yet. They never have been sold.

Mr. KELLOGG: Do you know whether they have or not?

Mr. HARRIMAN: I have not any personal knowledge.

Mr. KELLOGG: Have you any of them?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: You have no knowledge who the syndicate managers were?

Mr. HARRIMAN: I don't remember.

Mr. KELLOGG: Who kept the books of the syndicate?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: None of them kept in your office?

Mr. HARRIMAN: Not in my office.

Mr. KELLOGG: Would Mr. Stillman know?

Mr. HARRIMAN: I don't know whether he would know.

Mr. KELLOGG: Or Mr. Schiff?

Mr. HARRIMAN: I don't know whether he would know.

Mr. KELLOGG: Have you no way of finding out who handles the financial transactions of this syndicate?

Mr. HARRIMAN: I supposed it was all matter of public record.

Mr. KELLOGG: What public record? I know of none.

Mr. HARRIMAN: There were circulars issued at that time and issued by the syndicate managers, and you must have them somewhere.

Mr. KELLOGG: Where are they?

Mr. HARRIMAN: I am sure I don't know.

1549 Mr. KELLOGG: Did you sell the preferred stock—Chicago & Alton Railway preferred stock?

Mr. HARRIMAN: Did who sell it?

Mr. KELLOGG: The syndicate.

Mr. HARRIMAN: I don't believe they did as a syndicate.

Mr. KELLOGG: Has it been sold?

Mr. HARRIMAN: I presume the way that took place is that the holders of the Chicago & Alton Railroad stock received *pro rata* their proportion of whatever securities were issued for the railway stock and took up the railroad company's stock.

Mr. KELLOGG: Did you get your proportion?

Mr. HARRIMAN: I believe I did.

Mr. KELLOGG: Of bonds and of stock?

Mr. HARRIMAN: Of bonds and stock, yes.

Mr. KELLOGG: Did you sell them or did the syndicate managers sell them.

Mr. MILBURN: I would like that reserved, with the other question that we had this morning.

Mr. KELLOGG: I will withdraw the question at present. I stand corrected. 87½ was the highest price, I notice.

Mr. HARRIMAN: That is my recollection that they sold between 80 and 86 and 87 as the highest.

Mr. KELLOGG: The prices given me are between October, 1900, and January, 1906. The highest was from 82 to 87½.

Mr. HARRIMAN: Well, you have got them.

Mr. KELLOGG: I got that from a Stock Exchange report. Is that your recollection of it, Mr. Harriman?

Mr. HARRIMAN: My recollection was somewhere 80 to 86.

Mr. KELLOGG: I did not mean 94; I had the wrong sheet. 87½ is the highest price I find quoted. Was the common stock of this syndicate sold by the syndicate—managers of the syndicate?

Mr. HARRIMAN: That I said before, I believe that the securities of the railway company were divided to the holders of the
1550 stock of the railroad company in proportion to their holdings, and what they did with it they did on their own account.

Mr. KELLOGG: Well, but, Mr. Harriman the outside stockholders, outside of you four gentlemen, seem to have got no stock in the railway company.

Mr. HARRIMAN: They had the opportunity to do it.

Mr. KELLOGG: But they did not get it.

Mr. HARRIMAN: They did not put their stock in—wait a minute—isn't there a certain amount of stock still authorized to be issued in case they want to deposit their stock and take the railroad company's securities.

Mr. KELLOGG: Certainly, that is correct.

Mr. HARRIMAN: This small number of stockholders held on to their stock and they did not put it in as we did.

Mr. KELLOGG: So that, according to your statement the $22,000,000 of bonds and the nineteen millions and some hundred thousand of preferred and common stock of the Chicago & Alton Railway Company, which was issued against the $21,000,000 or $22,000,000 par value, of the Chicago & Alton Railroad Company, which cost you thirty-nine——

Mr. HARRIMAN: Which cost us thirty-nine plus the cost of the Peoria, which to my recollection was $3,000,000—about $42,000,000.

Mr. KELLOGG (continuing): Was divided up among you four men?

Mr. HARRIMAN: Well, was it?

Mr. KELLOGG: Were there any other parties?

Mr. HARRIMAN: Whoever the syndicate was.

Mr. KELLOGG: Who was the syndicate?

Mr. HARRIMAN: I don't know. There was participating receipts issued, by I think the United States Trust Company, and for a long time those participating receipts sold for about what they cost after they were issued. Now, the participants had those receipts, and

when they presented those receipts, I believe they, re-
1551 ceived their *pro rata* share of the securities. I think so. I am not sure.

Mr. KELLOGG: The records of the Chicago & Alton Railway Company only show the division of those securities among you four men?

Mr. HARRIMAN: I cannot help what the records show—the participants in that syndicate—I don't know how many there were—100 or 200, maybe.

Mr. KELLOGG: You don't know who they are?

Mr. HARRIMAN: No, the participating receipts were sold in the market and for a long time after the syndicate was formed and those receipts issued, those participating receipts sold for about what they cost, one or two per cent. premium on them.

Mr. KELLOGG: Who has the record to show who the participating parties were in this syndicate?

Mr. HARRIMAN: That I could not tell you. I think the United States Trust Company issued those participating receipts.

Mr. KELLOGG: Then, according to your statement, let us see what the capitalization of the Chicago & Alton Railway Company finally turned out to be. Originally, when you bought in the stock, it was substantially $39,935,887.

Mr. HARRIMAN: What was?

Mr. KELLOGG: The capitalization of the Chicago & Alton Railroad Company—when you bought the stock, I say the capitalization on the books of the Chicago & Alton Railroad Company, including bonds, stocks and all obligations——

Mr. HARRIMAN: No, you are talking about the railway company.

Mr. KELLOGG: Railroad Company—the original railroad company.

Mr. HARRIMAN: It was only about $30,000,000?

Mr. KELLOGG: No, total assets $39,935,887.

Mr. HARRIMAN: That is the railroad company.

Mr. MILBURN: Par value.

Mr. KELLOGG: Par value; and against that its total lia-
1552 bilities of stocks, bonds, underlying bonds and guaranteed stocks and all other obligations were $39,935,887.

Mr. HARRIMAN: How do you calculate those guarantees—the par of the stocks? or the Dividends guarantee on them?

Mr. KELLOGG: They are carried on the books as liabilities, and the total extent is $39,000,000; that is all I know.

Mr. HARRIMAN: They are liabilities for dividends to be declared to be paid on them under leases. Are they capitalized at so much money?

Mr. KELLOGG: I believe so.

Mr. LOVETT: I think the statement shows they are carried at par value.

Mr. KELLOGG: I have not gone through the details of them. I take it from the report as it showed at the time you bought the

stock, that the total liabilities of the Alton Company were in round numbers $39,000,000, and its total assets valued at $39,000,000?

Mr. HARRIMAN: That is counting the pay of the Chicago & Alton Railroad, counting it at its par value?

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Now, from that time until you turned over the management in October last, the capitalization of the Chicago & Alton Company was increased to $122,872,328, was it not?

Mr. HARRIMAN: Of the Alton Railroad Company?

Mr. KELLOGG: The Alton Railroad and the Alton Railway Company were consolidated, were they not?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: And new securities issued in place of the old securities?

Mr. HERRIMAN: Yes, that was done.

Mr. KELLOGG: And the new company assumed not only the $40,000,000 mortgage but the $22,000,000 mortgage, didn't it?

Mr. HARRIMAN: The Railway Company mortgage—yes, I believe that is so.

1553 Mr. KELLOGG: So that the new company has outstanding all the obligations that were issued after you took charge of the Chicago & Alton Railroad Company and of the Chicago & Alton Railway Company?

Mr. HARRIMAN: No doubt of that.

Mr. KELLOGG: And among those securities so issued were the $62,000,000 of bonds which you have mentioned?

Mr. HARRIMAN: Yes; the $8,000,000 you have got out as pledged; yes, that is right.

Mr. KELLOGG: And $5,000,000 more under the original $40,000,000 mortgage.

Mr. HARRIMAN: No, you have got forty and twenty-two as sixty-two.

Mr. KELLOGG: There is $45,000,000 issued under that mortgage, were there not?

Mr. HARRIMAN: Were there?

Mr. KELLOGG: Yes.

Mr. LOVETT: Issued for improvements.

Mr. HARRIMAN: If the report is there, I concede that.

Mr. KELLOGG: If the report shows it. I had forgotten that there had been any more bonds. I did not know there was an authorized issue of more than $45,000,000. I believe that is correct.

Mr. KELLOGG: The report shows that there were $45,350,000 of the 3 per cent. issued; $22,000,000 of the 3½ per cents; and $5,000,000 collateral trust notes, or $72,350,000. It also shows equipment obligations of $3,016,918.08, or about $75,000,000 of direct obligations.

Mr. HARRIMAN: Haven't you got the $5,000,000 of equipment trust notes duplicated, because $8,000,000 was issued to secure those. You have got to take $8,000,000 of those bonds off.

Mr. KELLOGG: Yes, you have got to take $8,000,000 of those

bonds off; but you have got to take off $800,000 from the other side of the ledger, which is carried as an asset for $1,000,000 of bonds.

Mr. HARRIMAN: They may be.

Mr. KELLOGG: So that according to your own comptroller,
1554 Mr. Mahl, stated the total liabilities of this company, the new company, consolidated company, when you turned over, the property was $122,872,327.56.

Mr. HARRIMAN: That is undoubtedly so.

Mr. KELLOGG: As against $39,000,000 when you took the property.

Mr. MILBURN: Less $8,000,000.

Mr. HARRIMAN: Yes, less $8,000,000.

Mr. KELLOGG: Less $7,000,000 because $1,000,000 is carried on the other side of the ledger. It is the statement made up by your comptroller; I take it from his report; that is all. Well, call it $116,000,000, then. Now, do you know how much of that increase of in the neighborhood of $80,000,000 was invested in that property itself?

Mr. HARRIMAN: I can tell you, yes, if you will let me.

Mr. KELLOGG: I will certainly let you. I want to know.

Mr. HARRIMAN: Do you want me to start now?

Mr. KELLOGG: Tell me the amount of money actually invested in it.

Mr. HARRIMAN: In which?

Mr. KELLOGG: In the Chicago & Alton Railroad—in the road, in the equipment, or in the track or improvements on that property, during that six or seven years.

Mr. HARRIMAN: I think twenty-two and a half million dollars.

Mr. KELLOGG: Isn't it as a matter of fact $17,272,118?

Mr. HARRIMAN: No, it is twenty-two millions and a half dollars.

Mr. KELLOGG: Where do you get the 22½?

Mr. HARRIMAN: From the facts. You have put in there $5,000,000 of equipment trust notes. That is counting the $5,000,000 of equipment trust notes, we have expended $22,000,000, 22½ million dollars I think it is.

1555 Mr. KELLOGG: Doesn't your book show out of the bonds you expended $9,385,889, paid for equipment $4,886,529 and for the Peoria road $3,000,000; or $17,272,118?

Mr. HARRIMAN: Is Mr. Miller here? $22,327,000 is the exact amount.

Mr. KELLOGG: What are the items?

Mr. HARRIMAN: Equipment, paid for direct $5,256,000; equipment paid for from car trust $5,807,000, making total for equipment $11,064,000. Track elevation in Chicago million and a half. These are round numbers, if you will allow me to. New buildings and structures, reconstruction shops, $1,000,000; new main tracks, side tracks, track betterments and terminal yards, $4,350,000. Changes in grade, $1,000,000. New bridges, $1,400,000. Fuel and water stations, $370,000. Interlocking and block signal, $586,000; real estate $672,000; and miscellaneous, $550,000; making a total of $22,327,219.04.

Mr. KELLOGG: Well, take these figures. Now, assume they are

correct. Then, according to this statement there is $60,000,000 of increase of capital for which the road got nothing?

Mr. HARRIMAN: Which road got nothing?

Mr. KELLOGG: The Chicago & Alton.

Mr. HARRIMAN: Consolidated company?

Mr. KELLOGG: Consolidated company.

Mr. HARRIMAN: Those securities were all out when the roads were consolidated.

Mr. KELLOGG: I know, but in the growth of this new consolidation?

Mr. HARRIMAN: Mr. Kellogg, they got 65 for the bonds; they got the Chicago & Alton Railroad stock, and they got the line from Springfield to Peoria plus those additions.

Mr. KELLOGG: But if they spent only $22,000,000 on that property and increased their liability to $82,000,000——

Mr. HARRIMAN: I am not disputing that the road is
1556 capitalized for what you say there. I want to get your figures correct.

Mr. KELLOGG: Then if the road issued stock and bonds and securities to the extent of $82,000,000, and only spent $22,000,000 of that on the property, the other $60,000,000 is water?

Mr. HARRIMAN: What are you going to show—that that affects the rates of transportation on the Chicago & Alton or the income of the Chicago & Alton?

Mr. KELLOGG: Going to show the facts. Isn't that true—$60,000,000?

Mr. MILBURN: There is not any doubt about it. Suppose you let Mr. Harriman make this statement now, when you ask him a question like that—"Is this water?"

Mr. KELLOGG: Will you let me see your statement from which you read that statement?

Mr. HARRIMAN: Yes. (Handing counsel paper.)

Mr. MILBURN: Mr. Stenographer, in that last statement there is a little error of $10,000,000. Mr. Kellogg stated it $2,000,000 too much.

Mr. KELLOGG: $39,000,000 original capital of the road deducted from $122,000,000 leaves in round numbers, $82,000,000, does it not?

Mr. MILBURN: $72,000,000.

Mr. KELLOGG: Assuming the capital of the original road was $40,000,000, if you take that from $122,000,000, its capitalization now, according to your last report leaves $82,000,000, does it not?

Mr. HARRIMAN: It looks like it.

Mr. KELLOGG: If you only spent $22,000,000 on the property, then $60,000,000 of its securities are loaded on to the railroad company, for which it got nothing; is not that true?

Mr. HARRIMAN: Yes; but I don't suppose you could sell three per cent. bonds, or three and a half per cent. bonds at par.

Mr. KELLOGG: They seem to have been sold at 96.

Mr. HARRIMAN: They may have, under certain condi-
1557 tions, but not at the time this company was formed, nor can you sell common stock at par, nor preferred stock limited to four per cent. at par?

Mr. KELLOGG: But you got $4,000,000 of these bonds, according to the statements on October 17——

Mr. HARRIMAN: Suppose you had to sell them to-day, what would they bring?

Mr. KELLOGG: And sold them at the same time to the New York Life at 96.

Mr. HARRIMAN: They were not sold, as far as I know, to the New York Life at the same time, or anything like the same time.

Mr. KELLOGG: What is that?

Mr. HARRIMAN: Or anything like the same time that I obligated myself to take them.

Mr. KELLOGG: When did you obligate yourself to take them?

Mr. HARRIMAN: I think we all obligated ourselves to take our proportion of those bonds in the spring of 1899, or the winter of 1899. The formation of an organization like that does not all take place in a week. There are many conferences and negotiations that lead up to it.

Mr. KELLOGG: The subscription to those bonds which was accepted by the records of the Board of Directors of the Chicago & Alton Railroad Company seems to have been entered into on September 7, 1899.

Mr. HARRIMAN: Is there nothing on record prior to that time?

Mr. KELLOGG: Yes, I am going to state it. The mortgage was not made until after that time, was it?

Mr. HARRIMAN: Not unless the record shows it differently. You know it.

Mr. KELLOGG: The resolution to issue certain bonds and to allow the stockholders to subscribe for them at 65, was passed along in June, was it not?

Mr. HARRIMAN: Was that so? It was some time prior to September.

Mr. KELLOGG: June, I believe?

Mr. HARRIMAN: Whatever the record shows there I concede that.

1558 Mr. KELLOGG: The subscription was actually made for them, according to this statement which you had, on the 7th of September, and accepted by the Board of Directors and the bonds were not actually issued but certificates were issued for them.

Mr. LOVETT: The date of the subscription is not shown.

Mr. MILBURN: The offer of 65 was made in June.

Mr. HARRIMAN: That is, there was an obligation on the part of stockholders to take those bonds at 65 in June, or prior thereto, I presume.

Mr. KELLOGG: Do you say there was any obligation prior to September 7th for the stockholders to take those bonds?

Mr. HARRIMAN: I have no doubt there was.

Mr. KELLOGG: Where is that obligation?

Mr. HARRIMAN: That I don't know. As I say, there were negotiations which led up to that action in September, and I presume the first action was in June, as shown by the record, indicating that the bonds were to be sold at 65.

Mr. KELLOGG: As a matter of fact, no bonds or certificates representing bonds were issued until after the 7th of September, were they?

Mr. HARRIMAN: The record probably shows that, but I was trying to explain to you that in the negotiation there undoubtedly was an obligation assumed to take those bonds when issued at 65.

Mr. KELLOGG: This report shows that the treasurer presented a statement as to the subscriptions received to the bonds of the company under the circular issued to the stockholders, dated June 27, 1899, to wit: It then gives the list. Now, prior to June 27, 1899, there was no obligation by any one of the stockholders to take those bonds, was there?

Mr. HARRIMAN: Well, I presume we did agree that we would take those bonds at 65: The first action may have been on June 27th.

1559 Mr. KELLOGG: That subscription was accepted, according to this statement, on the 7th of September, 1899?

Mr. HARRIMAN: That is what the record shows.

Mr. KELLOGG: According to the books, on October 10th the first $9,996,120 certificates, representing that amount of the bonds were sold to the stockholders at 65, and on the 17th, seven days later, it appears there were four millions of them sold to the New York Life for 96?

Mr. HARRIMAN: By the company?

Mr. KELLOGG: I do not know who sold them.

Mr. HARRIMAN: I have nothing to do with the sales to the New York Life. All I have to do with is whatever is a matter of record with the Railway Company.

Mr. KELLOGG: It is a matter of record that you took the first bonds on October 10th, $9,996,120. Were there any conditions intervening between that on the 17th of the same month that would cause those bonds to sell for 96, when you paid 65?

Mr. HARRIMAN: Yes, but had we not obligated ourselves to take them at 65 six months previous to that?

Mr. KELLOGG: No.

Mr. LOVETT: That is just the point.

Mr. KELLOGG: No proposition was made to take them until June 7th. That was not six months previously.

Mr. HARRIMAN: That is pretty nearly six months. It is four or five months.

Mr. KELLOGG: Well, say four or five months. What were the intervening conditions that caused those bonds to jump to 96? It was three months, July, August and September. During that three months, what change in the conditions caused those bonds which you had agreed to take at 65 to jump to 96?

Mr. HARRIMAN: I can tell you that I don't know exactly what did it. I was in Alaska and away from communication during most of that time. When I got back from Alaska a change had come over the whole situation. During the summer of 1899,

1560 the money that had been hoarded by the institutions and individuals and kept in trust companies and not invested,

was let loose. Their confidence was being restored, and they were buying pretty nearly everything that was presented in the way of interest-bearing securities.

Mr. KELLOGG: Go on.

Mr. HARRIMAN: No, I have nothing more to say.

Mr. KELLOGG: And you think the change in those conditions between June 27th and October 17th caused those bonds to jump from 65 to 96, 31 points?

Mr. HARRIMAN: I don't know that 65 would have been the market price in June. There was no market price. But I say they would not have sold at 90 or 96 in July or May.

Mr. KELLOGG: You considered the Chicago & Alton Railroad worth $40,000,000, did you not?

Mr. HARRIMAN: Certainly I did, or I would not have bought it.

Mr. KELLOGG: Do you say that $40,000,000 first mortgage bonds on the Chicago & Alton at 3 per cent. will not sell at 65?

Mr. HARRIMAN: It was a privilege to the stockholders themselves, given to themselves.

Mr. KELLOGG: That is not an answer to my question.

Mr. HARRIMAN: Under certain conditions, Mr. Kellogg, they would not bring 65. Under the conditions that existed in 1898, I doubt whether they would have sold 65.

Mr. KELLOGG: The conditions in the Fall of 1899——

Mr. HARRIMAN: That is all right. That was six months or twelve months after we had gone into this transaction.

Mr. KELLOGG: But no obligation to take those bonds accrued until after July 1st, 1899?

Mr. HARRIMAN: So far as your record goes. How do you know there wasn't any obligation?

Mr. KELLOGG: I don't know of any. Was there any?

Mr. HARRIMAN: I haven't any doubt of it, at least in June.

1561 Mr. KELLOGG: Well, in June then.

Mr. HARRIMAN: The people who were interested in the stock of the Chicago & Alton Railroad Company had undoubtedly agreed that they would take these bonds at 65.

Mr. KELLOGG: Do you say that in June, 1899, $40,000,000 first mortgage 3% bonds on the Chicago & Alton Railroad would not sell for more than 65?

Mr. HARRIMAN: Why, certainly it would.

Mr. KELLOGG: It would sell for 90, easily, would it not?

Mr. HARRIMAN: No.

Mr. KELLOGG: It did sell for more than that, did it not?

Mr. HARRIMAN: In June?

Mr. KELLOGG: In September and October.

Mr. HARRIMAN: That is a very different thing.

Mr. KELLOGG: You were in Alaska from June until October were you not?

Mr. HARRIMAN: No; from June until the latter part of August.

Mr. KELLOGG: Was there any particular change in the conditions of the market between July and September?

Mr. HARRIMAN: Yes; very much. It had all changed.

Mr. KELLOGG: After that, nearly $9,000,000, or practically $10,000,000 seems to have been sold.

Mr. HARRIMAN: Do you think there has been any change in the market in the last six months?

Mr. KELLOGG: Yes; I think probably there has.

Mr. HARRIMAN: Was there any change in the six months previous to that?

Mr. KELLOGG: Well, now, I notice that on May 21, 1900, $219,460 were sold to a syndicate at 65?

Mr. HARRIMAN: Had not the syndicate already obligated itself to buy those bonds?

Mr. KELLOGG: Probably so, but they had not paid for them.

Mr. HARRIMAN: It was not necessary to pay for them
1562 then. The company wanted some concrete understanding. The company either did not have to pay the interest in the meantime, or the interest was adjusted.

Mr. KELLOGG: You do not pretend to say those first mortgage bonds after June 27, 1899, could not have been sold for a large sum, more than 65?

Mr. HARRIMAN: The Burlington & Quincy Railroad, I think, in the Spring of 1899, sold a very large amount of its three and a half per cent. bonds to its stockholders at 65. Is it reasonable to suppose the Chicago & Alton three per cent. bonds were worth more than the Burlington & Quincy three and a half per cent. bonds?

Mr. KELLOGG: I don't know.

Mr. HARRIMAN: It is just one of those market conditions which you cannot account for, and nobody else.

Com'r PROUTY: Were the C. B. & Q. sales confined to the stockholders?

Mr. HARRIMAN: I think they were.

Com'r PROUTY: Would that be sales in the open Market?

Mr. HARRIMAN: The conditions in 1898 and the beginning of 1899 were different from what they were at the end of 1899 and the beginning of 1900. Then they changed again in 1903, and then again they had varied from time to time up to this time. For instance, you could not sell 3 per cent. bonds to-day of any railroad at 96.

Mr. KELLOGG: I notice, Mr. Harriman, that on June 30th, 1900, there was charged to the Alton Railroad, this dividend which had been paid, 30 per cent., and a discount on these 3 per cent. bonds of $8,155,751.40, or a total of about $15,000,000, and against that was charged this $12,444,177, the value of which was represented, you said by moneys that had been expended in the years back. Will you explain that transaction?

Mr. HARRIMAN: That is the amount of money that had
1563 gone into the property from earnings amounted to twelve million and odd thousand dollars. Is that right?

Mr. KELLOGG: Yes. Against that was charged a dividend of thirty per cent., amounting to over $6,000,000.

Mr. HARRIMAN: Amounting to over $6,000,000, and the discount——

Mr. KELLOGG: And the discount on these bonds, amounting to $8,155,000.

Mr. HARRIMAN: Well?

Mr. KELLOGG: Was that $8,155,000 in addition to the profit that you gentlemen made out of it, or was that the profit that you gentlemen made?

Mr. MILBURN: I submit that as not a fair question.

Mr. HARRIMAN: That is putting a wrong coloring on it.

Mr. KELLOGG: That, I presume, represented the discount between par and the 65 that the bonds were sold at.

Mr. MILBURN: Of course it does; counsel knows it does.

Mr. KELLOGG: It represents the difference between——

Mr. HARRIMAN: If we had carried our bonds to maturity, we would have got par for them, and four and seven-eighths per cent. interest on them.

Mr. KELLOGG: What does the $8,155,751.40 represent?

Mr. HARRIMAN: I presume it represents the discount on the bonds between 65 and par.

Mr. KELLOGG: No; it would be less than that. Does it not represent the difference between what this syndicate sold them at and the 65.

Mr. HARRIMAN: Not a bit. It had nothing to do with it.

Mr. KELLOGG: What does it represent? It certainly does not represent 35 points on $32,000,000 of bonds.

Mr. HARRIMAN: That is an entry which I haven't any recollection of at all.

Mr. KELLOGG: You have no knowledge about it whatever?

1564 Mr. HARRIMAN: The Chicago & Alton Railroad or the Railroad Company's books could not have had anything to do with the difference between what the syndicate sold its bonds at and what it paid for them.

Mr. KELLOGG: As a matter of fact was not the dividend and that discount on those three per cent. bonds charged against that $12,444,000 for the purpose of covering it up so that the Chicago & Alton would not——

Mr. HARRIMAN: It was not for the purpose of covering up anything.

Mr. KELLOGG: It was to have sold its bonds for 65 cents, was it not, for that purpose?

Mr. HARRIMAN: So that what?

Mr. KELLOGG: The Chicago & Alton would not appear to have gotten only 65 cents on the dollar out of this money.

Mr. HARRIMAN: There wasn't any concealment of the fact that it was sold at 65. It was offered to everybody.

Mr. MILBURN: It was a public offer.

Mr. HARRIMAN: A public offer; yes, and every stockholder of the Chicago & Alton Railroad Company availed of it.

Mr. KELLOGG: Now, $32,000,000 of bonds at 35 points discount would be $11,200,000 of discount on bonds. 65 is what it sold the bonds at. Tell me why there should be charged against that $12,444,000, $8,155,751.40 discount on bonds?

Mr. HARRIMAN: Besides the $6,000,000 that was distributed?

Mr. KELLOGG: Of dividends; yes.

Mr. HARRIMAN: Somebody has got to explain that transaction to you. I have no recollection of it. There must have been a discount on some lesser number of bonds than the total if that entry is correct there. Whoever made up those figures has got to explain it to you. I can't do it.

Mr. KELLOGG: You cannot explain it?

1565 Mr. HARRIMAN: Only in a general way, that the discount on the bonds was charged to the Profit & Loss account.

Mr. KELLOGG: Can you tell me any reason why any discount on bonds should be charged against that $12,444,000?

Mr. HARRIMAN: Wasn't there, in addition to the $12,444,000, an additional amount of profit and loss?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: Or didn't they use up the whole amount of the profit and loss, and make it up in that way? What was the total amount of the profit and loss, including the twelve million and odd? What was the total credit to profit and loss?

Mr. KELLOGG: $2,380,753.74.

Mr. HARRIMAN: That made the difference, did it not. You add the $2,000,000 and the $5,600,000, and it probably makes those two items.

Mr. KELLOGG: No; here is the entry. You can see it. You will notice that the dividends was something over six million, and the discount on the bonds a little over $8,000,000, which would amount to over $14,000,000.

Mr. HARRIMAN: Yes; $14,824,000.

Mr. KELLOGG: Very well. That is charged against the $12,444,000, still leaving over $2,000,000 charged off.

Mr. HARRIMAN: Well, was not the credit to profit and loss $12,444,000 plus the $2,480,000.

Mr. KELLOGG: No.

Mr. HARRIMAN: Where is the credit to profit and loss in this statement?

Mr. KELLOGG: I will get it for you.

Mr. MILBURN: There seems to have been a sum to balance that account.

Mr. HARRIMAN: That is, they wrote off the discount on the bonds against whatever they had to the credit of profit and loss. I think that is probably what they did.

Mr. KELLOGG: I will find it for you.

Mr. MILBURN: I will give you this statement, Mr. Kellogg. That seems to be the way they have it here.

1566 Mr. KELLOGG: According to this statement it appears that the dividend of something over $6,000,000, the discount on bonds, a litle over $8,000,000, amounting to $14,824,931.40, was charged against the $12,444,177.66 leaving $2,380,753.74, then charged to profit and loss. Is that correct?

Mr. HARRIMAN: Is that the way that was done? that was charged against the surplus to profit and loss, was it?

Mr. KELLOGG: Yes; that is correct.

Mr. HARRIMAN: So that the surplus profit and loss account was reduced that much.

Mr. KELLOGG: $2,380,000.

Mr. HARRIMAN: The whole thing, $2,000,000 and $12,000,000. In other words, the surplus profit and loss was reduced by whatever amount we charged.

Mr. KELLOGG: Do you know any reason why the discount on those bonds should have been charged against that $12,444,000, unless it was to cover it up?

Mr. HARRIMAN: There wasn't any reason for covering it up, because it had already been made public property. What is the use of trying to cover up a thing that is made public?

Mr. KELLOGG: It was not made public except on the books of the Alton road.

Mr. HARRIMAN: It was made public that the stockholders were selling these bonds at 65.

Mr. KELLOGG: And the stockholders were practically you four men?

Mr. HARRIMAN: It doesn't make any difference. It was a public advertisement, and all the stockholders availed of it. You have the list of the other stockholders.

Mr. KELLOGG: Yes; I put it in. It was a small amount outside the four men.

Mr. HARRIMAN: Yes; small amount in holdings, but quite a number of stockholders.

Mr. KELLOGG: It was the preferred stock of this Chicago & Alton Railway Company, which was issued after placing all these
1567 mortgages on the property, of over $60,000,000 which was sold to the Union Pacific Railroad, was it not?

Mr. HARRIMAN: That is hardly a fair way to put it.

Mr. KELLOGG: Is that the fact?

Mr. HARRIMAN: The Chicago & Alton Railway Company had been formed and the stock of the Chicago & Alton Railroad Company had been acquired, and the line from Springfield to Peoria had been acquired, and the expenditure for improvements on the Chicago & Alton Railroad had been made. Then came up the question of the acquisition of that stock by the Union Pacific. That was acquired by the Union Pacific in conjunction with other negotiations which bear upon it.

Mr. KELLOGG: But ahead of that stock is the $45,350,000 of first mortgage bonds, $22,000,000 of second mortgage bonds, of $5,000,000 of equipment notes; is not that true?

Mr. HARRIMAN: The equipment notes are on the equipment itself.

Mr. KELLOGG: But they are charged against the railroad.

Mr. HARRIMAN: Yes; and that is being paid out of the income.

Mr. KELLOGG: But they are a charge ahead of the stock.

Mr. HARRIMAN: Yes; practically ahead of the bonds, you might say.

Mr. KELLOGG: And $330,000 of equipment notes in addition,

making about $75,000,000 of direct obligations against the Chicago & Alton Railway Company ahead of that preferred stock.

Mr. HARRIMAN: What are you trying to prove? That the Chicago & Alton preferred stock is not worth anything?

Mr. KELLOGG: I am trying to prove the facts.

Mr. HARRIMAN: I am trying to get at the facts, if you will let me state them.

Mr. KELLOGG: Is that correct?

Mr. HARRIMAN: Undoubtedly it is correct if you have all
1568 the figures. We haven't concealed anything about it.

Mr. KELLOGG: Look at this statement——

Mr. HARRIMAN: There is no use in showing me statements, because I had nothing to do with making them up.

Mr. KELLOGG: But you had something to do with making the figures in the first instance?

Mr. HARRIMAN: Yes, and I will tell you why it was done.

Mr. KELLOGG: Then it is true that there are $75,000,000 of direct obligations against that company ahead of this preferred stock, is there not?

Mr. HARRIMAN: That looks so, yes.

Mr. KELLOGG: And that preferred stock is the stock which was sold to the Union Pacific Road for eighty-six and a half.

Mr. HARRIMAN: Yes, and the sellers were very much aggrieved because they didn't get more for it.

Mr. MILBURN: Those figures again include $7,000,000 too much.

Mr. KELLOGG: No; they do not.

Mr. MILBURN: I am informed here, Mr. Kellogg, that all through the record you are making those figures from $7,000,000 to $8,000,000 too much.

Mr. KELLOGG: There is the statement made by Mr. Mahl.

Mr. CRAVATH: Look at the note at the bottom.

Mr. KELLOGG: Yes; but the note at the bottom is not correct, because you have carried in your assets some of those bonds. You have to take the bonds out of the assets before you take the others. $8,000,000 of those bonds are pledged for how much?

Mr. HARRIMAN: $5,000,000.

Mr. KELLOGG: Then if the bonds are sold for the $5,000,000, there is not a duplication of $8,000,000, is there?

Mr. HARRIMAN: You have already got the $5,000,000 in, have you not?

1569 Mr. KELLOGG: And you have a million of those bonds on the other side of ledger at $800,000.

Mr. HARRIMAN: Well, $7,000,000.

Mr. MILBURN: Can we not get that straightened out?

Mr. HARRIMAN: I couldn't straighten it out.

Mr. MILBURN: I have an accurate man sitting at my left here.

Mr. HARRIMAN: What does he say?

Mr. MILBURN: The figure that is given is always seven millions too much.

Mr. HARRIMAN: Yes. I don't think it depends on the situation much anyway.

Mr. KELLOGG: I think it is enough. I will get the accurate figures. The exact figures, according to Mr. Mahl, will be $7,200,000 less. Then, according to that there is, $68,280,756 of direct obligations of the Alton Road ahead of the preferred stock. Is that correct?

Mr. HARRIMAN: That accounts for $22,000,000 of three and a half per cent. bonds.

Mr. KELLOGG: $45,000,000 of the others with eight millions of the [illegible] up as collateral, and it accounts for the equipment trust notes; and it is exclusive of its current liabilities. I mean permanent liabilities.

Mr. HARRIMAN: Yes, and exclusive of the equipment trust notes?

Mr. KELLOGG: No; it includes the equipment trust notes.

Mr. HARRIMAN: He made those figures up. I have no doubt they are right.

Mr. KELLOGG: About $68,000,000 then; that is near enough. Very well; I will read those items so that we will have the funded debt:

$45,350,000, first mortgage, 3% bond.
$22,000,000, three and a half per cent. bond.
$5,000,000 collateral trust notes.
$3,130,756.71 of joint equipment notes, in various series.

1570 Making a total, as I figure it, of $75,480,756.71, but, as the gentlemen say, $8,000,000 of those bonds are carried as collateral to that note, one million of them in the assets valued at $800,000, and it will leave a net permanent liability against this company of $68,280,756, inclusive of its current liabilities; is that substantially correct?

Mr. HARRIMAN: Payable in about fifty years from now.

Mr. KELLOGG: Some of it Some of it is payable in a short time.

Mr. HARRIMAN: That is being paid out of the income, the equipment trust notes.

Mr. KELLOGG: It is a charge on the property, is it not?

Mr. HARRIMAN: Undoubtedly.

Mr. KELLOGG: Ahead of the preferred stock. In addition to that, there is about $2,354,000, current liabilities.

Mr. HARRIMAN: Yes; I think very likely that is so.

Mr. KELLOGG: But we will leave that out. Now it is that preferred stock which is behind all of those obligations which the Union Pacific Railroad Company bought for eighty-six and a half, is it not?

Mr. HARRIMAN: Yes; and some other people bought it.

Mr. KELLOGG: Then if that stock is worth eighty-six and a half, limited to four per cent., what would you consider the bonds worth ahead of that—the first mortgage bonds?

Mr. HARRIMAN: The three per cent. first mortgage bonds?

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: Whatever they would bring in the market.

Mr. KELLOGG: All right; I guess that is a pretty good answer. Now, that stock which was sold to the Union Pacific Company, that preferred stock, is the stock which was deposited with Kuhn, Loeb

& Company pursuant to this agreement, Exhibit No. 5, to be
1571 valued by Mr. Stewart, Mr. Harriman and Mr. Mitchell, is it not?

Mr. HARRIMAN: Not on the same ownership. It may have changed ownership fifty times or a hundred times from the time it was issued.

Mr. KELLOGG: It is the same stock?

Mr. HARRIMAN: It is the same stock, undoubtedly.

Mr. KELLOGG: I now renew the question, if you owned any of that stock which was so deposited and sold to the Union Pacific?

Mr. MILBURN: I renew my objection.

The CHAIRMAN: Mr. Harriman, just a preliminary question. About what is the mileage of the railroad?

Mr. HARRIMAN: I think altogther about twelve hundred miles, between eleven hundred and fifty and 1,200 miles, that is, counting the second track.

The CHAIRMAN: I mean the length of line.

Mr. HARRIMAN: It is about 900 miles.

The CHAIRMAN: Do you recall about what its gross earnings were during the last fiscal year?

Mr. HARRIMAN: About eleven million and a half.

The CHAIRMAN: Do you remember its net earnings?

Mr. HARRIMAN: About $3,700,000.

Mr. SEVERANCE: Mr. Chairman, I can give you these figures if you want them.

Mr. HARRIMAN: I can give them to him. You need not check me up.

Mr. KELLOGG: You have not given them correctly. That is all.

Mr. SEVERANCE: We have the annual report.

Mr. HARRIMAN: I have it in my mind just as good as that.

The CHAIRMAN: It would seem that a property which earned net—how much?

Mr. HARRIMAN: $3,700,000.

The CHAIRMAN: Or less than four millions last year, is charged with obligations amounting to about $68,000,000, which are ahead of the rights of the preferred stockholders?

1572 Mr. HARRIMAN: Yes; but those obligations are at a low rate of interest.

The CHAIRMAN: I understand.

Mr. HARRIMAN: Those obligations are what they would bring in the market really.

The CHAIRMAN: Without pretending to make a ruling, which goes beyond the facts developed in this proceeding, we are of the opinion that upon the facts appearing, we are entitled to know whether Mr. Harriman himself sold any of this stock, and if so, how much?

Mr. MILBURN: May it please the Commission, appreciating what has been held as to the function of the Commission, and as counsel have serious, real conviction as to the testimony being proper, the court being accessible, to determine the question, and fully conscious that the Commission has given its conviction that the testimony is admissible, still we feel that we must advise Mr. Harriman to decline

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to answer that question, on the ground that it is an inquiry into the private affairs of the witness, in no way connected with the interstate commerce and therefore beyond the power and jurisdiction of the Commission, because it is not within the scope of this investigation as defined by the order under which it is proceeding; and because such an inquiry is an invasion of the right of the witness under the Federal constitution. I request it to be noted that that question Mr. Harriman declines to answer.

The CHAIRMAN: It is perhaps hardly worth while to state our reasons for the ruling already made; but fundamentally, it should be noted that we take the position that a railroad company subject to the provisions of the federal statute, is not entitled to have any secrets, and that the officers of such companies may, under such circumstances as are here already disclosed, be required to make known their transaction in respect of the operations of such companies, financial or otherwise.

Mr. MILBURN: I would not have the Commission think
1573 for one moment that we are withholding any information that the company has.

The CHAIRMAN: We quite understand that.

Mr. MILBURN: I would not for a moment contend that we have not to furnish you all the information that the company has. Where I am drawing the line is the private transactions of an individual.

The CHAIRMAN: Upon the facts appearing here, which are thoroughly understood, Mr. Harriman, who was the president of the Union Pacific at the time, who was a member of the committee which determined at what price this stock would be paid, and under the circumstances that appear, is asked whether he owned any of that stock which the Union Pacific thus purchased. He declines to answer, objection being made, although it does not appear yet that the objection is made in his own interest. The Commission overrules that objection and directs him to answer. He takes the responsibility of declining to do so.

Mr. MILBURN: It may be entered then, that the witness declines to answer on the grounds assigned by counsel, to avoid repetition. I suppose the question will come up in various forms, and we would be very glad at any time to present the matter in the way that the statute provides. We do not wish to delay, and if we are wrong, Mr. Harriman can answer these questions. If we are right, then, we feel that we should stand for that principle.

Mr. KELLOGG: We will go on with the inquiry. You decline, Mr. Harriman, to answer for that reason, do you?

Mr. HARRIMAN: As requested by counsel, yes.

Mr. KELLOGG: One further question about the Chicago & Alton. I see by its report it reports: main track owned 946.66 miles, and operated under trackage rights, 23.67 miles; and the other trackage which you refer to, is second main track, side tracks and other tracks.

Mr. HARRIMAN: The second track makes it about 1,100 miles, doesn't it?

1574 Mr. KELLOGG: The second track makes it 126 and 950.

Mr. HARRIMAN: 1,080 miles.

Mr. KELLOGG: Yes; it is close to 1,100 miles.

Mr. HARRIMAN: I had in my mind about 950 miles of railroad.

Mr. KELLOGG: Figuring the stock and bonds liability of the road itself, including its second main tracks its double track, it is about $115,000 or $116,000 a mile?

Mr. HARRIMAN: Well, what of it?

Mr. KELLOGG: I don't know, I just asked you.

Mr. HARRIMAN: It may be worth that or more.

The CHAIRMAN: We will turn one moment to the other questions. I understand it appears so far that Mr. Harriman was the owner of about one quarter of about 97 per cent. of this stock? The fact therefore that he owned some of the stock which was acquired by the Union Pacific Company seems to be a natural if not necessary conclusion of his own testimony, that he did own it.

Mr. KELLOGG: Do you still own any stock in the Chicago & Alton Railroad?

Mr. MILBURN: Now, that is substantially the same question. I submit we have the same question and time should not be frittered away——

The CHAIRMAN: I only suggest that, Mr. Milburn, for this reason. It occurred to me that the question that is asked Mr. Harriman is the precise question whether he owned any of the stock which was acquired by the Union Pacific. It occurred to me that the testimony here creates at least the presumption that he did, and whether therefore, the substantial question might be, how much of it he owned. In other words, we do not want to litigate this question on a mere technicality.

Mr. MILBURN: Of course there are years intervening between the time this stock was distributed to the syndicate as Mr. Harriman has testified in 1889, four or five years. I don't know but I say four or five years.——

1575 The CHAIRMAN: In other words, on the testimony as I have understood it, the question whether he owned any of the stock which was acquired by the Union Pacific would appear to be quite unimportant. The substantial question would be how much he owned of that which was acquired by the Union Pacific.

Mr. KELLOGG: Let me ask you a question, will you, or the Commissioner can ask it.

Mr. MILBURN: You probably had better ask it.

The CHAIRMAN: You may ask it.

Mr. KELLOGG: How much, if any, of the preferred stock which was sold to the Union Pacific Company and valued by your judgment, did you own?

Mr. MILBURN: If we can have inserted here the same objection and same action——

The CHAIRMAN: The objection is overruled and the witness declines to answer for the reasons stated by counsel.

Mr. MILBURN: Mr. Kellogg tells me that he is passing over from this Alton transaction now, and I think it would be only right and fair inasmuch as much of Mr. Harriman's testimony has come out in reply to questions framed by counsel, and limiting him to just

the reply to those questions that he should have an opportunity of stating the transaction from his own point of view, which would take a few minutes probably.

The CHAIRMAN: Have you any objection to that Mr. Kellogg?

Mr. KELLOGG: I should prefer to go on with the examination. I may have some further questions.

Mr. MILBURN: They may be asked afterwards.

Mr. KELLOGG: And when we get through counsel may examine him all the time he pleases.

Mr. MILBURN: I do not think that would be fair under the circumstances. Counsel has put Mr. Harriman off several times.

Mr. KELLOGG: I have no objection to that if counsel thinks that is not fair he can examine him, but I would prefer to go on
1576 with my examination, still if the Commission thinks otherwise——

The CHAIRMAN: We are not disposed to interfere with the order in which Mr. Kellogg desires to continue the examination of this witness. We are perfectly willing that he should make any explanation now, or at some later stage.

Mr. KELLOGG: I would prefer to go on with an examination, but if counsel does not think it is fair, I want to give Mr. Harriman every opportunity of explaining this deal.

Mr. MILBURN: Then Mr. Harriman may make his statement.

The CHAIRMAN: All right.

Mr. MILBURN: Go on Mr. Harriman.

Mr. HARRIMAN: In the first place, Mr. Chairman and gentlemen, it seems to me that too much importance is attached to what the counsel call over capitalization. The capitalization of any railroad or any corporation must be taken upon the basis of the charge for interest which it assumes. In the case of the Chicago & Alton Railroad and Railway Companies, a syndicate which purchased the stock of the Chicago & Alton Railroad Company and the line from Peoria to Springfield paid in the neighborhood of $42,000,000 therefor. The dividends that had been paid to the Chicago & Alton Railroad Company amounted to about $1,760,000 a year. At no time since the purchase of that stock have any dividends been paid in excess or equal to that amount. I think about $1,600,000 a year has been paid to the holders of the Chicago & Alton Railroad Company as dividends on the stock. That income has been applied, first, to the payment of the interest on $22,000,000 of 3½ per cent. bonds, issued by the Chicago & Alton Railway Company, and the balance, four per cent. in round numbers—speaking in round numbers—on $20,000,000 of the Chicago & Alton Railway Company, which altogether make about $1,600,000. There has been expended upon the Chicago & Alton Railroad Company for improvements and
1577 betterments, something over $22,000,000. The gross income of the Chicago & Alton, resulting from that improvement has increased from about five and one half millions in 1898 to about eleven million five hundred thousand dollars in 1906. That increase is because of the expansion of the business permitted by the improvements to the Chicago & Alton Railroad. Those improve-

ments have resulted in rerailing the line with 80 or 90 pound rails for 883 miles out of 950; in increasing the freight car capacity over 200 per cent. and passenger car capacity about 100 per cent.,I think a little less, 99 and some hundredths per cent.; in increasing the tractive power of its motive power something over 130 per cent. Now, the interest on $22,000,000 at five per cent. is $1,100,000 a year. The earnings of the Chicago & Alton Railroad Company, or the consolidated Company are that $1,100,000 a year, plus $1,600,000 paid in dividends to the Chicago & Alton Railroad Company, or $3,700,000. And the rates charged for freight by the Consolidated Company were thirty per cent. greater in 1898 than they were in 1906. So that the result of the operations of the Chicago & Alton Railroad Company have been to promote the territory served by it, to expand its business by three fold at a reduction of rate that was thirty per cent. greater in 1898 than in 1906. If the same rate had prevailed in 1906, that was maintained in 1898, the net income of the Chicago & Alton consolidated company would have been $2,500,000 more than was received, or about 11 per cent. on its common stock.

Now, as to the sale of those three per cent. bonds to the stockholders, that was agreed to undoubtedly long before June, 1899. In other words, the syndicate which was represented by the four men named had agreed to a plan of readjustment of the finances of the Chicago & Alton Railroad Company through the medium of the Railway Company, to enable the Railroad Company to negotiate a low rate of interest bond, to provide first, for the retirement of the outstanding high rate of interest bonds of the Railroad Com-
1578 pany, the money necessary to improve its property and the dividend which was distributed to the Chicago & Alton Railroad of $6,000,000. The price 65, which was placed upon those bonds seemed to be a fair price at that time, and if those bonds—and it was issued to the stockholders at that price, which was upon an interest bearing basis of 4⅞ per cent. if held to maturity, or about 4½ per cent. immediate returns. It was practically the same result, the issuing of that number of three per cent. bonds, as though they had issued five per cent. bonds at par, and I do not suppose that anybody would criticise the fact of its issuing a five or six per cent. bond at par to its stockholders, but the result of issuing a three per cent. bond at 65 is just the same. Now, then, the syndicate found itself in the position of having paid $42,000,000 for the stock and property mentioned, less $6,000,000 which it had received in dividends on the stock of the railroad company, or $36,000,000. Now, the return of about $1,600,000 a year is less than 4½ per cent. on that amount invested. It would seem as though it were not very liberal distribution but we took all the chances of what the markets might be and the common stock that was issued by the railway company was somewhat in relation to what you might say discounting the future, and to enable us to put out a security which might be a prior lien that is, our 3½ per cent. bonds, by dividing the risk, we would sell a 3½ per cent. bond to some advantage and still retain either the preferred or common stock for purposes of control,

or we could sell the whole of the preferred stock or part of it, and still retain common stock for the purposes of control.

The situation in 1898 as compared to 1906, was as follows: In 1898 we were just beginning to emerge from a series of years of depression, resulting from the panic of 1893, and I might say the shock of 1896, that is the political campaign, and the result of the Venezuelan message, which I think probably you will remember had a very serious effect, and the possible difficulty which
1579 it might get us into with England. In 1898 we were just beginning to emerge from those conditions which were conditions of economy, restriction and timidity on the part of capital, and it was doubtful whether we with all the stock of the Chicago & Alton Railroad Company, whether we would have been able at that time to have sold our three per cent. bonds as high as 65 in the market, but it was the change in conditions between the end of 1898 and the fall of 1899 which brought about a condition which enabled the marketing of the 3½ per cent. bonds, the three per cent. bonds and the preferred stock, which the syndicate subscribers held to advantage to themselves, without any disadvantage to the shippers or anybody that was using the Chicago & Alton Railroad Company, as shown by the figures I have just given you, in the reduction of rate and increased net income only sufficient to pay five per cent. on the increased capital put into the property.

I think I have about covered the field, unless there is something I have overlooked.

Mr. MILBURN: Might I ask you, before you close, to state, if you can, the difference between the dividend charges and interest charges in 1899, or whenever it was that you and your associates bought the stock, and now at the present time.

Mr. HARRIMAN: That is the dividend or interest charges?

Mr. MILBURN: The dividend and interest charges, at that time with the dividend and interest charges of this time. They were paying seven and eight per cent. and they were paying interest. Now, what is the difference between the charges at that time, the aggregate——

Mr. HARRIMAN: I think they were paying in the aggregate about $2,600,000 in 1898. And now you want 1906?

Mr. MILBURN: Yes.

The CHAIRMAN: He said in both dividends and interest.
1580 Mr. HARRIMAN: In both dividends and interest?

Mr. MILBURN: In 1906 we want both dividends and interest.

Mr. HARRIMAN: And in 1906 I think they are paying about $3,600,000, between $3,500,000 and $3,600,000, after spending the $22,000,000 on the property.

Mr. MILBURN: Precisely.

Mr. HARRIMAN: I thought I brought that out in this statement.

Mr. MILBURN: Perhaps you did.

Mr. HARRIMAN: That the net returns, the traffic returns are only sufficient to pay five per cent. upon the additional capital invested in the Chicago & Alton, and it has resulted in enabling the company

to serve the territory adjacent to it at a rate which in 1898 was thirty per cent. greater than in 1906. Now, by the time those bonds, whatever bonds or obligations are out of the Chicago & Alton Railroad Company, or the consolidated Company—the properties may be worth $100,000 a mile, or $150,000 a mile, or $50,000, but I do not believe the Chicago & Alton Railroad Company could be developed to-day for the amount of bonds that are outstanding. In fact, it could not be duplicated, because it could not be located, the towns along the line of the railroad and the terminal properties, and location of the line would not permit of a new railroad being constructed.

Mr. MILBURN: One thing you have not given which I want you to give, what reasons did the Union Pacific have for acquiring the preferred stock?

Mr. HARRIMAN: Yes, I was going to get to that. But I wanted to get rid of the Chicago & Alton Railroad Company. Now, the negotiations for the acquisition of the preferred stock by the Union Pacific—the Union Pacific was influenced by negotiations which were had with the Chicago & Rock Island, or the representatives of the Chicago & Rock Island, coincident with the negotiations which were conducted for the purchase of the preferred stock of the Chicago & Alton Railway Company, and it was only after
1581 the agreement was made with the Chicago & Rock Island Railroad that I consented that the Union Pacific should acquire the Chicago & Alton Railroad Company's stock at all. My part in that negotiation was to acquire the stock at as low a price as I could, and the other members of the committee in whose charge it was were very much aggrieved because I refused to pay any more, and the price paid was a compromise between what I thought they ought to sell it at and what they wanted.

Now, then, we conducted the negotiation with the Rock Island, which resulted in their agreeing to deposit in trust enough additional preferred stock and enough common stock to make up with our stock a majority of the Chicago & Alton Railroad Company, under an agreement which gave us joint control. I might say here that it is a fact that under the offer of Kuhn, Loeb & Company for the purchase of Chicago & Alton preferred stock, that nearly fifty per cent. of the holders of that stock declined to sell it, believing that it was worth more. So that the conditions as they existed at the time of the negotiations were such that the price we paid was considered a low one by at least fifty per cent, or forty-nine per cent. of the holders of the stock. Now, that agreement with the Rock Island, you are aware of, I believe, you all have a copy of the agreement, it has been furnished you.

Mr. LOVETT: It is in the evidence.

Mr. HARRIMAN: But in the negotiations and what led to the final agreement on our part was the statement by the Rock Island representatives that their reason for acquiring the stock of the Alton, was so that they could use the line from Kansas City to Chicago for their through traffic in lieu of their own line, which was longer and less efficient, higher grade and with more curvatures. That

the same money that it would cost to put their own line in proper operating condition could be invested in the Alton road and to better advantage to them. On the other hand, it was the in-
1582 tention of the Union Pacific to co-operate with the Rock Island and to use the Alton road between Kansas City and St. Louis, in forming a through line from Denver to St. Louis, making the Alton part of the other line, so that it was not a stock transaction pure and simple, but a stock transaction which carried with it, supposedly an alliance which would benefit the Chicago & Alton, the Union Pacific and the Rock Island.

As time went on, it developed that the Rock Island had apparently changed their minds, because they never used the Chicago & Alton for the conducting of their through traffic, but continued to send it by their own line, except that they did put on one of their through passenger trains, which was operated by the Chicago & Alton at a loss, and this last year, because of that dropped by the Chicago & Alton. And the evident intention of the Rock Island not to carry out that part of the understanding precluded the Union Pacific from tying itself up in the line from Kansas City to St. Louis. I cannot think of anything else. If I have made myself plain. If I have not, I would like to do so by answering any questions.

The CHAIRMAN: The hour for adjournment has arrived unless there is some special reason for continuing.

Mr. KELLOGG: If the Commission will allow me to ask a few questions now I may be close to the Alton matter now. I do not want to impose upon the Commission, but would like to ask a few questions.

The CHAIRMAN: Very well.

Mr. HARRIMAN: I wish you would find whether I covered all the points I had in mind.

Mr. KELLOGG: You can do it tomorrow, if you have not today.

Mr. KELLOGG: If you thought it a good thing for the Union Pacific in 1905 to buy this Chicago & Alton stock, because it was a good connection, why wasn't it a good thing prior to that time?

Mr. HARRIMAN: Because the line to St. Louis was not a good line prior to 1905.

1583 Mr. KELLOGG: But it was in 1904, wasn't it?

Mr. HARRIMAN: No.

Mr. KELLOGG: In 1903.

Mr. HARRIMAN: No.

Mr. KELLOGG: It was not?

Mr. HARRIMAN: No.

Mr. KELLOGG: It was not put into shape until after 1905?

Mr. HARRIMAN: No, there was a connection built from Mexico, Missouri to St. Louis, by the Burlington Road, which was joined to the Alton and made a through line between St. Louis and Kansas City, which made it a shorter line, and perhaps a better line than any in existence, and that was completed in 1905. It would not have been possible to have operated a line from Denver to St. Louis to advantage without that cut-off.

Mr. KELLOGG: But that cut-off could have been built by the Union Pacific, could it not?

Mr. HARRIMAN: Well,——

Mr. KELLOGG: Or, that is, by the Alton under the control of the Union Pacific.

Mr. HARRIMAN: But the Union Pacific did not have control of the Alton.

Mr. KELLOGG: Well, you say it was a good thing to buy control of the Alton, or get control of it in 1905. If that is true, I do not see why it was not a good thing to buy control of it in 1902, or 1903.

Mr. HARRIMAN: We did not buy control of it.

Mr. KELLOGG: Was it a good thing to buy less than control, for the Union Pacific?

Mr. HARRIMAN: Yes, under the arrangement we made with the Rock Island.

Mr. KELLOGG: For a joint ownership?

Mr. HARRIMAN: Yes, or joint management.

Mr. KELLOGG: Now, you say that you think that it would have been considered a very good transaction to have sold Chicago & Alton bonds at five per cent. at par?

1584 Mr. HARRIMAN: I did not say that I thought so. I said that we would not have been criticised by anybody, if it had sold its own bonds, five per cent. bonds at par.

Mr. KELLOGG: Well, you do not state as your opinion that an old road like the Chicago & Alton whose stock you say was worth $39,000,000 should sell five per cent. bonds at par, do you?

Mr. HARRIMAN: Well, I don't know. I do not believe they could sell them today.

Mr. KELLOGG: At that time.

Mr. HARRIMAN: In 1898?

Mr. KELLOGG: Yes, 1899.

Mr. HARRIMAN: In 1899 the arrangements were made for the sale of those bonds in the beginning of 1899. The conditions for that six months in 1899 changed materially. I went away to Alaska, starting in May, 1899, and I got back to New York at the end of August, 1899, and then there had been a complete change taken place, and if we had had our money in anything else but Chicago & Alton, we would have more than doubled it.

Mr. KELLOGG: I will ask one question and then will finish tomorow morning. As a matter of fact, was not the circular under which you or others asked the stock of the Chicago & Alton to be deposited for the purpose of selling it to you gentlemen, sent out the 31st of January, 1899?

Mr. HARRIMAN: I presume that is so, but Mr. Kellogg you know just as well as I do that negotiations for these purchases and these transactions are conducted months before circulars are sent out.

Mr. KELLOGG: Yes. You bought no stock thereafter of that company until April, 1899, did you?

Mr. HARRIMAN: I don't catch that.

Mr. KELLOGG: I say the stock of the Chicago & Alton Railroad was not purchased by your syndicate until April 1899 was it?

Mr. HARRIMAN: Well, where do you get your dates from? I do not——

Mr. KELLOGG: Well, I ask you if that is correct?

1585 Mr. HARRIMAN: Well, as I have told you before I do not remember dates. I only know in a general way that we started the negotiations in the autumn of 1898 and concluded them, I think in December, 1898, or January, 1899, and——

Mr. KELLOGG: Well, until you made this purchase of stock, in 1905, or 1906,—which was it, for the Union Pacific?

Mr. HARRIMAN: 1905, I think.

Mr. KELLOGG: You say——

Mr. HARRIMAN: Maybe it was in 1904, wasn't it? I don't know.

Mr. KELLOGG: You said you did not contemplate buying it for the Union Pacific as a connection or operating it with you?

Mr. HARRIMAN: That had no connection whatever with the Union Pacific.

Mr. KELLOGG: You did not contemplate any such a thing?

Mr. HARRIMAN: Not at all, no sir.

Mr. KELLOGG: Will you tell me why in the circular that was sent out to buy this stock it was stated "The purchasers of the stock of the company are gentlemen connected with important railway interests. This fact will enable them to use the railway of the Chicago & Alton Railroad Company if acquired by them, as a virtual extension of their systems, and will furnish it with a large amount of through traffic which otherwise it might not obtain." What system was it to be an extension of?

Mr. HARRIMAN: What is the date of that?

Mr. KELLOGG: Circular sent out January 31st, 1899, in which the gentlemen who signed it ask to deposit this stock and sell——

Mr. MILBURN: Signed by whom?

Mr. KELLOGG: By part of the directors of the Chicago & Alton Railroad. Will you tell me why that was put in there?

Mr. HARRIMAN: I don't know. I did not send it out.

Mr. KELLOGG: You knew of the circular, didn't you?

1586 Mr. HARRIMAN: I think very likely. I do not recall it now.

Mr. KELLOGG: I will show it to you. Where did they get the idea you were going to use it as part of some system?

Mr. HARRIMAN: Mr. Jesup, Mr. Stewart, Mitchell, Field, Sprague, Bartlett and Chappell.

Mr. KELLOGG: Yes.

Mr. HARRIMAN: I have not the slightest idea.

Mr. KELLOGG: That is not true, then, is it?

Mr. HARRIMAN: It may be thought so.

Mr. KELLOGG: They did not get that from you?

Mr. HARRIMAN: I don't see if they were going to sell their stock what effect it had on them, whom it was sold to.

Mr. KELLOGG: That was six years before 1905. Did you contemplate at that time using it as a virtual extension of a system with which you were connected?

Mr. HARRIMAN: No?

Mr. KELLOGG: Then that statement made to the stockholders is not correct?

Mr. HARRIMAN: Why, if we had considered it as an extension of the Union Pacific we would not have sold our securities that we received for our Chicago & Alton Railroad Company.

The CHAIRMAN: Is it not evident that Mr. Harriman's examination cannot be finished to-night?

Mr. KELLOGG: Yes, I think so.

At 4:40 P. M. adjourned to Tuesday, February 26th, at 10:00 A. M.

1587 NEW YORK, *February* 26, 1907—10 a. m.

The Commission met pursuant to adjournment, at Room 70 in the Post Office Building.

Present:

Commissioners Knapp, Clements, Lane and Harlan.

Mr. Kellogg and Mr. Severance, for the Interstate Commerce Commission.

Mr. Lovett, Mr. Milburn and Mr. Evarts, for the Union Pacific Railroad Company.

Mr. Cravath, for Otto H. Kahn and other witnesses.

The CHAIRMAN: Mr. Kellogg: Are you ready to proceed?

Mr. KELLOGG: We are ready, but Mr. Harriman's counsel are not here for the moment.

The CHAIRMAN: Mr. Harriman; you will kindly resume the stand.

EDWARD H. HARRIMAN resumed the witness stand, and testified as follows:

Mr. KELLOGG: Mr. Harriman, if I recollect correctly, you testified that you did not know who the stockholders of the Laclede Construction Company were. Do you recollect as to that?

Mr. HARRIMAN: I don't recollect as to that.

Mr. KELLOGG: I wish to refresh your memory. Please look at a contract dated the 5th day of May, 1900, between Edward H. Harriman, Jacob H. Schiff, James Stillman and George J. Gould, parties of the first part, the Chicago & Alton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, parties of the second part, and the Chicago & Alton Railway, etc., party of the third part. This is the contract for the substitution of a tenant for the Chicago Terminal Railway, and the last clause on the page, if you will look at the signatures, I think will refresh your memory on that.

1588 Mr. HARRIMAN: This last clause here?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: That is undoubtedly correct. I was one of the shareholders.

Mr. KELLOGG: I wish to offer this contract in evidence.

The paper was received in evidence and marked Exhibit 8 to Mr. Harriman's testimony.

Mr. KELLOGG: This purports to be a copy signed by Edward H. Harriman, Jacob H. Schiff, James Stillman, George J. Gould, the Chicago & Alton Railroad Company, and the Chicago & Alton Railway Company. I have not compared it with the copy as quoted in the minutes, but subject to any corrections in copying, I ask you if you remember such a contract as that.

Mr. HARRIMAN: I don't remember the contract.

Mr. KELLOGG: You do not remember.

Mr. HARRIMAN: No, I do not.

Mr. KELLOGG: It recites that "Whereas, the parties of the first part (who are Edward H. Harriman, Jacob H. Schiff, James Stillman and George J. Gould) are the owners and holders of all the shares of the capital stock of the Laclede Construction Company, which latter company owns and holds all the capital stock of said St. Louis, Peoria & Northern Railway Company."

Do you recollect that to be the fact?

Mr. HARRIMAN: No, I do not. What is that contract?

Mr. KELLOGG: This is a contract——

Mr. HARRIMAN: I don't remember the contract, but undoubtedly that is a matter of record, and I do not dispute it.

Mr. KELLOGG: This is a contract in relation to the Chicago Terminal transfer station.

Mr. HARRIMAN: Let me see the contract.

Mr. KELLOGG: Yes; look the contract over.

Mr. HARRIMAN: I don't want to look it all over. It takes too much time.

Mr. KELLOGG: You signed that?

1589 Mr. HARRIMAN: Yes, sir; I joined with the parties. I don't remember the contract at all.

Mr. KELLOGG: Do you remember that the four gentlemen named owned all the stock of the Laclede Construction Company?

Mr. HARRIMAN: I do not. I have no recollection. Undoubtedly that is so. The probabilities are if I looked into it, it would come back to my mind, just what happened. What is the date of that, please?

Mr. KELLOGG: It is dated the 5th day of May, 1900.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Do you remember that the Laclede Construction Company owned all the stock of the St. Louis, Peoria & Northern Railway Company?

Mr. HARRIMAN: I think they were the constructors. Were they not contractors for the construction of the St. Louis, Peoria & Northern?

Mr. KELLOGG: I don't know.

Mr. HARRIMAN: That is my recollection.

Mr. KELLOGG: I don't know.

Mr. HARRIMAN: I think they did, but still it is all a matter of record. It is in the Laclede Construction Company books.

Mr. KELLOGG: Who has the books of the Laclede Construction Company?

Mr. HARRIMAN: That I don't know. I suppose they are in St. Louis. It is a St. Louis concern.

Mr. KELLOGG: Who is the president of the Laclede Construction Company?

Mr. HARRIMAN: That I don't know.

Mr. KELLOGG: The St. Louis, Peoria & Northern Railway Company, that was owned by the Laclede Construction Company through its stock, is the corporation which sold the railroad to the Chicago & Alton Railway Company for $3,000,000?

Mr. HARRIMAN: The Laclede Construction Company is?

Mr. KELLOGG: The St. Louis, Peoria & Northern owned that 58 miles which went into the Chicago & Alton Railway for $3,000,000?

1590 Mr. HARRIMAN: That may be.

Mr. KELLOGG: Is not that the road?

Mr. HARRIMAN: I think it is.

Mr. KELLOGG: Now, if you four gentlemen owned that road, please tell me what it cost?

Mr. HARRIMAN: That I can't tell you.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: Tell me where I can find out what it cost?

Mr. HARRIMAN: I don't know where the records are, where you could find out. You have got to look somewhere else.

Mr. KELLOGG: Would the books of the Laclede Construction Company show its cost?

Mr. HARRIMAN: I never saw the books of the Laclede Construction Company.

Mr. KELLOGG: Have you any recollection as to its cost?

Mr. HARRIMAN: I have not.

Mr. KELLOGG: Who fixed the price of $3,000,000?

Mr. HARRIMAN: That I don't remember. I presume I joined in it.

Mr. KELLOGG: You fixed it both for the seller and the purchaser?

Mr. HARRIMAN: Possibly. Is it not a fact, Mr. Kellogg, that also we were owners of all the securities of the buyers?

Mr. KELLOGG: Oh, certainly; you owned 97 per cent.

Mr. HARRIMAN: No; didn't we own all the securities?

Mr. KELLOGG: Yes, that is right. You owned all the securities of the purchaser?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: And all the securities of the seller. As I recollect, yesterday you did not know the name of the managers of the syndicate representing you four gentlemen in the purchase and sale of the Chicago & Alton securities. I wish to show you two checks drawn to pay the dividends upon the common and preferred stock, the 30 per cent. dividend that was paid out of the mortgage

1591 bonds of the Chicago & Alton Railroad Company to the stockholders, and ask you if those checks refresh your memory as to the syndicate managers?

Mr. HARRIMAN: Undoubtedly that is so. They are drawn to Kuhn, Loeb & Co., syndicate managers.

Mr. KELLOGG: Kuhn, Loeb & Co. were the syndicate managers?

Mr. HARRIMAN: Undoubtedly.

Mr. KELLOGG: Would they have the records of the sale of those bonds and securities for you gentlemen?

Mr. HARRIMAN: I presume they have.

Mr. KELLOGG: I offer these two checks in evidence, and with the permission of the Commission I will leave copies.

The papers were received in evidence and marked Exhibits 9 and 10 to Mr. Harriman's testimony.

Mr. HARRIMAN: What is the date of those checks, please?

Mr. KELLOGG: May 7, 1900. They are very short, and I will read them right into the record.

1592 "*Special Common Stock Dividend.*

No. 65.

NEW YORK, N. Y., *May* 7, 1900.

The National City Bank of New York.

52 Wall Street.

Will pay to the order of Kuhn, Loeb & Co., syndicate managers, $5,562,900 Five Million Five Hundred and Sixty-two thousand Nine Hundred Dollars.

CHICAGO & ALTON RAILROAD COMPANY,
By FRED V. S. CROSBY,
Assistant Treasurer.

H. S. BRADT,
For the Secretary.

[Endorsed:] Pay to the order of Kuhn, Loeb & Co.
KUHN, LOEB & CO.

Pay to the order of the National City Bank.
KUHN, LOEB & CO."

The other check, Exhibit 10, for the preferred stock dividend is in the same words and form, and is for $1,041,660. Both of them have like endorsements. The copies will be given instead of the originals.

You think those gentlemen, Mr. Harriman, would have all the details of the sale of these bonds?

Mr. HARRIMAN: I should think very likely.

Mr. KELLOGG: As I recollect, in your explanation of the Alton deal yesterday, you said:

"Too much importance is attached to what the counsel call over

capitalization. The capitalization of any railroad or any corporation must be taken from the basis of the charge for interest which it assumes."

Now taking that as a basis, then the fixed charges for inter-
1593 est of the Chicago & Alton Railroad Company, before the reorganization to which you referred, and after the reorganization, would be quite important, would it not?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: And if it appeared that the fixed charges for interest on the Chicago & Alton Railroad before the reorganization were $1,014,538.05, even with the large rate of interest, those securities bore, and after the reorganization they were $2,669,118, you would say that with only $22,000,000 spent upon the property there was a considerable inflation in the interest, would you not?

Mr. HARRIMAN: I want to check up your figures. You may be right or you may not.

Mr. KELLOGG: These figures are made by the comptroller of the Alton. Perhaps they are wrong. Total fixed charges in 1898, $1,014,538, not including dividends?

Mr. HARRIMAN: That is including the——

Mr. KELLOGG: Rentals, interest on funded debt, and everything.

Mr. HARRIMAN: They have not given me rentals in this statement.

Mr. KELLOGG: Interest on funded debt was $594,288.

Mr. HARRIMAN: Well, I have a different statement from that, Mr. Kellogg, it seems to me.

Mr. KELLOGG: Was the interest on the funded debt about $595,288 in 1898?

Mr. HARRIMAN: No, I think it was $655,636.

Mr. KELLOGG: Well, take your statement to be correct, then.

Mr. HARRIMAN: Let us take my statement all the way through. Don't take it piecemeal.

Mr. KELLOGG: Take that statement then. The interest on the bonds alone, after the reorganization, was $229,336, was it not?

Mr. HARRIMAN: I will show you this paper that has just been handed me. I had one made up.

Mr. KELLOGG: Please answer that question.

Mr. HARRIMAN: What is it?

1594 Mr. KELLOGG: You say the interest on the funded debt, according to your statement, before the reorganization, was $600,000 and some thousand.

Mr. HARRIMAN: $655,000 in 1898.

Mr. KELLOGG: The interest on the bonds alone, after the reorganization was $2,199,336, was it not?

Mr. HARRIMAN: Yes, after $22,000,000 had been spent on the property.

Mr. KELLOGG: But $22,000,000 at 5% would be only $1,100,000?

Mr. HARRIMAN: You are twisting the figures around Mr. Kellogg.

Mr. KELLOGG: Not at all.

Mr. HARRIMAN: We are taking the total payments for dividends and interest.

Mr. KELLOGG: Very well.

Mr. HARRIMAN: The total amount which the public is called upon to pay. That is what you want.

Mr. KELLOGG: In the total amount which the public is called on to pay, have you included anything for dividends on the common stock that you put on the public?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: Then you consider it legitimate, do you, to put $19,000,000 of common stock on the public that will never pay a dividend?

Mr. HARRIMAN: Did we ever say to the public that we would pay a dividend?

Mr. KELLOGG: You say the public can take care of themselves in buying stock? Don't you think that when stock of a railroad is put out, there is some implied obligation at some time to pay something on it?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: Now, is your statement of the charges——

Mr. HARRIMAN: Wait a minute.

Mr. KELLOGG: Against the Alton Reorganization Company you include nothing for dividends, do you, on the common stock?

Mr. HARRIMAN: The reason that the common stock has not
1595 received any dividend is because the public has received the service of the Chicago & Alton Railroad Company at a difference in rate charged of 30 per cent, as compared between 1906 and 1898.

Mr. KELLOGG: Then the Alton must have reduced its rates much faster than the Union Pacific, which does not seem to have reduced its rates at all.

Mr. HARRIMAN: The Union Pacific doesn't appear in this. When we get to the Union Pacific, we will take up that part of it. You are talking about the Chicago & Alton. The Chicago & Alton, after spending $22,000,000, enabled the industries located along its line and the territory tributary, to increase their business threefold, at a cost of more than 30 per cent. less than was charged in 1898, before we got the property.

Mr. KELLOGG: Now let us go back. We will see about that reduction in rates when we come to look into that; let us go back to the statement where you claim that the charges for interest have not been increased, and where you say that the basis of the capitalization is the fixed charges. Is it not a fact that the fixed charges of the Chicago & Alton Railroad Company for interest are more than two and a half times as much as they were before the reorganization?

Mr. HARRIMAN: Yes; and if that is so, then the dividends on stocks have been reduced more than two and a half times.

Mr. KELLOGG: We will see about that. Is that statement true?

Mr. HARRIMAN: It seems to be so.

Mr. KELLOGG: Now we have got that far. You say that the Chicago——

Mr. HARRIMAN: Wait a minute. It is true, the statement I made.

I don't know that the statement you made is true, and I am not willing to concede it until I have seen all the papers.

Mr. KELLOGG: You say it is true in the statement you make that the interest charges are more than two and a half times——

1596 Mr. HARRIMAN: If there has been an increase in the interest charge, there has been a reduction in dividends. The total payment to security holders is no greater in 1906 that it was in 1898, counting the interest on the amount that has been expended on the Chicago & Alton Railroad for improvements and betterments.

Mr. KELLOGG: We will come to that in a moment. You say that the interest charges are more than two and a half times as much.

Mr. HARRIMAN: I didn't say so. You said that.

Mr. KELLOGG: Is that true?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: If you don't know, then how do you know its fixed charges are no more?

Mr. HARRIMAN: I have gotten here a statement which shows that the dividend——

Mr. KELLOGG: Who made that statement?

Mr. HARRIMAN: It has just been handed to me. I presume it was made by one of our people.

Mr. KELLOGG: Do you know it is correct?

Mr. MILBURN: It was made by Mr. Mahl.

Mr. HARRIMAN: I have no doubt that it is correct.

Mr. KELLOGG: What, according to your statement, were the interest charges in 1898? The total fixed charges included rentals of the Chicago & Alton Railway? If you don't know, Mr. Harriman, we will prove it by somebody else.

Mr. HARRIMAN: That is all right. The annual report shows $1,077,000.

Mr. KELLOGG: That included rentals in it, did it?

Mr. HARRIMAN: That included everything.

Mr. KELLOGG: That was all fixed charges against the Chicago & Alton Railroad Company?

Mr. HARRIMAN: Apparently.

Mr. KELLOGG: Tell me what the total fixed charges are to-day against the Chicago & Alton Railroad Company not including dividends?

Mr. HARRIMAN: This is the Chicago & Alton Railroad.

1597 Mr. KELLOGG: I mean the present company—the total fixed charges.

Mr. HARRIMAN: The Consolidated Company?

Mr. KELLOGG: Yes, the Consolidated Company.

Mr. HARRIMAN: That is the three and a half per cent. bonds?

Mr. KELLOGG: That is all fixed charges prior to dividends.

Mr. HARRIMAN: Dividends on guaranteed stock, collateral trust notes——

Mr. KELLOGG: Yes, everything.

Mr. HARRIMAN: Equipment notes;—appears to be about $2,400,000.

Mr. KELLOGG: Isn't it $2,669,000?

Mr. HARRIMAN: Not according to this.

Mr. KELLOGG: What is the interest on the bonds?

Mr. HARRIMAN: Interest on the bonds all told. In the first place, the interest on the refunding bonds, three per cent. bonds and the collateral notes, is $1,119,000. The interest on the three and a half bonds is——

Mr. KELLOGG: Wait a minute. How many of those three per cent. bonds are outstanding?

Mr. HARRIMAN: $45,350,000 less $8,000,000—wait a minute——

Mr. KELLOGG: We will take your totals.

Mr. HARRIMAN: Now, wait a minute. There are $45,350,000, and the interest on that amounts to $1,359,000. Then there are $8,000,000 of those that are pledged against collateral notes, which amounts to $240,000; making the interest on the outstanding $1,119,000. Shall I go on?

Mr. KELLOGG: And the interest on the collateral trust notes is how much?

Mr. HARRIMAN: $200,000.

Mr. KELLOGG: That makes——

Mr. HARRIMAN: $1,319,000.

Mr. KELLOGG: Then the interest on the equipment notes?

1598 Mr. HARRIMAN: $83,000.

Mr. KELLOGG: $83,498.44?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: Dividend on guaranteed stock?

Mr. HARRIMAN: $241,000.

Mr. KELLOGG: $241,624. Dividends on the former C. & A. Railroad preferred and common stock in the hands of the public, which is a lien and charge ahead of your dividends?

Mr. HARRIMAN: Yes. How much is that?

Mr. KELLOGG: $15,260.

Mr. HARRIMAN: I have not got that in here. I don't know. Dividends on stocks is not here. $815,000. Then comes what?

Mr. KELLOGG: Then comes interest on your $22,000,000 of bonds.

Mr. HARRIMAN: Yes—$770,000.

Mr. KELLOGG: What is the total of those items?

Mr. HARRIMAN: That is interest alone—$2,413,000.

Mr. KELLOGG: And before the reorganization it was $1,077,000 according to your statement?

Mr. HARRIMAN: $1,077,000.

Mr. KELLOGG: Now, then, you paid no dividends on the common stock of the present Chicago & Alton Railway Company—the present company?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: Now, Mr. Harriman, it appeared last night in your examination that the circular under which the old Chicago & Alton stock was deposited and sold to you gentlemen, was sent out the 31st of January, 1899. You think that is correct?

Mr. HARRIMAN: What date was that?

Mr. KELLOGG: 31st day of January, 1899.

Mr. HARRIMAN: The circular?

Mr. KELLOGG: That was sent out by the directors of the Chicago & Alton Railroad Company, requesting you to deposit your stock.

Mr. HARRIMAN: You have a copy of it?

Mr. KELLOGG: The copy says it is dated January 31, 1899.

1599 Mr. HARRIMAN: Undoubtedly that is true.

Mr. KELLOGG: The stock was purchased between that and the first meeting when the old directors went out and the new went in, was it not?

Mr. HARRIMAN: I presume that was so.

Mr. KELLOGG: And that was in April?

Mr. HARRIMAN: I presume that the obligation was acquired prior to the time the circular was sent out.

Mr. KELLOGG: Very well. Have you any document or agreement, showing that any of you gentlemen assumed any obligations to take any bonds prior to September, 1899?

Mr. HARRIMAN: I have not any document at all, Mr. Kellogg. I have not any of the details of that transaction whatever in my possession.

Mr. KELLOGG: Where is the obligation by which you assumed to take a bond of the Chicago & Alton Railroad Company prior to September, 1899?

Mr. HARRIMAN: You have to find that somewhere else.

Mr. KELLOGG: Then you don't know there was such an obligation, do you?

Mr. Mr. HARRIMAN: I am quite sure there was.

Mr. KELLOGG: Where it is?

Mr. HARRIMAN: I haven't the slightest idea.

Mr. KELLOGG: You know where we can find it?

Mr. HARRIMAN: I do not. You have got to hunt somewhere else besides me.

Mr. KELLOGG: It is not in the records.

Mr. HARRIMAN: Isn't it.

Mr. KELLOGG: I know of no such.

Mr. HARRIMAN: I thought you read yesterday, some time in June, 1899.

Mr. KELLOGG: But no obligations. I will read that June entry of 1899. The first resolution is at the June 27th meeting, 1899, of the Board of Directors, Chicago & Alton Railroad Company, and it provides:

"*Resolved*, that this Company borrow such sum of money

1600 as may be necessary to fund its indebtedness and to complete, furnish, improve and operate or maintain its lines of railroad.

Resolved, further, that in order advantageously to borrow said moneys, it will be necessary to issue bonds of this company, in a series of denominations of $1,000 each, of an authorized issue, not exceeding in the aggregate, forty millions of dollars, face value, bearing interest at the rate of three per cent. per annum, payable semi-annually principal and interest, payable in gold coin of the

United States, of or equal to the present standard of weight and fineness.

Resolved, further, that in order to secure the payment of said bonds, a mortgage should be executed by the officers of the company to the Illinois Trust & Savings Bank, as Trustee, upon the corporate property, rights, powers and privileges and franchises of the company, including the rights of the corporation; provided that the consent and concurrence of the stockholders of the company to the execution and delivery of such mortgage be first obtained; and that power be reserved in any such mortgage to issue additional bonds if duly authorized by the stockholders of the company, for the purpose of providing additional funds for building, completing or acquiring any extension of the railroad of the company necessary and proper in its business; such additional issue not to exceed the rate of twenty thousand dollars per mile of main track, excluding sidings or switches, and not exceeding five hundred miles of such additional main tracks; and also for the purpose of funding the rental indebtedness of the company upon its leased lines, upon such terms as the stockholders may hereafter approve; and also providing for future requirements for betterments, not exceeding five million dollars, face value of bonds; such issue for further betterments to be made at the rate of not more than one million per annum from and after January 1st, 1900.

Resolved, further, that the proceeds of about twenty-five million dollars of said issue of said forty million dollars face value
1601 of bonds be appropriated for the purpose of improvements, betterments and extensions of the company's lines of railroad, including the rebuilding of bridges, track elevation, reduction of grade, the acquisition of new locomotive engines and equipment and so forth, and other lawful corporate purposes, and that the proceeds of the remaining fifteen million dollars face value thereof, when received, be forthwith deposited with the United States Trust Company of New York, or other responsible Trust Company, and be used as needed, primarily for the purpose of funding or paying the existing indebtedness of the company, including the following:—

Then follows a list of bonds which I will ask the stenographer to copy afterwards, amounting to about a little over eight millions dollars of bonds of the Chicago & Alton.

(The above list will be found at page — of the exhibits attached.)

Resolved, further, that any increase of such bonds under said mortgage beyond forty million dollars value thereof, shall not be made by the directors without first procuring the due consent and concurrence of three-fourths in interest of the preferred and common stock holders of the corporation.

Resolved, further, that a special meeting of the stockholders of this company be called, to be held at the general office of the company in the city of Chicago, on Thursday, the 7th day of September, 1899, at 12 o'clock noon, for the purpose of submitting to the stockholders for their action, and obtaining their consent and concurrence in the creation of such debt and the execution of such mort-

gage, and that the notice be given—a copy of the notice is in the minutes.

Resolved, that it be recommended and proposed to issue and negotiate said forty million dollars face value of said bonds of and when duly authorized by the stockholders and to give to the stockholders the privilege of subscribing for and purchasing the same at the rate of $650 in cash for each one thousand dollars face value of
1602 the new bond, and that, as the capital stock of the company now issued and outstanding, both preferred and common, amounts in the aggregate, to $22,236,600, the stockholders shall be entitled and offered the privilege of subscribing to said bonds at the rate of 180 face value of their new bonds, for each share of common or preferred stock."

Now, at a meeting of the stockholders——

Mr. HARRIMAN: One minute. May I ask was I present at that meeting—was I a director of the company?

Mr. KELLOGG: You were a director. You don't seem to have been present. The directors present were Mr. Clowry, Mr. Henckel, Mr. Hutchins and Mr. Schiff, a quorum of the Board, with the vice president, Mr. Chappell.

Mr. HARRIMAN: One minute, Mr. Kellogg. All that took place in the summer of 1899?

Mr. KELLOGG: June 27.

Mr. HARRIMAN: In the summer of 1899 I was away from communication for all that time. I was up along the coast of Alaska,—left about the middle of May, and returning about the end of August, so that I could not have had a hand in or been present at any of those transactions. It seems to indicate by the resolution which you have just read, which I never have seen, that there was some commitment apparently on the part of some one to buy those bonds at 65.

Mr. KELLOGG: Will you tell me, Mr. Harriman, how it is possible for there to be an obligation for some one to buy those bonds at 65, until either the directors, executive committee, or stockholders of the road had authorized such a contract or such an obligation?

Mr. HARRIMAN: I presume that somebody agreed to buy them, provided the authority was given.

Mr. KELLOGG: The somebody must have been you four men?

Mr. HARRIMAN: It could not have been me personally at that time. I have no doubt I had the same interest that anybody
1603 else had in them, but I was not here; you cannot refresh my memory on anything that happened while I was away from communication.

Mr. KELLOGG: Now, it appears, Mr. Harriman, that the first absolutely authorized to be issued at all were ten million dollars of them on September 15, 1899: "Resolved, that the Illinois Trust & Savings Bank be requested to forthwith certify and deliver to F. V. S. Crosby, Assistant Treasurer of the Company, the ten million dollars face value of the refunding bonds of this company, being part of the twenty-five million dollars of bonds mentioned in subdivision 2, of Article 2d of the Refunding Mortgage, which were

authorized to be executed and issued by resolution of the Board of Directors of the company at a meeting held in the city of Chicago, September 7, 1899."

Now, it appears that the first action ever taken by the directors was June 27th; they were not authorized until September 7; and the first bonds ever issued were issued October 10th under the resolution passed Sept. 15; isn't that true?

Mr. HARRIMAN: I presume it is true if the records show it.

Mr. KELLOGG: Very well. If that is true, will you tell me how the market had improved between June and October so that a three per cent. bond could only be sold at 65 in June——

Mr. HARRIMAN: Does anybody say it could only be sold at 65?

Mr. KELLOGG (continuing):—and could be sold at 96 in October?

Mr. HARRIMAN: Did anybody say it could only be sold at 65 in June? I have not said so.

Mr. KELLOGG: You know of no reason?

Mr. HARRIMAN: Know of no reason why everything appreciated in the market in 1899?

Mr. KELLOGG: Between July and October?

Mr. HARRIMAN: Wait one minute.

Mr. KELLOGG: To the extent of thirty-one points.

1604 Mr. HARRIMAN: Will you take a list of the securities dealt in at the Stock Exchange in June 1899, and a list in September, 1899, and find out if you can find any appreciation of the market value of other securities than those, during that time? There was a complete change in the disposition of the public.

Mr. KELLOGG: Do you think there was a change in Alton bonds to the extent of thirty-one points?

Mr. HARRIMAN: There apparently was at that time, by your own record.

Mr. KELLOGG: I think that is true, there was a change in the price of from 65 to 96. Was there any such change in any other first mortgage bonds?

Mr. HARRIMAN: I have not any recollection.

Mr. KELLOGG: Then you do not attribute the difference between 65 and 96 to any increased value by reason of market conditions?

Mr. HARRIMAN: Any change in market conditions?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: A very large part of it had to be. I do not believe you could have sold three per cent. bonds in June at anything like 90 or 96.

Mr. KELLOGG: You did not try to sell them in June, evidently?

Mr. HARRIMAN: Apparently we did not have them.

Mr. KELLOGG: You said yesterday you did not know whether any of your bonds were sold to the New York Life. All of that ten million dollars were sold to the New York Life, weren't they?

Mr. HARRIMAN: Not to my knowledge.

Mr. KELLOGG: If all of that ten millions were sold to the New York Life, and no other bonds issued until the next year in May, your bonds were sold, weren't they—your share?

Mr. HARRIMAN: What do you mean—my interest in those bonds?
Mr. KELLOGG: Yes, sir.
Mr. HARRIMAN: If I had any?
Mr. KELLOGG: Yes.
Mr. HARRIMAN: Undoubtedly.
Mr. KELLOGG: Well, did you have any?
1605 Mr. HARRIMAN: I don't remember.
Mr. KELLOGG: You don't remember whether you had any?
Mr. MILBURN: Wait a moment. Is not that under the reserve?
Mr. KELLOGG: No, not at all. He testified yesterday that those bonds were issued to those four men in this syndicate.
Mr. HARRIMAN: Mr. Kellogg, whatever interest I had,—I suppose those four men represented the syndicate.
Mr. KELLOGG: You suppose they did, but you did not tell us who the syndicate was.
Mr. HARRIMAN: And perhaps some one else. While I did not charge my memory, nor did I have to do with the details during the summer of 1899, as I was not there, undoubtedly I had an interest, and perhaps a large interest in those bonds. If they were sold to the New York Life, which I have no knowledge of, undoubtedly whatever interest I had in the bonds went with the whole. That is conceded; I had not disputed that fact. I think you are wasting a lot of time. I will concede all that.
Mr. KELLOGG: Perhaps I am, but I am not familiar with these things as they are.
Mr. HARRIMAN: Well, you are more familiar.
Mr. KELLOGG: Oh, No.
Mr. HARRIMAN: You have been examining the record, and I have not.
Mr. KELLOGG: Now, Mr. Harriman, you were the head and front of the Alton reorganization, weren't you?
Mr. HARRIMAN: Me?
Mr. KELLOGG: Yes.
Mr. HARRIMAN: No, no more than any of the others.
Mr. KELLOGG: Didn't you have charge of the whole thing?
Mr. HARRIMAN: No, sir.
Mr. KELLOGG: Were you chairman of the Board of Directors or chairman of the Executive Committee?
1606 Mr. HARRIMAN: Whatever action was taken while I was here, as Chairman of the Executive Committee undoubtedly I am responsible for.
Mr. KELLOGG: Well, general charge of the Alton reorganization, of the Alton Company's business for the next three or four years?
Mr. HARRIMAN: The Alton readjustment, I should call it.
Mr. KELLOGG: I mean the new company which was launched in April, 1899.
Mr. HARRIMAN: I joined with the other gentlemen that were interested with me in the readjustment, and——
Mr. KELLOGG: Go ahead.
Mr. HARRIMAN: No, go on.
Mr. KELLOGG: In the management of the finance of the Chicago

& Alton Railroad Company, and the Chicago & Alton Railway Company, you had charge of it, did you not?

Mr. HARRIMAN: So far as my position as Chairman of the Executive Committee went, I certainly did.

Mr. KELLOGG: As such Chairman you were looked to as being the director of the financial affairs of the company, were you not?

Mr. HARRIMAN: To a very large extent.

Mr. KELLOGG: And the company paid you $100,000 for that, didn't they?

Mr. HARRIMAN: It did, yes, later on.

Mr. *Harriman:* Is that the voucher (showing paper to Mr. Harriman)?

Mr. HARRIMAN: I presume it is.

Mr. KELLOGG: I offer it in evidence.

(Paper marked Exhibit 12 to Mr. Harriman's testimony and received in evidence).

Mr. KELLOGG: Mr. Harriman, I would like to ask you a few questions about the purchase of the Southern Pacific. I believe you stated yesterday that that was one of the prominent investments of the Union Pacific, other than a mere investment in stock——

1607 Mr. HARRIMAN: Have you got through with Chicago & Alton may I ask?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: May I make a statement here?

Mr. KELLOGG: Certainly.

Mr. HARRIMAN: Now, our figures show that the whole charge for the year 1906 for interest and dividends on the Chicago & Alton consolidated company, was $3,228,864.69. In 1898, that including the same distribution—interest and dividends, it was $2,383,460.05; or an increase of $845,404.64, after $22,327,000 had been expended in improvements and betterments on the property.

Mr. KELLOGG: Is that all, Mr. Harriman?

Mr. HARRIMAN: That is all I wanted to say.

Mr. KELLOGG: Now, Mr. Harriman, where did you get that information. Let me take that.

Mr. LOVETT: Isn't it a fact that the interest on the three and a half per cent. bonds was dependent upon the common and preferred stock up to the last year.

Mr. HARRIMAN: Of the old Chicago & Alton Railroad Company?

Mr. LOVETT: Yes.

Mr. HARRIMAN: Yes sir. Therefore the dividend distribution ought to be included in the computation for interest distribution.

Mr. KELLOGG: But today the twenty-two million dollars of bonds are a lien upon the Chicago & Alton property?

Mr. HARRIMAN: On the consolidated company?

Mr. KELLOGG: Yes, sir; isn't that true?

Mr. HARRIMAN: They are a lien through the stock of the old Chicago & Alton Railroad Company.

Mr. KELLOGG: In the consolidation, this twenty-two millions of

three and a half per cent. bonds became an obligation of the present Chicago & Alton Railroad Company?

Mr. HARRIMAN: And the interest on those bonds, or to that extent, was reduced, in the dividends paid to the stockholders.

1608 Mr. KELLOGG: Certainly; they are a lien ahead of the stock.

Mr. HARRIMAN: But the distribution is the same.

Mr. KELLOGG: It don't make any difference. The mortgage of the Chicago & Alton is $45,000,000.

Mr. HARRIMAN: I am glad to hear you say so, that it don't make any difference. That is just exactly what I have been saying, it does not make any difference; the distribution is just the same—the burden on the property is just the same.

Mr. KELLOGG: The burden on the Chicago & Alton Railroad property before was a $22,000,000 mortgage on its stock, wasn't it, the Railroad Company?

Mr. HARRIMAN: What?

Mr. KELLOGG: The burden on the Chicago & Alton Railroad Company before the consolidation was three and a half per cent. on $22,000,000, on its stock, wasn't it,—charged on its stock?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Today the $22,000,000 is a charge against the Chicago & Alton Railway Company, owning the railroad?

Mr. HARRIMAN: The consolidated company.

Mr. KELLOGG: The consolidated company owns the railroad?

Mr. HARRIMAN: Owns the railroad and whatever acquisitions it got.

Mr. KELLOGG: So at present the charge on the railroad is $45,000,000 first mortgage bonds, and $22,000,000 second mortgage bonds,—isn't that true?

Mr. HARRIMAN: That is apparently so, on the consolidated company.

Mr. KELLOGG: In your computation, you include only four per cent. upon the preferred stock of the Chicago & Alton Railway Company—isn't that true?

Mr. HARRIMAN: That is undoubtedly so.

Mr. KELLOGG: And no dividend on the common stock?

Mr. HARRIMAN: That is right.

1609 Mr. KELLOGG: And you include about $2,500,000 fixed charges on the road; that is true, is it not?

Mr. HARRIMAN: Undoubtedly, after $22,000,000 has been expended.

Mr. KELLOGG: Now, Mr. Blackstone only had a little over a million dollars fixed charges on the property; isn't that true?

Mr. HARRIMAN: And he had no railroad.

Mr. KELLOGG: Well, he seemed to have a railroad that paid 8 per cent.?

Mr. HARRIMAN: Yes, he skinned it out of the property, apparently.

Mr. KELLOGG: If he had no railroad, why did he pay $200 a share for its preferred stock?

Mr. HARRIMAN: Because we believed we could expand its business to such an extent as to make a fair return on that investment of money.

Mr. KELLOGG: And to expand its securities also?

Mr. HARRIMAN: We had to expand its securities.

Mr. KELLOGG: You undoubtedly did, at least.

Mr. HARRIMAN: But we have not expanded the return to the security owners, it does not make any difference how many there are; it is the lower rate of interest that enabled us to make the readjustment.

Mr. KELLOGG: But you put on the market nearly $40,000,000 of stock, on half of which you have paid no dividends, is not that true?

Mr. HARRIMAN: Undoubtedly that is so.

Mr. KELLOGG: And this syndicate have some of their common stock, haven't they?

Mr. HARRIMAN: You ask the Rock Island people, they may know.

Mr. KELLOGG: I think they do know, quite likely. I will ask them. You unloaded the stock on somebody else?

Mr. HARRIMAN: I don't know whether you call it unloading. They can tell you. They are carrying the load.

Mr. KELLOGG: You are not carrying the load, anyhow.

1610 The CHAIRMAN: May it not be put this way, that in 1896-98, the returns to capital included dividends on the stock?

Mr. HARRIMAN: That is right.

The CHAIRMAN: In 1906 the returns to capital do not include any dividends on the common stock.

Mr. HARRIMAN: Of the old Railroad Company?

The CHAIRMAN: Well, of any railroad company, of any Chicago & Alton Company.

Mr. HARRIMAN: I think the Chicago & Alton old railroad company common stock has disappeared in the consolidation, but the returns to the stock and bondholders are no greater than the returns to the stock and bondholders of 1898.

The CHAIRMAN: But the present consolidated company has issued common as well as preferred stock?

Mr. HARRIMAN: Yes, that had to be done, I think, and some method for consolidation——

The CHAIRMAN: I am not questioning its propriety.

Mr. HARRIMAN: Now, frankly, Mr. Knapp, I have not charged my mind nor have I got the details of that. I think that was done during the last year, and I did not give it very much attention. Now I think the old Chicago & Alton Railroad common stock has disappeared in some way.

The CHAIRMAN: But my point is that as I understand the testimony, on the figures, the figures for 1896-8 include dividends on the common stock of the then Railroad Company of 8 per cent., whereas the figures for 1906 do not include any dividends on common stock of the present company.

Mr. HARRIMAN: I think it must include some, because the interest on $22,000,000 of 3½ per cent. bonds would not cover all the

dividends that were paid on the common and preferred stock to the Chicago & Alton Railroad Company.

Mr. MILBURN: The Chairman says dividends on the common stock of the present company.

Mr. HARRIMAN: Yes, the $20,000,000 of common stock.

1611 Mr. MILBURN: Yes.

Mr. HARRIMAN: No, there never has been any dividend. I thought you meant the old Chicago & Alton Railroad Company common stock.

The CHAIRMAN: No, in comparing the figures of 1898 and 1906, the former include the dividend- which were paid on the common stock of 8 per cent., and the latter do not include any dividends on the common stock of the present company, because no such dividends have been declared.

Mr. HARRIMAN: Never have been.

Mr. KELLOGG: I would like to ask a few questions about the purchase of Southern Pacific stock. Is that one of the stocks which you said yesterday was purchased for control as a permanent investment?

Mr. HARRIMAN: I did not say it was purchased for control.

Mr. KELLOGG: Well, what was it purchased for?

Mr. HARRIMAN: It was purchased for the purpose of getting a dominating interest in the Southern Pacific Company.

Mr. KELLOGG: It acquired the dominating interest by that purchase?

Mr. HARRIMAN: By that purchase, yes, sir.

Mr. KELLOGG: Who was in control and management of the Southern Pacific Company prior to the acquisition by the Union Pacific?

Mr. HARRIMAN: The stockholders.

Mr. KELLOGG: Well, that is quite so, but who was the president, Mr. Huntington?

Mr. HARRIMAN: No, I think not—prior to our purchase?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: Mr. Hayes.

Mr. KELLOGG: Well, shortly prior to your purchase, Mr. C. P. Huntington died, did he not?

Mr. HARRIMAN: Yes; I don't remember; I think it was about six months.

Mr. KELLOGG: Prior to his death, Mr. C. P. Huntington for many years had been in control of the Southern Pacific road, had

1612 he not—that is, he had been the head?

Mr. HARRIMAN: Yes, for many years. Mr. Stanford had been president, you know, at one time.

Mr. KELLOGG: But for some years past Mr. C. P. Huntington had been the head of the Southern Pacific system?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Now, as it appears, the first purchase was 750,000 shares and afterwards 150,000 shares, making 900,000 shares, which the company owned prior to the issue of the preferred stock—that is, either the Union Pacific or the Short Line?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: I refer to it as Union Pacific.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Why did you buy just a little less than the majority?

Mr. HARRIMAN: Well, I presume that we thought it was not necessary to buy a majority.

Mr. KELLOGG: You could control it just as well with a minority?

Mr. HARRIMAN: Undoubtedly.

Mr. KELLOGG: In other words, owning just a minority of the stock——

Mr. HARRIMAN: That is, for our purposes it was just as good to us.

Mr. KELLOGG: As a controlling interest?

Mr. HARRIMAN: Yes, it was a dominating interest, and a very large outside interest, as copartners.

Mr. KELLOGG: A large amount of this stock was bought from the Huntington Estate, wasn't it?

Mr. HARRIMAN: I think it was—no, wait a minute——

Mr. KELLOGG: Did you carry on the negotiations for that purchase?

Mr. HARRIMAN: I helped carry them on.

Mr. KELLOGG: Didn't you make the arrangement for the purchase for the Union Pacific.

Mr. HARRIMAN: No, not for the Union Pacific.

1613 Mr. KELLOGG: Well, the Union Pacific and Short Line.

Mr. HARRIMAN: No, from the Huntington Estate, I made no arrangement for any of our companies.

Mr. KELLOGG: Was all of that stock purchased from the Huntington Estate?

Mr. HARRIMAN: The whole 900,000?

Mr. KELLOGG: The whole 750,000 shares?

Mr. HARRIMAN: I think not.

Mr. KELLOGG: I notice that your statements show that since that time, since the acquisition of the other 150,000 shares in 1902, I believe, that at all times since either the Union Pacific or the Short Line has owned 900,000 shares of the common stock according to the statements. Now, where did you get the 300,000 shares of stock that you sold to William Rockefeller on March 13, 1903? Is that a part of the 900,000 shares?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: I notice that stock was sold pursuant to a resolution, March 30, 1903, and purchased back from Mr. William Rockefeller on November 12, 1903. Is that your recollection of it?

Mr. HARRIMAN: That is my recollection.

Mr. KELLOGG (handing paper): I show you a letter written to you by Mr. Rockefeller.

Mr. HARRIMAN: That is right.

Mr. KELLOGG: This is signed William Rockefeller: "Referring to the agreement entered into between you and me on March 30th, 1903, in respect to the 300,000 shares of the capital stock of the Southern Pacific Company, I beg to state that I should be glad to have you take over the stock now instead of waiting until the first of May, 1904, as originally contemplated." Now, what was the

agreement that contemplated the Union Pacific taking the stock back?

Mr. HARRIMAN: It was a reciprocal agreement between Mr. Rockefeller and myself, in that he was to purchase that stock and have the privilege on May 1st, the year following—what was the date of that letter?

1614 Mr. KELLOGG: November 5th, 1903.

Mr. HARRIMAN: Well, he was to have the privilege on the 1st of May, 1904, to deliver the stock back to us at the same price at which we sold it to him.

Mr. KELLOGG: Then it was——

Mr. HARRIMAN: And a reciprocal agreement on our part that we were to have the privilege to take it back.

Mr. KELLOGG: Then it was a sale with a condition, it was a sale by the Union Pacific Railroad Company or the Short Line Company, with a condition that you were obliged to take it back if Mr. Rockefeller asked you to, on May 1st, 1904, at the same price with interest.

Mr. HARRIMAN: With interest, and I think a commission of one per cent.

Mr. KELLOGG: With interest and a commission of one per cent.?

Mr. HARRIMAN: I think so.

Mr. KELLOGG: Which would be $300,000?

Mr. HARRIMAN: Yes, I think so.

Mr. LOVETT: Mr. Harriman is mistaken about the rate of commission.

Mr. KELLOGG: I think that is so. Five-eighths of one per cent.

Mr. HARRIMAN: Five-eighths of one per cent.

Mr. KELLOGG: Now, then, if the Short Line Company was responsible, Mr. Rockefeller assumed no obligation, and merely had a conditional title to the stock, is not that true?

Mr. HARRIMAN: And paid for it.

Mr. KELLOGG: Only paid for a part of it, didn't he?

Mr. HARRIMAN: He gave good collateral and a note for the balance. He paid $6,000,000 and gave his note and marketable collateral for the security of the note for eleven millions and odd hundred thousand dollars.

Mr. KELLOGG: I notice by your annual report of June 30, 1903, after this stock was sold to William Rockefeller, you report that the Union Pacific Company and its auxiliary company, the

1615 Short Line, own $90,000,000 or 900,000 shares of the capital stock of the Southern Pacific Company. Is that correct?

Mr. HARRIMAN: Yes, of course.

Mr. LOVETT: What was the date when that report was issued?

Mr. KELLOGG: For the year ending June 30, 1903.

Mr. LOVETT: What was the date of the report?

Mr. KELLOGG: Stocks owned June 30, 1903. By this report it appears on page 25, stocks owned June 30th, 1903——

Mr. HARRIMAN: That is all right. Don't show it to me; it is undoubtedly correct.

Mr. KELLOGG: Well, you considered you owned it at that time, didn't you?

Mr. HARRIMAN: That whole transaction of the 300,000 shares of stock sold to Mr. Rockefeller was a protective measure, pure and simple. There had been a syndicate or a pool formed in Wall Street to speculate in Southern Pacific stock, and they were said to have acquired about 300,000 shares. They had appealed to the stockholders and had appealed to the courts and had tried to get enough proxies with their stock to prevent us from continuing in the management of the Southern Pacific, and to force in some way a distribution to the stockholders, so that they could get a market for and sell their stock out to advantage. We were fearful that they might get a temporary injunction and prevent us from voting on the whole 900,000 shares of stock, and in order to protect us against such a condition, we took this method of disposing of enough stock, we thought, that would enable us, with the proxies that we might obtain from the other stockholders, to control the election as against this speculative syndicate. It was purely to protect the interests of the Union Pacific or Short Line stockholders.

Mr. KELLOGG: That is, if it was necessary to show that somebody else owned it,——

Mr. HARRIMAN: And in fact there never was any election for the year 1903. There was a temporary injunction obtained, and
1616 it was in the courts until some time in the autumn of 1903.

Mr. KELLOGG: Well,——

Mr. HARRIMAN: Now, one minute and I will explain it all to you.

Mr. KELLOGG: All right, I want it all.

Mr. HARRIMAN: The annual report of the Southern Pacific was not approved by its Board of Directors until after November 12, 1903. It has been the custom of the comptroller to hold its books open until after the annual report has been approved by the Board of Directors. Now, then, when this stock was returned in November, on November 12, some six months prior to the time of the agreement at which Mr. Rockefeller was to have the right to return it to us, the comptroller made his entries as of June 30, 1903, and that was the reason that the 300,000 shares was not shown to have been disposed of during that year. I believe that explains it.

Mr. KELLOGG: Well, this is the Union Pacific——

Mr. LOVETT: Mr. Harriman said a temporary injunction was granted. As a matter of fact, an application was made for an injunction, and it was set down for hearing, and the court required that the election should be postponed pending the decision of the question. The injunction was not actually granted; subsequently it was refused, but it had been set down for argument.

Mr. HARRIMAN: And we wanted to get 300,000 shares of stock in the ownership of somebody who would act against the attempt of this speculative pool to control the property.

Mr. KELLOGG: Well, the decision of the court on that injunction, as I recall it, Mr. Lovett, was rendered on the 3rd of April, 1903, refusing an injunction.

Mr. LOVETT: Yes, and an appeal was taken, and pending the appeal——

Mr. HARRIMAN: It was pending the appeal, and then it was set-

tled some time in the autumn of 1903, the whole matter was disposed of.

1617 Mr. KELLOGG: Well, it is the report of the Union Pacific that I refer to, in which Mr. Mahl reports by a letter to you on October 27, 1903, that on June 30, 1903, the Union Pacific or Short Line owned 900,000 shares of this common stock.

Mr. LOVETT: The report is dated November 12.

Mr. KELLOGG: Oh, certainly, but the report shows the stocks owned on June 30, 1903.

Mr. HARRIMAN: I know. I have just explained that to you that he made his entry as of June 30, 1903.

Mr. KELLOGG: Well, in any event, the object of selling the stock was to enable the Union Pacific, if it was necessary in that suit, to show that it did own that 300,000 shares?

Mr. HARRIMAN: Undoubtedly.

Mr. KELLOGG: And it was necessary, to show that it did own it, that is, to have a string on it, so you could get it back?

Mr. HARRIMAN: No, it was not.

Mr. KELLOGG: As a matter of fact the sale——

Mr. HARRIMAN: No, no; you cannot put intention at this late day on the part of the Union Pacific Railroad. It was purely for the purpose of getting that stock into the ownership of somebody who would act against this pool who were trying to get control of the Southern Pacific Company for speculative purposes.

Mr. KELLOGG: Let me inquire into that for a moment. That suit was brought by a man by the name of Taylor, was it not?

Mr. HARRIMAN: Was that the man?

Mr. KELLOGG: He was connected in some way with Mr. Keane, a gentleman well known in Wall Street, I believe?

Mr HARRIMAN: A son-in-law.

Mr. KELLOGG: A son-in-law of Keane?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: I am not familiar with Wall Street——

Mr. HARRIMAN: What?

Mr. KELLOGG: Well, Mr. Taylor claimed, didn't he, that

1618 he was a stockholder in the Southern Pacific Company, in that suit?

Mr. HARRIMAN: I believe he did.

Mr. KELLOGG: And he was a stockholder, was he not, or Mr. Keane?

Mr HARRIMAN: He was a stockholder of record.

Mr. KELLOGG: Yes, he claimed that the control of the Union Pacific of the Southern Pacific was unlawful, because it was the control of a parallel and competing line, which the stockhoders had a right to object to, did he not?

Mr. HARRIMAN: Did he do that?

Mr. KELLOGG: That is my recollection; is that true?

Mr. HARRIMAN: I have forgotten. Well, he did not prove it, anyway.

Mr. KELLOGG: He did not get jurisdiction of the Union Pacfic, because it did not live down at Beechmont, Ky.

Mr. HARRIMAN: Is that the reason?

Mr. KELLOGG: That is the reason.

Mr. HARRIMAN: Well, I have never been there, I don't know what sort of a place it is.

Mr. KELLOGG: I don't believe anybody else ever has. I think that it is the headquarters of the Southern Pacific Company, is it not?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Now, in order to show that the Union Pacific was not controlling a parallel and competing line you sold that stock to Mr. Rockefeller, didn't you?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: That was not the reason?

Mr. HARRIMAN: No, it was not.

Mr. KELLOGG: Was it not transferred to him in order to enable you to show that you did not own enough stock to control the Southern Pacific?

Mr. HARRIMAN: No, sir.

Mr. KELLOGG: Did you not deny in that suit that you did control the Southern Pacific?

Mr. HARRIMAN: I don't remember that. Did we?

1619 Mr. KELLOGG: Well, didn't you admit that you controlled the Southern Pacific—which is it?

Mr. HARRIMAN: I don't remember.

Mr. KELLOGG: But you did control it, didn't you?

Mr. HARRIMAN: Practically.

Mr. KELLOGG: For that transaction, without Mr. Rockefeller assuming any particular responsibility, you paid him $187,500 commission, is that true?

Mr. HARRIMAN: We paid him $187,000 for paying us $6,000,000 and giving us his obligation secured by good collateral which we could have used for the balance, about an $18,000,000 transaction, for about fifteen months.

Mr. KELLOGG: But he had the obligation of the Short Line Railroad Company to take that stock back at the same price?

Mr. HARRIMAN: What are you trying to prove, that that was too large a commission?

Mr. KELLOGG: Oh, I don't know, I want to find the facts.

Mr. HARRIMAN: If you had had the money, would you have assumed it for less?

Mr. KELLOGG: I cannot imagine having that amount.

Mr. HARRIMAN: We thought—but you want to have it, that is the trouble.

Mr. KELLOGG: Well, we will pass that transaction.

Now, Mr. Harriman, it appears in the list of stocks which you bought for the Union Pacific Railroad Company—I notice that on July 10 the Oregon Short Line Railroad Company purchased $10,000,000 par value of the Atchison, Topeka & Santa Fe Railway Company for $10,395,000. You recall that, substantially?

Mr. HARRIMAN: Yes, sir; no doubt about that.

Mr. KELLOGG: What was the object of purchasing that stock?

Mr. HARRIMAN: To invest some of the money that we had on hand.

Mr. KELLOGG: The Santa Fe is a parallel and competing line with the Union Pacific, is it not?

Mr. HARRIMAN: Undoubtedly, I am sorry to say.

1620 Mr. KELLOGG: And prior to that time you had made arrangements with Mr. Ripley for a representation on the Board of the Southern Pacific, hadn't you?

Mr. MILBURN: Who do you mean by "you?"

Mr. KELLOGG: You, Mr. Harriman, I mean.

Mr. HARRIMAN: Yes, myself and some of my associates.

Mr. KELLOGG: In 1904 did you have an interview with Mr. Ripley about obtaining a representation on the Santa Fe Board?

Mr. HARRIMAN: During 1904?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: I presume it was. When were the representatives that we suggested elected? Have you got a record of it?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: I don't think it is material. I had several interviews with both Mr. Morowitz and Mr. Ripley; mostly with Mr. Morowitz.

Mr. KELLOGG: State the substance of your interview and arrangement with Mr. Ripley, please?

Mr. HARRIMAN: With Mr. Ripley and Mr. Morowitz both, do you mean?

Mr. KELLOGG: Yes, Mr. Ripley and Mr. Morowitz.

Mr. HARRIMAN: It was mostly with Mr. Morowitz.

Mr. KELLOGG: Mr. Morowitz represented the Santa Fe?

Mr. HARRIMAN: Yes, he was chairman of the Board.

Mr. KELLOGG: And Mr. Ripley was President.

Mr. HARRIMAN: It was in substance that we were to try to establish a better relationship between all the railroads, in the line that we should deal more frankly with each other, more publicly and more frankly, and not operate our lines for the purpose of destroying each other, but for the purpose of helping each other, and for developing the territory served by each, and to that extent I even went so far with Mr. Morowitz as to tell him that as far as the Southern Pacific was concerned, I would be willing to even put him on

1621 the executive committee of the Southern Pacific so that he might know what our intentions were, if he chose to.

After considerable talk on those lines they concluded that they would give representation,—not to the Union Pacific Railroad—or I cannot say that it was representation for stock that was owned by myself and some of my associates, but that they would elect to the Atchison Board two men that were suggested by us, and to that end elected Mr. Rogers and Mr. Frick.

Mr. KELLOGG: Both of whom were directors of the Union——

Mr. HARRIMAN: Yes, I think they were. Now, then, the effect of that has been, so they tell me, that they have acquired two of the best directors that they have ever had. So far as my knowledge of the Atchison is concerned, through the information that has been

conveyed to me by either of those men, it has been practically *nil*, in fact so much so, that when it was—I am afraid you are getting his mind off of this, Mr. Severance?

Mr. KELLOGG: Go ahead, Mr. Harriman.

Mr. HARRIMAN: So that when they had concluded in the Board of Directors to issue $98,000,000 of convertible bonds, and to obtain the consent of the stockholders to increasing the stock, I did not know anything about it until it was announced in the newspapers.

Mr. KELLOGG: Well, this establishing closer relations and friendly interests is what is commonly known as community of interest?

Mr. HARRIMAN: I never invented that, I don't like the term.

Mr. KELLOGG: I thought you invented it.

Mr. HARRIMAN: No, I never invented it.

Mr. KELLOGG: I would like to find the inventor.

Mr. HARRIMAN: I call it a common interest; we all have a common interest.

Mr. KELLOGG: Now, then, was it stated at that time by
1622 you that gentlemen connected with the Union Pacific had acquired large interests, to the extent of over $30,000,000 in the stock——

Mr. HARRIMAN: I don't remember that we said how much we had acquired, but that we personally had acquired large interests in the Atchison stock.

Mr. KELLOGG: Was that stock acquired by you and Mr. Frick and Mr. Rogers before Mr. Rogers and Mr. Frick were elected to the Board?

Mr. HARRIMAN: Oh, yes, a long time before.

Mr KELLOGG: And that stock amounted to over $30,000,000 as Mr. Ripley stated, about one-seventh of the capital stock?

Mr. HARRIMAN: Did Mr. Ripley state that?

Mr. KELLOGG: That is my recollection.

Mr. HARRIMAN: I don't know how he knew, I don't know that I ever told him.

Mr. SEVERANCE: He said he looked you up.

Mr. HARRIMAN: It was only an estimate on his books.

Mr LOVETT: I think Mr. Ripley testified that he did not know how much, but he assumed it was $25,000,000 to $30,000,000.

Mr HARRIMAN: Suppose he did; that does not bear on this question.

Mr. KELLOGG: Well, had these parties acquired from $25,000,000 to $30,000,000?

Mr. HARRIMAN: I don't know that you can inquire into that.

Mr. KELLOGG: Since that time and until June 10, 1906, the Union Pacific itself as a company, or the Short Line, has acquired $10,000,000 of this stock?

Mr. HARRIMAN: That was an investment pure and simple in the preferred stock?

Mr. KELLOGG: Was that a part of the stock which had been previously acquired by you, Mr. Rogers and Mr. Frick?

Mr. HARRIMAN: I think not——

Mr. MILBURN: No——

Mr. KELLOGG: Well, do you know it was not?

1623 Mr. HARRIMAN: Well, I received a shock; I don't think I can answer.

Mr. KELLOGG: I suggest you gentlemen let Mr. Harriman go ahead, and he will clean this whole thing up.

Do you know that it was not, Mr. Harriman?

Mr. MILBURN: Mr. Harriman, I am going to draw, as far as you will allow me, the lines I drew yesterday. I think this question is within the objections I made at that time, and I would like the same proceedings taken in reference to this question as were taken to the other.

Mr. SEVERANCE: Do you want to withdraw the answer?

Mr. MILBURN: We will let stay what is in, but I do not think it is proper to pursue it further.

Mr. KELLOGG: Of whom did the Union Pacific buy that $10,000,000 of stock?

Mr. HARRIMAN: Kuhn, Loeb & Co.

Mr. KELLOGG: Was it or any part of it at that time owned by any of you three gentlemen?

Mr. MILBURN: That I object to.

The CHAIRMAN: You object to his answering the question on the same grounds as stated to the similar question asked yesterday?

Mr. MILBURN: Yes, and could we have the record contain the same proceedings, without going over it?

The CHAIRMAN: The objection is overruled and the witness is directed to answer.

Mr. MILBURN: Yes, and the witness declines to answer on the grounds assigned to a similar question, yesterday, as repeating what is on the record.

The CHAIRMAN: Precisely.

Mr. MILBURN: That is understood.

Mr. KELLOGG: Is that your position, Mr. Harriman?

Mr. HARRIMAN: Absolutely.

The CHAIRMAN: Just one moment, Mr. Kellogg: It appears, Mr. Harriman, that for reasons stated by you, or under the circumstances stated by you, that two gentlemen who were then directors of the Union Pacific were elected directors of the Santa Fe?

1624 Mr. HARRIMAN: Yes.

The CHAIRMAN: Was there any corresponding arrangement by which one or more men who were identified with the Santa Fe were elected directors of the Union Pacific?

Mr. HARRIMAN: No, sir; it was purely this question that I suggested to Mr. Morowitz that we sought to overcome.

The CHAIRMAN: The Union Pacific then got representation——

Mr. HARRIMAN: No, sir; no; the Union Pacific did not get representation.

Mr. MILBURN: You know Mr. Ripley testified that they would not have a Union Pacific representative on their Board.

The CHAIRMAN: That depends perhaps on what is meant by representative.

Mr. HARRIMAN: I don't think that any one ever asked them to.

The CHAIRMAN: My recollection was that Mr. Ripley objected to having an executive officer of the Union Pacific, or one active in its management, elected as a director, but of course he perfectly understood that Mr. Rogers and Mr. Frick, to whose election to the directory he assented, had been directors of the Union Pacific, and he expected that they would continue to be directors of the Union Pacific. I am simply inquiring whether there was any corresponding arrangement by which the directors of the Santa Fe were elected to the directory of the Union Pacific.

Mr. HARRIMAN: No, sir.

The CHAIRMAN: Mr. Harriman says there was no such thing.

Mr. HARRIMAN: No, sir.

The CHAIRMAN: So that in point of fact, up to this time, there is no officer or director of the Santa Fe, who is also a director of the Union Pacific, the Southern Pacific or the Atchison?

Mr. HARRIMAN: I think not.

1625 Mr. KELLOGG: Mr. Harriman, Mr. Rogers and Mr. Frick were directors of the Union Pacific?

Mr. HARRIMAN: I believe they were.

Mr. KELLOGG: They had accumulated, as Mr. Ripley said, together with you, a large amount of Santa Fe stock?

Mr. HARRIMAN: Who said they had?

Mr. KELLOGG: Mr. Ripley.

Mr. HARRIMAN: How did he know?

Mr. KELLOGG: He said you said so.

Mr. HARRIMAN: I think not.

Mr. KELLOGG: Is that true?

Mr. HARRIMAN: Did Mr. Ripley say that they had——

Mr. LOVETT: He so testified.

Mr. HARRIMAN: Mr. Ripley probably knew better than I did. Mr. Kellogg, I am not going to answer that question, because I do not think you have any right to ask me whether they or anybody else had any interest in Atchison or Union Pacific with me.

Mr. KELLOGG: I am trying to get at what this harmonious arrangement was between the Santa Fe and the Union Pacific.

Mr. HARRIMAN: Who said there was a harmonious arrangement?

Mr. KELLOGG: You said so to Mr. Ripley and Mr.——

Mr. HARRIMAN: I said we ought to have franker methods of dealing with our company.

Mr. KELLOGG: Yes; get along in harmony with them.

Mr. HARRIMAN: Get along in harmony with them.

Mr. KELLOGG: And that method was accomplished by having common directors?

Mr. HARRIMAN: Not common directors. We have no directors of theirs in our company.

Mr. KELLOGG: Is there no director of the Santa Fe——

Mr. HARRIMAN: I said myself and some of my associates had large interests in the Atchison Road, and there ought to be

1626 somebody in there who would properly represent not only our stock but the stockholders of the Atchison Road, to the end that we might have a better understanding and a franker dealing

between our corporations, if you like. In other words, I had a common interest, I might say—an interest in Union Pacific and an interest in Atchison myself.

Mr. KELLOGG: And the greater the common interest you gentlemen had in the two lines, the less competition?

Mr. HARRIMAN: Not necessarily. I wish it were so.

Mr. KELLOGG: You think you have not reached the millenium on the Pacific Coast yet?

Mr. HARRIMAN: Nor anywhere else.

Mr. KELLOGG: Did you think it proper for directors of the Union Pacific, to be on the Board of Directors of a parallel and competing line, the principal competitor of the Union and the Southern Pacific?

Mr. HARRIMAN: I undoubtedly thought that those men were proper to put in the Atchison Board, otherwise I would not have suggested it.

Mr. KELLOGG: They were active Directors of the Union Pacific were they not?

Mr. HARRIMAN: They may be active directors in some other companies.

Mr. KELLOGG: Were they active directors in the Union Pacific?

Mr. HARRIMAN: I have told you that already.

Mr. KELLOGG: Yes; very prominent directors.

Mr. HARRIMAN: Yes; they were prominent directors. Their personality would make them prominent wherever they were.

Mr. KELLOGG: Certainly. They were also active directors in the Santa Fe, were they not?

Mr. HARRIMAN: I believe they were just the same; they would be wherever they are.

Mr. KELLOGG: Now, which interest did they represent the most, the Union Pacific or the Santa Fe?

Mr. HARRIMAN: Where?

Mr. KELLOGG: In the meetings.

Mr. HARRIMAN: In which meetings?

1627 Mr. KELLOGG: When questions of conflict came up between the Union Pacific and the Santa Fe, which did you expect those gentlemen to represent?

Mr. HARRIMAN: They would represent the interest of the stockholders of the company for which they were acting.

Mr. KELLOGG: At the time?

Mr. HARRIMAN: At the time.

Mr. KELLOGG: Under that arrangement, under this harmonious——

Mr. HARRIMAN: Now, you are inventing a phrase, "harmonious." That is worse than "community of interest."

Mr. KELLOGG: What will I call it?

Mr. HARRIMAN: I don't know.

Mr. KELLOGG: Under this arrangement for closer——

Mr. MILBURN: Frank relations.

Mr. KELLOGG: Oh, yes; more frank relations. Under this frank understanding between the Santa Fe and the Union Pacific, you gen-

tlemen joined in the ownership of a railroad in Northern California, did you not?

Mr. HARRIMAN: They had nothing to do with it whatever.

Mr. KELLOGG: That has been done since this frank arrangement was made?

Mr. HARRIMAN: It was not because of it. I should say it was not done because of any misrepresentation on the Board of Directors of persons who were also directors of the Union Pacific. In fact, so far as I know, they had nothing to do with it—those people.

Mr. KELLOGG: Under that arrangement, instead of the Santa Fe building into and having a railroad into the territory of the Union Pacific and Southern Pacific, you made an arrangement with the Santa Fe Company for a joint alternate shuttlecocking management like the Alton, did you not?

Mr. HARRIMAN: Now you are inventing another phrase. There is no shuttlecock about it. It is purely and simply a business transaction for the control of important properties, and for
1628 the development of important properties, and for the development of territory tributary to those properties.

Mr. KELLOGG: It is a joint ownership?

Mr. HARRIMAN: It is a joint ownership of the Santa Fe and Union Pacific north of San Francisco, leading into Mendocino County.

Mr. MILBURN: Southern Pacific you mean, instead of Union Pacific.

Mr. HARRIMAN: Southern Pacific.

Mr. KELLOGG: Well, Southern Pacific, it is all one.

Mr. HARRIMAN: I wish it were all one. I hope you will help us to get legislation some time so that it will be all one. That is where we will get some day.

Mr. KELLOGG: It is pretty nearly all one man. Under that arrangement there is an alternate arrangement with the Santa Fe?

Mr. HARRIMAN: Yes; you might call it a joint management.

Mr. KELLOGG: So competition in that territory has been eliminated?

Mr. HARRIMAN: There never was any.

Mr. KELLOGG: There never was any?

Mr. HARRIMAN: There never was. Wait a moment, Mr. Kellogg. Don't get a false impression about that. The Santa Fe had interests up in Mendocino County, some 150 miles north of the terminus of the California & Northwestern Road, which was owned by the Southern Pacific Company, and it was not a question of construction of parallel lines so much as it was a question of traffic or trackage arrangements between the lines north of the terminus of the California & Northwestern, and that road itself, whether a joint ownership was not better than a traffic or trackage alliance.

Mr. KELLOGG: There is a contract for the joint control of that road, is there not?

Mr. HARRIMAN: Yes; there is, and I am quite proud of it. We made great sacrifices to have that done.

Mr. KELLOGG: That is one railroad which is jointly operated by the Santa Fe and the Union Pacific.

1629 Mr. HARRIMAN: It is not built yet.

Mr. KELLOGG: Well, it is to be.

Mr. HARRIMAN: So far as the California & Northwestern is concerned, it is under joint control.

Mr. KELLOGG: And when constructed, it is to remain under joint control.

Mr. HARRIMAN: I hope so.

Mr. KELLOGG: The San Pedro Railroad, from Salt Lake to California, is also under joint control, between the Union Pacific and Mr. Clark?

Mr. HARRIMAN: Yes; but we built that road jointly with him.

Mr. KELLOGG: I think he claims he built it.

Mr. HARRIMAN: We built that jointly with him, I say.

Mr. KELLOGG: Jointly with him. You sold him 512 miles belonging to the Short Line Company, did you not?

Mr. HARRIMAN: For the purpose of enabling the line between Salt Lake and Los Angeles to be completed quicker than it otherwise could have been.

Mr. KELLOGG: That is, you contributed to that line of railroad, 512 miles, is that correct?

Mr. HARRIMAN: Undoubtedly.

Mr. KELLOGG: Mr. Clark contributed some money and some more railroad that he had been building.

Mr. HARRIMAN: Yes, some insignificant lines.

Mr. KELLOGG: And you put into it a railroad, and the Union Pacific or the Short Line and Mr. Clark owned the securities jointly?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: You provided for a joint arrangement?

Mr. HARRIMAN: Yes, we developed a new railroad.

Mr. KELLOGG: And you brought the Southern Pacific into that with a contract?

Mr. HARRIMAN: And opened new avenues of traffic.

Mr. KELLOGG: Yes, but they all lead to the same place, the Union Pacific.

1630 Mr. HARRIMAN: I hope so. The Union Pacific is quite capable of doing it.

Mr. KELLOGG: Competition with the San Pedro line is eliminated there.

Mr. HARRIMAN: There never was any competition until we built it.

Mr. KELLOGG: There is not now, is there?

Mr. HARRIMAN: Isn't any what?

Mr. KELLOGG: Any competition now.

Mr. HARRIMAN: Between what?

Mr. KELLOGG: Between the San Pedro road and the Southern or Union Pacific.

Mr. HARRIMAN: I should say there was; it is a continual source of annoyance.

Mr. KELLOGG: I have no doubt. Now, the Chicago & Alton Railroad is under a joint management.

Mr. HARRIMAN: With the Rock Island.

Mr. KELLOGG: Of a certain line to California.

Mr. HARRIMAN: With the Rock Island.

Mr. KELLOGG: And the competition of the Chicago & Alton is eliminated from that territory, is it not?

Mr. HARRIMAN: With what? With the Union Pacific?

Mr. KELLOGG: Between that and the Rock Island.

Mr. HARRIMAN: I don't know anything about that. That is up to them. You must ask them.

Mr. KELLOGG: We can find out about that. The Union Pacific has acquired a dominating interest in the Illinois Central, has it not?

Mr. HARRIMAN: Has it?

Mr. KELLOGG: I want to know.

Mr. HARRIMAN: It has acquired a very large interest in the Illinois Central. It has never exerted any influence in it so far.

Mr. KELLOGG: Well, some influence was exerted to change the president, was it not, after the acquisition of the Illinois Central by the Union Pacific?

Mr. HARRIMAN: Do you want me to tell you about that?

Mr. KELLOGG: I just want that question answered.

1631 Mr. HARRIMAN: I will tell you how the Illinois Central's president was changed.

Mr. KELLOGG: I don't care anything about that squabble. I ask you what influence changed it.

Mr. HARRIMAN: There was no squabble about it.

Mr. MILBURN: It is not fair to open up a question like that, and not let him go into it.

Mr. KELLOGG: I am perfectly willing he should explain it.

Mr. HARRIMAN: I will tell you how the change in the president *in* the Illinois Central took place. In September, 1903, after I had been abroad about three months, on arriving here, I was approached by several of the influential directors of the Illinois Central, asking me——

Mr. LOVETT: Wait a moment, Mr. Harriman. (Pause.) All right.

Mr. KELLOGG: I don't care anything about it; I simply want to know when the change was made.

Mr. HARRIMAN (continuing): Asking me of the advisability of reporting certain acts of the president of the Illinois Central to its Board of Directors, with a view of having them request the president to resign at that time.

Mr. KELLOGG: Now, Mr. Harriman——

Mr. HARRIMAN: I want to prove to you that it had nothing to do with the Union Pacific, that change in the management, or change of the president.

Mr. KELLOGG: Go ahead if you want to. I have no objection.

Mr. HARRIMAN: And at that time I took steps to smooth over the difficulty which had arisen, and which showed that the president of the Illinois Central had been using his position as president to further his own personal interests. I prevented action by the Board of Directors at that time, in the interest of the president, and re-

tained him in office, but subsequent to that, he continued to act in the same line, and the Board of Directors of the Illinois Central, purely and simply from the interests of that company, took
1632 steps to relieve him from that position. If you want the detail of it, I can give it to you.

Mr. KELLOGG: The change in the management of the Illinois Central occurred,——

Mr. HARRIMAN: There hasn't been any change in the management of the Illinois Central.

Mr. KELLOGG: Well, the change in its president occurred after the acquisition of the Illinois Central stock by the Union Pacific Railroad Company?

Mr. HARRIMAN: That was only a coincidence.

Mr. KELLOGG: Well, it preceded that, did it not?

Mr. HARRIMAN: It was only a coincidence. If the Union Pacific had not disposed of a certain amount of its holdings of securities, and had money to invest in like securities, it never would have acquired the Illinois Central.

Com'r LANE: In what manner was the president of the Illinois Central using his position wrongly?

Mr. HARRIMAN: Well, in the Spring of 1903, he deposited over half million dollars with the Trust Company of the Republic, of which he was a trustee, a very small company, and then went off to Europe. I came home from a trip to California and found that condition. I was then consulted by some of the directors who were conversant with that fact. We directed the secretary of the company to withdraw that deposit. He went to the managing officer of the Trust Company of the Republic, and was frankly told that if we demanded a return of that money, the company would have to go into bankruptcy. So we gradually drew that money down, until we got it all back some time during the Summer of 1903. That was after I went to Europe, that we got it all out. But notwithstanding that fact, on June 30, 1903, the president deposited again a large amount of money with the Trust Company of the Republic, and then had it returned about July 1st or July 2nd, in that way using the money of the Illinois Central Railway Company, to pad the accounts of the Trust Company of the Republic.

In addition to that he loaned to himself a large amount of
1633 money during that summer, without the knowledge, I believe, of the Board of Directors; and it was based on those matters that the directors who had become conversant with those facts approached me after my return from Europe, with the request that I join with them, to take the matter before the Board of Directors of the Illinois Central, with the intention of having Mr. Fish deposed. I interfered in the interests of Mr. Fish, loaned him $1,200,000 to take up his obligations to the Illinois Central, and let it remain with him for two years, most of the principal. He paid it back gradually until the securities which he had up appreciated in value, and he could arrange for the matter, somewhere else or dispose of some of it.

Subsequent to that, he again, in January, 1904, deposited with the Commonwealth Trust Company, the successor of the Trust Com-

pany of the Republic, additional money again to pad the statements of that Trust Company, and continued to do various things of which I think I have said enough. They are all matters of record and can be taken up. They indicated that he looked upon the Illinois Central as his personal property, to be used as he personally thought fit. He entered into contracts—one special contract, I couldn't say contracts. Of course a president always has to enter into some contracts without bringing them to the Board of Directors first, but usually they are insignificant ones. He entered into one contract in the construction of the Indianapolis & St. Louis Railroad, and committed the company to that, without the action of the Board, without its consent, and against the express wish of the Board made previous to this action, or the express wish of members of the Board.

The CHAIRMAN: You were understood to say, Mr. Harriman, that the action taken with regard to the presidency of the Illinois Central was——

Mr. HARRIMAN: The circular issued by the majority of the Board of Directors of the Illinois Central last Autumn stated that this was only a climax of many things that had gone before.

1634 The CHAIRMAN: You are understood then to say, Mr. Harriman, that the action taken, which resulted in the change of the presidency of the Illinois Central, was in no way influenced by or connected with the fact that the Union Pacific had acquired a large block of the stock of the Illinois Central?

Mr. HARRIMAN: Not one iota. It had nothing whatever to do with it.

Mr. KELLOGG: I was asking you if there had been any change in management and what the reason was for the purchase of the stock by the Union Pacific of the Illinois Central?

Mr. HARRIMAN: It was an opportunity to obtain a large amount of stock at what we considered a very reasonable price, and to invest the money which the Union Pacific had, the proceeds of the sale of Northern Pacific and Great Northern.

The CHAIRMAN: Was there no other purpose, Mr. Harriman, than a desire to invest that money?

Mr. HARRIMAN: Absolutely none whatever.

The CHAIRMAN: The Union Pacific is a connection of the Illinois Central?

Mr. HARRIMAN: It is, and it might be used to advantage by both companies.

The CHAIRMAN: You were mindful of the fact that it was a connecting road?

Mr. HARRIMAN: We were mindful of the fact that it was a connecting road. That stock belonged to people who were interested in Union Pacific, myself among the number. The records all show it, and undoubtedly we had in mind that the ownership of that stock, placed in that way, could be depended upon to secure to the Illinois Central a continuance of its present management.

Mr. KELLOGG: Now, Mr. Harriman, I asked you your reasons for purchasing the stock. You say it was purely an investment. I did not ask you for any quarrel with Mr. Fish, but you have gone on and given it.

Mr. HARRIMAN: I beg your pardon. You did ask me. You asked me why we deposed Mr. Fish.

1635 Mr. KELLOGG: I asked you when the change occurred.

Mr. HARRIMAN: You asked about the change in the presidency, and why it was.

Mr. KELLOGG: The object of the change, whether it was for the control of the Illinois Central or not?

Mr. HARRIMAN: What was the question?

Mr. KELLOGG: The question was——

Mr. HARRIMAN: Excuse me. Let me have the question read.

(The stenographer read as follows)

"Mr. KELLOGG: The Union Pacific has acquired a dominating interest in the Illinois Central has it not?

"Mr. HARRIMAN: Has it?

"Mr. KELLOGG: I want to know.

"Mr. HARRIMAN: It has acquired a very large interest in Illinois Central. It never has exerted any influence in it so far.

"Mr. KELLOGG: Well, some influence was exerted to change the president, was it not, after the acquisition of the Illinois Central, by the Union Pacific?"

Mr. HARRIMAN: That is it.

Mr KELLOGG: That was in relation to the Union Pacific control, not any squabble between you and Mr. Fish?

Mr. HARRIMAN: I am not talking about any squabble between me and Mr. Fish. There was no squabble between me and Mr. Fish.

Mr. KELLOGG: I propose to read to you the proceedings of the meeting of the Board of Directors, July 19, 1906, to see whether it was to the interest of the Union Pacific to purchase this stock purely as an investment.

Mr. HARRIMAN: I think I have explained that already to the Commission, in addition to what I have said to you.

Mr. KELLOGG: Just listen: "Director Harriman called the Vice-President Cornish to the chair, and then stated to the meeting in substance that he believed it to be to the interest of the Union

1636 Pacific Railroad Co. to purchase stock of the Illinois Central Railroad Co.; that, while the Union Pacific line served a large grain-producing territory, it had no line from that territory to the Gulf or to Chicago and into the southeast; that the export of grain via the Gulf ports is likely to increase steadily; that the value and importance of a system of railroads extending from the Missouri River, at and above Omaha and as far north as Minnesota and Wisconsin, and from Chicago and St. Louis, on a low grade, to New Orleans, as does the Illinois Central, will be enhanced by the construction of the Panama Canal, and the importance and value of such connections to the Union Pacific will be very great; that, while the Illinois Central was generally recognized as an important and valuable system of railroads, yet he believes its strategic value and importance was but little understood and appreciated even by some of those most active in its management; and that, while its stock appeared to be a good investment at prevailing prices,

he believed it could be made, and in time was bound to become, very much more valuable. For these and many other legitimate reasons which might be stated, he believes the Union Pacific ought to purchase stock of the Illinois Central Railroad Company, now to be had at a fair price. He said, however, that he was interested in the ownership of the stock of the Illinois Central which he thought the Union Pacific should buy, and, because of such interest, could not act for the Union Pacific. He said he sought to procure the attendance at this meeting of the largest number of directors possible, so that the question might receive of the Board the consideration its importance deserved; and that such action should be taken as the Board might think the interests of the Union Pacific Railroad Company require."

Now, after reading that, was it to procue the control of and a connection with an important grain producing road that the Union Pacific bought that stock?

1637 Mr. HARRIMAN: I think that statement absolutely covers the whole point.

Mr. KELLOGG: Then it was for the purpose of the control of the Illinois Central——

Mr. HARRIMAN: Does that say that—for the control?

Mr. KELLOGG: Was it for the purpose of the control of the Illinois Central that it bought that stock?

Mr. HARRIMAN: It was to get an influential holding in Illnois Central, and as I have said to the Commission already, I undoubtedly believed that that ownership of the Union Pacific could be used to continue the present management of the Illinois Central?

Mr. KELLOGG: Mr. Harriman, the company bought 281,231 shares of Illinois Central stock at that time, did it not?

Mr. HARRIMAN: If that is the amount. I suppose that is the amount.

Mr. KELLOGG: 30,000 shares of stock from each of you, Mr. Rogers and Mr. Stillman?

Mr. HARRIMAN: Yes, sir.

Mr. KELLOGG: For 175?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: Ex dividend?

Mr. HARRIMAN: That is right.

Mr. KELLOGG: That sale was made on July 19, 1906? or about that time, was it not? That stock is now worth less than 160, is it not?

Mr. HARRIMAN: The market value is apparently less than 160.

Mr. KELLOGG: Was that a pool of stock, 30,000 each from you gentlemen?

Mr. HARRIMAN: I don't remember that.

Mr. KELLOGG: How did you happen to own 30,000 shares each?

Mr. HARRIMAN: Well we had bought it during a long time. We had acquired a certain amount of Illinois Central, bought it in the open market.

Mr. KELLOGG: How long before that had you bought that?

1638 Mr. MILBURN: That comes, I think, within the objection.

Mr. KELLOGG: He volunteered the information that he sold this stock to the Union Pacific. I did not ask him.

Mr. MILBURN: I do not think he volunteered it.

Mr. LOVETT: The record shows you asked him the question.

The CHAIRMAN: He has stated in giving his account of the transaction, that part of the stock of the Illinois Central that the Union Pacific acquired was his stock.

Mr. MILBURN: There is no doubt about that; but that is in the record, and is fully stated, and there is no dispute about it. When we acquired it is another question. That I think is within the range of the objection I have made.

Mr. KELLOGG: Let me ask a few questions in advance of that. Was that a pool?

Mr. MILBURN: I think that is a purely private arrangement. Here are these gentlemen who own these shares of stock in this corporation. The corporation takes the matter up. The ownership is disclosed. The corporation decides to buy. A committee is appointed to fix the price, and the price is fixed. Now I think it is an entirely irrelevant and immaterial matter, entirely in the domain of private business, as to when they acquired that stock or for what they acquired it, or whether they acquired it separately or co-operating together.

Com'r HARLAN: Mr. Milburn, the record shows, as I understand it, that the motion to acquire this stock was made by Mr. Harriman.

Mr. MILBURN: It shows that there was a report made on this matter, not a motion.

Com'r HARLAN: Very well; a report by Mr. Harriman.

Mr. MILBURN: They did not vote on it, and a committee was appointed to fix the price of the stock.

1639 Com'r HARLAN: I understand all that; but the report was made by Mr. Harriman. He was then an officer of the company, and put himself in the position of recommending the company to purchase his stock. Now, do you say that it is not proper for the Commission to know all the details of that transaction? That is, that he can act in one moment, as an officer of the company, and in another moment claim protection against full information as a private citizen?

Mr. MILBURN: I do not think, if the Commissioner will excuse me, that that question is raised here. Here is an officer of a corporation, a director. He is also an individual. Now, there is no concealment, the matter comes before the Board of Directors with respect to a purchase of Illinois Central stock. Here is a director who says "I own these shares of stock," and the company decides it is a good thing to buy them. He says "Because I own them I cannot act on this proposition."

Com'r HARLAN: Mr. Milburn, the facts are all understood. Of course we understand the situation, but I am trying to get the basis of your objection.

Mr. MILBURN: The basis of my objection is that when Mr. Harriman acquired those shares, whether six hours before or sixteen years

before, what he paid for them, whether 178 or 123, is an absolutely immaterial consideration, not interstate commerce, not bearing on any question which this Commission can pass upon.

The CHAIRMAN: You say it has nothing to do with the propriety of the purchase by the Union Pacific?

Mr. MILBURN: The propriety, in what sense, your Honor? I don't think the propriety of a purchase of stock, under the circumstances disclosed here, is a matter of interstate commerce, or is an interstate commerce transaction. It has been acted upon by the directors of this concern. It has been, I dare say, looked through and approved by the stockholders of the Illinois Central.

Mr. SEVERANCE: Not the Illinois Central.

Mr. MILBURN: The Union Pacific.

1640 Com'r LANE: Is not that just one of the weaknesses of your position.

Mr. MILBURN: I do not think my position has any weakness.

Com'r LANE: That is not interstate commerce? In other words, are not all of these transactions in stock practically outside of the railroad business?

Mr. MILBURN: I tried to argue the other day before the Supreme Court that the sale of stock of interstate railroads by citizens of one state to citizens of another state, was interstate commerce, and the Supreme Court passed me by very quickly. They said it was not interstate commerce.

Com'r LANE: Then it is your position, Mr. Milburn, that when an interstate commerce carrier engages in the purchase of the stocks of other interstate commerce carriers, in that transaction it is not an interstate commerce carrier, but may be an investment company?

Mr. MILBURN: Let me divide that, as the actual facts are. The Union Pacific Railroad Company is a railroad corporation. It is also, by the law which creates it, authorized and empowered to invest moneys in the stocks of other corporations. In that sense it is an investment company, if you please. It has that power. Now, if the Union Pacific buys the stock under that power of another railroad corporation, it is not interstate commerce at all. If the Union Pacific Company, as a carrier, as a transporter of property, is acting in an entirely other and different capacity, if any question of interstate transportation arises, in which that road is involved, it arises and is considered and is determined regardless of any condition which exist- with respect to its transactions as an investment company.

Com'r LANE: How do you draw the distinction between the bonds that are issued by the Union Pacific Company for railroad purposes, and bonds issued for investment purposes?

1641 Mr. MILBURN: I do not think it is necessary to draw any distinction. We know what portion of the funds of this company has gone into securities which it has bought, and what portion has gone into the physical property and the development of the physical property. That all appears.

Mr. KELLOGG: How do you know?

Mr. MILBURN: The books show it.

Mr. KELLOGG: The Short Line?

Mr. MILBURN: The books show it. It is shown in the reports to the Commission. If we bought Illinois Central stocks, the books show we bought Illinois Central stock, and the books show how much was paid for it. The books show every dollar that this company has earned from transportation. They show every dollar it has got from dividends. They show every cent that has been spent for any purpose, operation, construction, or maintenance, and therefore the financial transactions of this company can be segregated at any time.

Com'r LANE: But what does it mortgage in order to get the money to invest in the New York Central?

Mr. MILBURN: Whatever it has power to mortgage.

Com'r LANE: It mortgages the interstate commerce railroad does it not?

Mr. MILBURN: But it did not mortgage.

Com'r LANE: It issued convertible bonds, did it not?

Mr. MILBURN: Never with reference to this Illinois Central stock. But suppose it did. It has power to issue securities to mortgage whatever it has for its corporate purposes.

Com'r LANE: Are they not so inter-related, mortgage being placed upon the railroad, which is an interstate commerce carrier, and the result of that mortgage being the purchase of other railroad stock, that money being exclusively used for the building up of the individual property which is mortgaged—are they not so dependent and bound up together that it is impossible for us to segregate between the investment company and the railroad company?

Mr. MILBURN: I do not see any difficulty in segregating.

1642 This Commission, in the exercise of its rare and great function, in determining what are proper rates, if some claim should be made to suspend a rate by reason of losses or burdens resulting from the investment side of this company's operations, would very quickly find a way to say that that was not a factor to take into account in fixing a rate.

Com'r LANE: Let me ask Mr. Harriman a question. Do you fix the rates on the Union Pacific?

Mr. HARRIMAN: No, sir.

Com'r LANE: Does the Board of Directors fix the rates on the Union Pacific?

Mr. HARRIMAN: No, sir.

Com'r LANE: Who fixes the rates?

Mr. HARRIMAN: The traffic manager?

Com'r LANE: The traffic manager?

Mr. HARRIMAN: The various traffic managers.

Com'r LANE: Upon what basis are those rates fixed? Upon the basis of capitalization?

Mr. HARRIMAN: Upon the conditions that exist in the movement of commodities at the time.

Com'r LANE: What does capitalization represent in a railroad?

Mr. HARRIMAN: What do the traffic officers know about capitalization? It is purely a business transaction betwen the shipper and the

carrier, and the traffic officers have to make a rate that will move that traffic, without regard to how much capital there is out on that railroad. I do not suppose there is a traffic officer in the country who takes into consideration what the capital of his railroad is, when he makes a traffic contract.

Com'r LANE: Then do I understand you to say that when a rate is fixed by a traffic direct, that rate is fixed irrespective——

Mr. HARRIMAN: Or a traffic manager, or a freight agent.

Com'r LANE: Or a traffic manager or a freight agent—that that rate is fixed independent of the return it will yield upon the capital.

1643 Mr. HARRIMAN: I believe that is absolutely so.

Com'r LANE: So that capitalization, when we come to the fixing of a rate, has absolutely nothing whatever to do with it?

Mr. HARRIMAN: It has, in a general way, but in the general management from day to day of the railroad, the traffic men know little or nothing about the capitalization of the road. They have to make their contracts to move the traffic under the conditions that then exist, and make a rate that will move it.

Com'r LANE: Are we justified, then, in excluding from consideration——

Mr. HARRIMAN: I don't believe you are.

Com'r LANE: In the making of a rate?

Mr. HARRIMAN: I don't believe you are, in regulating the rates generally.

Com'r LANE: Now, what does capitalization represent?

Mr. HARRIMAN: It represents the investment in the property.

Com'r LANE: The investment in the property?

Mr. HARRIMAN: Yes, sir.

Com'r LANE: Do you mean to say, then, that the capitalization represents the actual value of the property in use for transportation purposes?

Mr. HARRIMAN: Well, the actual value of the whole property, whether it is actually in use for the specific purpose of moving traffic from one point to another. I don't quite catch what you mean.

Com'r LANE: I mean, is it the property that is actually used as a railroad property, or is it all of the properties that the railroad company may have, or is capitalization based upon earnings?

Mr. HARRIMAN: It is very largely both. I don't quite catch it yet.

Com'r LANE: What is the basis upon which you capitalized the Union Pacific Railroad Company?

Mr. HARRIMAN: I didn't capitalize the Union Pacific Railroad Company.

1644 Com'r LANE: You added $100,000,000 of convertible bonds, did you not?

Mr. HARRIMAN: Yes, for a specific purpose.

Com'r LANE: What was that purpose?

Mr. HARRIMAN: To purchase the Southern Pacific and the Northern Pacific.

Com'r LANE: You did that upon the basis of the earnings of the Union Pacific, did you not?

Mr. HARRIMAN: That was the basis of the credit of the Union Pacific, that it could continue to pay interest on those bonds even if it had to stop paying dividends on its stock.

Com'r LANE: You found it was possible to extend that credit $100,000,000 more than it had been theretofore.

Mr. HARRIMAN: Yes; and it might have jeopardized the dividends on the Union Pacific stock itself. That is, we subrogated the stock to the bonds. If the Northern Pacific and the Southern Pacific had made no returns from their stock, no dividends, the income of the Union Pacific would have had to be used to pay the interest on those bonds, and to that extent it would have had to be deducted from the amount available to pay dividends on its stock.

Com'r LANE: But as a matter of fact, that event did not transpire?

Mr. HARRIMAN: That event did not transpire in this instance.

Com'r LANE: You did take the $100,000,000, or a portion of it, and you bought the Southern Pacific, a competing line?

Mr. HARRIMAN: No, a connecting line.

Com'r LANE: You object to the word "competing"?

Mr. HARRIMAN: I do, absolutely.

Com'r LANE: You bought the Southern Pacific. Now, it was by virtue of the Union Pacific's revenue and ability to earn that you did that.

Mr. HARRIMAN: The credit of the Union Pacific, based on its earnings.

1645 Com'r LANE: Its earnings were based, in turn, upon its receipts, were they not?

Mr. HARRIMAN: Upon its traffic.

Com'r LANE: So that by the raising of rates, you could increase the returns of the Union Pacific?

Mr. HARRIMAN: But that never has happened.

Com'r LANE: Or by the lowering of rates you might lower the returns of the Union Pacific?

Mr. HARRIMAN: Yes. We had $200,000,000 of stock behind these bonds, on which we were paying dividends, preferred stock and common stock, $100,000,000 of each. Therefore, in so far as we issued those bonds, we jeopardized the dividends that might be paid on those stocks.

Com'r LANE: Now, if you uphold rates, hold your rates high and get a large return from the Union Pacific, and by virtue of that large return from the Union Pacific, showing a large earning, you are enabled to higher capitalize the Union Pacific and borrow more money upon it, and by borrowing more money are able to reach out and buy other railroads, then fundamentally it is upon the basis of the rate you are fixing on the Union Pacific?

Mr. HARRIMAN: Not altogether. It is also on the basis of the returns which we may receive from the investment in those other securities. It is not altogether the rates on the Union Pacific. For instance, what is going to become of the six and a half million dollars income which we receive from the investments in these stocks,

which has already been shown, and which goes into the treasury of the Union Pacific? It doesn't come from its traffic.

Com'r LANE: I would like your opinion upon this, Mr. Harriman: Why should the Union Pacific, as a railroad, be empowered or have the right, out of its credit as a railroad, to buy other railroads?

Mr. HARRIMAN: It depends upon what that other railroad is?

Com'r LANE: No, it does not.

Mr. MILBURN: That, the State has conferred.

1646 Com'r LANE: There is no man more eminent than Mr. Harriman in the railroad world, and I would like to get his judgment on that proposition.

Mr. HARRIMAN: Mr. Lane, it is a pretty broad question and pretty hard to answer it offhand. It would require a great deal of deep thought. If we had not had the power to buy the Southern Pacific with the credit of the Union Pacific, the territory of the Southern Pacific would have been ten years behind what it is now. If we had acquired the Northern Pacific, the Northern Pacific territory would have been ten years ahead of what it is now.

Com'r LANE: Then you think also, if you acquired the Santa Fe, you might improve that?

Mr. HARRIMAN: That is a very different question. I believe we could. I believe under proper regulation and proper statutes, which would enable railroads to combine and establish lines upon which traffic could be moved at the least cost, we could reduce our rates; but just so long as we are prohibited by law from agreeing among ourselves without the danger of being sent to State prison, you have this chaos that now exists. Just as soon as we can get laws that will enable us to combine and establish these lines, so that we can conduct the traffic on the lines of least resistance, at the least cost, we will then be able to reduce the charge, and also to increase wages or to stand the increase in wages, and not before.

Com'r LANE: Do I understand your reasoning to be this; that inasmuch as there is some law which prevents your combining with other railroads, you, upon the strength of the earnings of one railroad, will extend and buy other railroads?

Mr. HARRIMAN: I didn't say we couldn't combine. We could not have consolidated with the Southern Pacific without acquiring all its stock, and there might have been a doubt about our being able to consolidate. We could not consolidate with the Northern Pacific without acquiring all its stock. We had to have the action of the stockholders.

1647 Com'r LANE: What is the law that you would want that would bring about this beneficial result?

Mr. HARRIMAN: A law that would enable corporations to make contracts between themselves under proper regulations, just the same as individuals have the right to make contracts; contracts that would be standing and enforceable for a long term of years, so that it would enable railroads to establish these lines upon which traffic could be moved at least cost, taking various parts of the lines as they now exist. If there had been such a right, the purchase of the Burling-

ton by the Northern Pacific and the Great Northern might not have taken place.

Com'r LANE: Would the purchase of the Southern Pacific by the Union Pacific have taken place?

Mr. HARRIMAN: It might not have. We might have made a contract between the Southern Pacific and the Union Pacific for the use of the Southern Pacific lines, so far as they were necessary, and absolutely necessary.

Com'r LANE: What competition would there then be between railroad lines?

Mr. HARRIMAN: As I said it should be under proper regulation. I do not think that it is to the advantage of the business interests of this country to force business around upon improvident up and down-hill lines, where there is a straighter and more economical line to be used. I do not mean to say that no business ought to be allowed to go over that line, because there are other conditions sometimes when the less fortunate line can do business to better advantage and at less cost; that is, in filling out its trains. But there should be some law—and I think the President of the United States had that in mind when he sent his Message to Congress last December; I do not remember his exact language—that there should be, under some proper control, a change in the laws which would enable contracts to be made between railroads.

Com'r LANE: As a matter of fact, there are perhaps 226,000 miles of railroad in the United States. Are there 2,000 miles that
1648 you know of that are actually competing in rates?

Mr. HARRIMAN: I think every mile is.

Com'r LANE: You know all the rates are made by bureaus, and after consultation between each other?

Mr. HARRIMAN: I don't know that. I know this, that in the struggle for business, the traffic managers of the railroads try to fill out their trains, and they take the business at the best terms they can get, as a rule, in order to do that. That is true even in your local business, that is competitive business. There is not a point on the Union Pacific Railroad that is not competing with a point on the Atchison road—that is, situated under the same conditions, although they may be 200 or 300 miles apart. If we are going to develop the traffic and the industries along our transportation lines, we have got to give the same service that exists at similar points on another railroad, or better service, no matter whether it is local or not.

Com'r LANE: There are two points in your examination to which I wish to refer. One is that capitalization itself doe t control and should not control in the fixing of a rate?

Mr. HARRIMAN: Not altogether.

Com'r LANE: The second proposition is the question of the right of a railroad to use its profits, after it has paid dividends to its stockholders, to acquire other railroads.

Mr. HARRIMAN: I don't think that is quite the position, as you put it a little while ago.

Com'r LANE: That is the question.

Mr. HARRIMAN: I don't think the railroads ought to use their

profits to that extent. They ought to use those profits for the purpose of improving the lines they already have, or else, in building up the business of a railroad which they might acquire, they might use their profits on one line to improve the business of the other. It is to develop the business and develop the territory, no matter what line you put it on. For instance, the acquisition of the
1649 Southern Pacific by the Union Pacific; and the credit of the Union Pacific at that time enabled the Union Pacific to lend the Southern Pacific $20,000,000, or thereabouts, quickly, and make the improvements quickly. If you are interested in it, I would like to show you some time the maps which were submitted when the improvements on the Union Pacific were first started, and the maps that were submitted to the Board of Directors of the Southern Pacific when it was first started. I think it would be quite an object lesson to you to know how these things are begun, and what they end in.

Com'r LANE: The point I was getting at originally was the point of the interdependence of the rate and the return the earnings of the road and the rate, and the use by the Union Pacific of a return upon freight rates for the purchase of stocks in another company as an investment.

Mr. HARRIMAN: I don't think that condition ever has existed.

Com'r LANE: You don't think it has.

Mr. HARRIMAN: No, I don't think it ever has.

Com'r LANE: Was it the credit of the Union Pacific that enabled you to go out and purchase this Northern Pacific stock?

Mr. HARRIMAN: Yes, and we——

Com'r LANE: Supposing at this time, instead of taking $100,000,000 of credit that you had cut down your rates and given the money back that way to the people, or that you had increased wages or had increased your dividends to your stockholders?

Mr. HARRIMAN: Yes, but the purpose that we had was to acquire contributed business to the Union Pacific from other lines.

Com'r LANE: That is just the proposition; then you made these connections because of the benefit there would be in the connections themselves?

Mr. HARRIMAN: In the connections themselves.

Com'r LANE: And one of the elements in making that connection was that you could control the rates of other competitors?

1650 Mr. HARRIMAN: No, it was to enable us to go into the territory, that would enable us to open territory tributary to the Union Pacific and the Southern Pacific. For instance, in the Northern Pacific, if we had obtained control of the Northern Pacific, as we ought to, we would have opened the whole Washington and Oregon territory to the 15,000 or 16,000 miles of the Southern and Union Pacific, which we are now shut out of, and we have no joint rates—we are shut out of it absolutely, and the section served by those lines in shut off from direct communication and interchange of business with most of the territory north of the Columbia River.

Com'r CLEMENTS: One question, in view of the serious charges you have made in regard to Mr. Fish.

Mr. HARRIMAN: I have not made any charges. I have only stated facts. I do not want to be put in the position of making charges.

Com'r CLEMENTS: In view of the alleged facts which you have stated in regard to his conduct to the effect that he had misused his trust as president——

Mr. HARRIMAN: That is what we thought.

Com'r CLEMENTS (continuing): Of the Illinois Central Railroad Company to promote his own private personal gain. Don't you think it is due in all candor to the commission and to yourself as well, that you withdraw your objection and make a full disclosure as to your own interest in the stocks and securities——

Mr. HARRIMAN: It is not a like condition.

Com'r CLEMENTS: And that went to the Union Pacific?

Mr. HARRIMAN: It is not a like condition. The funds of the Union Pacific have never been used by any director for their own personal benefit.

Com'r CLEMENTS: That may be a question of conclusion. Don't you think you ought to disclose the facts, so that the Commission and others interested in the matter may judge.

Mr. HARRIMAN: I refer you to Mr. Milburn: It is a question of principle pure and simple.

1651 The CHAIRMAN: We are required to disclose, under the law, and I think the responsibility will have to rest on Mr. Harriman in a matter of this sort—he can speak for himself.

Mr. MILBURN: He is speaking for himself.

The CHAIRMAN: Mr. Kellogg, to go back to the point from which we started, it appears that Mr. Harriman states that part of the Illinois Central stock purchased by Union Pacific was his, and you were understood to ask him when he acquired it and at what price.

Mr. KELLOGG: Will the reporter read the question?

The CHAIRMAN: Isn't it easier to renew the question than to go back to the original one?

Mr. KELLOGG: Yes. I ask Mr. Harriman if the 30,000 shares sold to the Union Pacific by himself, Mr. Rogers and Mr. Stillman, was pooled—or if there was a pool which acquired that stock?

Mr. MILBURN: I object to that on the grounds stated.

The CHAIRMAN: What was the amount of Illinois Central stock which was purchased by the Union Pacific?

Mr. KELLOGG: 90,000 shares, from those three gentlemen.

Mr. HARRIMAN: That was part of the 280,000 shares that were purchased, that was disclosed and so stated at the time?

The CHAIRMAN: Then the fact that he owned it, and the amount of their present holdings, including the Union Pacific purchases in Illinois Central appear?

Mr. KELLOGG: Yes, sir.

Mr. MILBURN: Thas is disclosed by the record.

The CHAIRMAN: Now, your question is when they acquired it and the price at which they acquired it?

Mr. KELLOGG: I will ask it again. I want to follow it up with other questions. Mr. Harriman, was that stock acquired by a pool of you three gentlemen?

Mr. MILBURN: I object to that question on the grounds stated.

Mr. KELLOGG: I submit it.

The CHAIRMAN: We think the witness should answer.

1652 Mr. MILBURN: The record will take the same course.

The CHAIRMAN: It appears your objections were renewed without repeating them, they are overruled and the Commission directs the witness to answer; he refuses to do so, for the reason stated.

Mr. HARRIMAN: I take the same position.

Mr. KELLOGG: Was it acquired with the view of selling it to the Union Pacific?

Mr. MILBURN: Same objection.

Mr. KELLOGG: Do you decline to answer it?

Mr. HARRIMAN: It takes the same course exactly, each one of these questions.

The CHAIRMAN: Let us distinctly understand.

Mr. HARRIMAN: Yes, absolutely.

The CHAIRMAN: You decline to answer whether that stock was acquired by you.

Mr. HARRIMAN: I decline by request of counsel.

The CHAIRMAN: For the purpose of selling it to the Union Pacific.

Mr. MILBURN: If it could be put, so far as Mr. Harriman's reply is concerned, that he declines to answer on the grounds stated by counsel——

The CHAIRMAN: There is no objection to that.

Mr. SEVERANCE: That is all right. I wanted to be sure the reporter had the record straight.

The CHAIRMAN: We understand that Mr. Harriman is asked now whether he acquired that stock for the purpose of selling it to the Union Pacific?

Mr. KELLOGG: Yes.

The CHAIRMAN: Objection is made; the objections are overruled, and Mr. Harriman is directed to answer, and still declines to make reply on the grounds already stated.

Mr. HARRIMAN: Under the same record as before.

Mr. KELLOGG: Was that stock purchased by you or any part of it, at a much lower price than $175 a share, with the intention of turning it over to the Union Pacific?

Mr. MILBURN: Same objection.

1653 The CHAIRMAN: Same ruling and same direction to the witness to answer.

Mr. MILBURN: Same answer by the witness.

Mr. HARRIMAN: Mr. Kellogg, do you want to ask me any other question on that subject?

Mr. KELLOGG: Just a moment, yes, sir. Did you have any interest in the 105,000 shares which were sold at the same time by Kuhn, Loeb & Co. to the Union Pacific?

Mr. MILBURN: Same objection.

Mr. KELLOGG: Do you decline to answer it?

Mr. HARRIMAN: It takes the same course.

Mr. KELLOGG: Was that acquired by a syndicate or pool for the purpose of selling it to the Union Pacific?

Mr. MILBURN: Same objection.

The CHAIRMAN: As before, the record will show the objection, overruled, and the witness declines to answer.

Mr. HARRIMAN: It takes the same course as before, to save time.

The CHAIRMAN: Are you about to take up some other line of inquiry?

Mr. KELLOGG: Yes.

The CHAIRMAN: Then we will suspend at this point until 2 o'clock.

Mr. HARRIMAN: I will say one word. I believe when Union Pacific purchased Illinois Central stock that it could have been sold at a higher price to other parties, and I believe now that if Union Pacific wished to dispose of it, it could sell it at at least the price it paid for it, if not higher. That is all I want to say.

Recess until 2 p. m.

1654 After Recess.

The CHAIRMAN: Proceed, Mr. Kellogg.

Mr. KELLOGG: Mr. Harriman, take the stand.

EDWARD H. HARRIMAN, resumed.

By Mr. KELLOGG:

Mr. KELLOGG: You stated that in your opinion the Northern Pacific Railroad would be ten years ahead if you had got control of it, as you ought to have done.

Mr. HARRIMAN: I did not mean to open up that vista, but as long as you have done it, perhaps I had better explain.

Mr. KELLOGG: All right.

Mr. HARRIMAN: I believe that the territory—that is, the rest of the country—the territories tributary to other railroads would have been opened to the use—for intercommunication I might say, to the territory served by the Northern Pacific. I believe the improvements on the Northern Pacific would have been more drastic, that their equipment and motive power would have been increased more rapidly, and I believe, more intelligently.

Mr. KELLOGG: Well——

Mr. HARRIMAN: I understand—I am told now that the Northern Pacific has got—is unable to move the traffic tributary to it, and that a large part of its motive power—excuse me, not a large part of its motive power, but a considerable part of its motive power is out of service, because of not being in proper condition.

Mr. KELLOGG: Well, there is a good deal of blockade of freight all over the country, isn't there?

Mr. HARRIMAN: Do you want to defend the Northern Pacific?

Mr. KELLOGG: No, I want to see if they are not all alike, that is all.

Mr. HARRIMAN: I have no doubt there is some freight congestion.

M. KELLOGG: You may be quite right.

1655 Mr. HARRIMAN: Yes.

Mr. KELLOGG: The public is interested primarily in the rates and next in the service, is it not?

Mr. HARRIMAN: Yes, and so are the carriers.

Mr. KELLOGG: That is right; their interest should be mutual. Then I judge if you think the Union Pacific has been better managed—and I have no doubt it has been well managed—that it has given better service and at better rates.

Mr. HARRIMAN: No, I will say this, that it has developed its lines quicker, and to better advantage than the other lines north of it or south of it.

Mr. KELLOGG: Do you undertake to say it has given better rates than other Trans-continental lines?

Mr. HARRIMAN: You are going to try to show that we charge higher rates?

Mr. KELLOGG: I will try to show—let us see.

Mr. HARRIMAN: I will explain the whole thing. The traffic of the Union Pacific and the Southern Pacific is more diversified than the lines north or between them; in other words, the commodities carried by the Union Pacific are of a higher class than those carried by the Northern Pacific or the Great Northern. The figures I have in my mind now—I don't remember about the Northern Pacific, but I believe that nearly 75 per cent. of the traffic on the Great Northern is either the products of the mines or lumber, the products of the forest, and only a little over fifty per cent. of the commodities of the Union Pacific are of the same character; therefore the rate on the Union Pacific, the average rate is being computed, that ought to be taken into consideration.

Mr. KELLOGG: Very well. Now, is it a fact that in ten years from 1896, in 1906, the rates of the Union Pacific have not been reduced at all, or at least, to any appreciable extent.

Mr. HARRIMAN: I think about seventeen per cent.

Mr. KELLOGG: I have had made up——

Mr. HARRIMAN: I am not talking about ten years; I am talking about since we have had it.

1656 Mr. KELLOGG: Yes. I have a statement which shows the rate per ton per mile on the Union Pacific Road each year from 1896 to and including 1906, and it shows——

Mr. HARRIMAN: Let me see it, will you?

Mr. KELLOGG: Yes, sir; I will, when I complete the question. That in 1896 the rate per ton per mile was substantially .95 of a cent, and 1906 it was substantially .92 of a cent.

Mr. HARRIMAN: Have you got the Union Pacific proper or the Union Pacific system?

Mr. KELLOGG: The Union Pacific proper, I suppose.

Com'r CLEMENTS: By whom was that *repaired?*

Mr KELLOGG: By that statistician of the Interstate Commerce Commission from the reports of the Union Pacific Railroad. And that for a number of years after 1896 and down to 1905, the rates on the Union Pacific were increased.

Mr. HARRIMAN: They were increased up to 1901, and decreased

from that right down to 1906. In other words, through 1900 and 1901, they were over a cent a ton a mile and 1.5 cents, and in 1906, .924 cents.

Mr. KELLOGG: But they were higher in 1903 and 1904 than they were in 1906, were they not?

Mr. HARRIMAN: Yes, they were higher in 1902, 1903 and 1904 than they were in 1906. You have 2900 miles; I don't know what this refers to. There is only 1800 miles in 1896, 1897 and 1898, and then it increases to 2900 miles and 3000 miles from 1900 on, so that you are including some of the Short Line with it.

Mr. KELLOGG: I am not including the Short Line or the Oregon Navigation Company.

Mr. HARRIMAN: Yes, but you take 1899, the rate on the Union Pacific, as you have it here for 2848 miles, was 1.16 cents.

Mr. KELLOGG: Yes.

Mr. HARRIMAN: And in 1906, it was .924 cents.

Mr. KELLOGG: Yes.

1657 Mr. HARRIMAN: In other words, it was reduced from more than a cent a ton a mile to less than a cent a ton a mile.

Mr. KELLOGG: But it had increased after 1896.

Mr. HARRIMAN: I was not managing the road in 1896.

Mr. KELLOGG: When did you commence?

Mr. HARRIMAN: In the spring of 1898.

Mr. KELLOGG: In the spring of 1898?

Mr. HARRIMAN: That was on 1848 or 1849 miles of road, and now you have interjected 1000 miles more; I don't know what that thousand miles was.

Mr. KELLOGG: I do not. They were made up from your reports.

Mr. HARRIMAN: Well, you can make figures appear any way you please, but in 1899 is the year you begin with 2800 miles of road; compare that with 1906 and it shows about fifteen per cent. higher in 1899 than in 1906. That may have changed also by the commodities carried, whether they were a higher class of commodity, or a low class of commodity.

Mr. KELLOGG: Well, that statement was put in evidence last January when Mr. Mahl or Mr. Millar was on the stand, I have forgotten which, and no one has questioned it since. It comes from the statistician of the Interstate Commerce Commission.

Mr. HARRIMAN: Well, it shows they have been reduced from the same mileage.

Mr. KELLOGG: But for four or five years, yes, six years after you had the management of the Union Pacific, its rates were higher than they were in 1896, were they not?

Mr. HARRIMAN: Well, that is——

Mr. KELLOGG: If those figures are correct.

Mr. HARRIMAN: Now, you cannot say those figures are correct in comparing 1800 miles of road to 2800. What is that thousand miles, do you know?

A VOICE: I suppose it includes some of the branch lines.

1658 Mr. HARRIMAN: Of course the branch line service, the rates are higher there than on the main line. That probably accounts for it.

Mr. KELLOGG: Let us take the Southern Pacific. You became connected with the management at what time—in 1901 wasn't it?

Mr. HARRIMAN: I think it was.

Mr. KELLOGG: The rates on the Southern Pacific in 1901, when you became the manager of the road were .93 of a cent per ton per mile, and in 1906, 1.10 cents per ton per mile. Is that due to your management, or due to the management of the Union Pacific, or is it due to the joint control, the elimination of competition?

Mr. HARRIMAN: Well, here you have it again, Mr. Kellogg. In 1901 the rate was .932 of a cent, that is the first year.

Mr. KELLOGG: Yes.

Mr. HARRIMAN: The next year they went to .925 of a cent. I was still in control, as you say, and the next year they went to .888 and the next year to .898, and then the next year they went up to over a cent, and the next year it was 1.10 cents. Now there are additions there, a couple of hundred miles of road added to it; those are probably branch lines. You cannot tell whether that was because of the increase in high class commodities. We have had a very large increase in the shipment of fast trains carrying fruit.

Mr. KELLOGG: Well——

Mr. HARRIMAN: Those are matters which you have got to consider; you have got to take in the class of business that one road does in comparing it with either former years, or with the traffic of other roads.

Mr. KELLOGG: But the mileage operated in 1896 was fourteen miles less than in 1905, was it not, and the rates were increased?

Mr. HARRIMAN: Oh, well, they were practically the same.

Mr. KELLOGG: The last three or four years the mileage was practically the same, wasn't it?

1659 Mr. HARRIMAN: No, I don't know that it was. For instance, that jump—I don't know why these mileages have changed, 5200 miles in 1902 to 5400 in 1906. The rates in 1905 and 1906 are practically the same.

Mr. LOVETT: What is the mileage given?

Mr. HARRIMAN: 5406 miles in 1906.

Mr. KELLOGG: What is it in 1905?

Mr. HARRIMAN: 5400 miles.

Mr. KELLOGG: And in 1904?

Mr. HARRIMAN: 5412 miles.

Mr. KELLOGG: So those three years, the mileage was substantially the same?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: What was the rate per ton per mile those three years?

Mr. HARRIMAN: I will begin in 1903, .888. .898. Then in 1905 it jumped to a cent. Now I cannot tell you why.

Mr. KELLOGG: Well, you would not think, Mr. Harriman——

Mr. HARRIMAN: It may be in the class of commodities.

Mr. KELLOGG (continuing): That on the Southern Pacific road, then, there had been any decrease in rates since the control of it by the Union Pacific, would you?

Mr. HARRIMAN: Well, there were decreases and increases again.

Mr. KELLOGG: But they are higher now than they have ever been before, except back in 1896, is not that true?

Mr. HARRIMAN: Is that so? What were they in 1906?

Mr. KELLOGG: Substantially the same, 1.12, and 1.10 now.

Mr. HARRIMAN: Yes, that may be right.

Mr. KELLOGG: Now, is it not a fact that the Union Pacific, controlling the Southern Pacific, the same management, the same control, the same traffic official, president, boards of directors,
1650 the same stock ownership to the extent of forty-five per cent. of it, that all inducement to competition has been taken away, and the rates have been increased?

Mr. HARRIMAN: I think not.

Mr. KELLOGG: You do not think so?

Mr. HARRIMAN: I think not.

Mr. KELLOGG: Then you think consolidation or joint ownership in the same interest does not tend to stiffen the rates or put them up?

Mr. HARRIMAN: Not necessarily.

Mr. KELLOGG: It takes away all inducement to reduce them, doesn't it?

Mr. HARRIMAN: Wait a minute. You have got to go into the details of the business. Let us take Atchison, for instance.

Mr KELLOGG: All right; let us take the Atchison. The Atchison, Topeka & Santa Fe, its rate per ton per mile in 1896 was 1.02 cents per ton per mile; in 1906 it was .89 of a cent.

Mr. HARRIMAN: How could the Southern Pacific maintain a rate higher than the Atchison and get any business? It is the Southern Pacific and Atchison you have got to compare and not the Union Pacific.

Mr. KELLOGG: But it did maintain a higher rate.

Mr. HARRIMAN: That is just the point. You will find that the Atchison Road has developed a traffic of low class commodities, lumber and products of mines, while the Southern Pacific has probably developed a traffic of merchandise and higher class products of the farm and fruits, and that sort of thing.

Mr. KELLOGG: In spite of the rate per ton per mile on the Union Pacific, remaining substantially the same as it was ten years ago, its gross earnings have doubled and its net earnings have more than doubled per mile of road, is not that true?

Mr. HARRIMAN: I should think very likely it was.

Mr. KELLOGG: Now, is it not a fact that substantially all over the United States, except in the Union Pacific and Southern Pacific territory, where there is no competition, the rates have decreased.

1661 Mr. HARRIMAN: I cannot consent to that.

Mr. KELLOGG: You cannot consent to it?

Mr. HARRIMAN: No, I cannot consent to it.

Mr. KELLOGG: If it was true, you could consent to it, couldn't you?

Mr. HARRIMAN: Certainly, but I don't think it is.

Mr. KELLOGG: Take the Atchison. You admit the Atchison has

decreased its rate per ton per mile more than the Southern and Union Pacific?

Mr. HARRIMAN: Absolutely.

Mr. KELLOGG: Let us take the Northern Pacific first. The Northern Pacific rate per ton per mile in 1895 was 1.13 cents?

Mr. HARRIMAN: Yes, and now it is lower, and if they would let us take some of that lumber that they cannot carry themselves, we would show an average rate much less than we do now.

Mr. KELLOGG: Its rate is .82 of a cent?

Mr. HARRIMAN: That is true, but they are carrying more lumber on long hauls, from Washington to the markets in the Eastern States or Middle States, I might say, and if we could get some of that traffic which we hope to get and would have gotten if we had obtained control of the Northern Pacific, we would have opened our territory to those products and the rates on those would have been materially less than the higher class traffic we now carry, and to that extent the average rate per ton per mile on the Union Pacific would have been reduced.

Mr. KELLOGG: That is, you would have reduced the rates on the Northern Pacific faster than they did?

Mr. HARRIMAN: I think very likely, and I do not believe you will find the products of the farm, the rates on products of the farm on the Northern Pacific or Great Northern are less than they are on the Union Pacific.

Com'r LANE: Why cannot you get some of that Puget Sound lumber?

Mr. HARRIMAN: Because we have no lines running there.

1662 Com'r LANE: Why can't you make a joint rate with the Northern Pacific?

Mr. HARRIMAN: Because they won't do it.

Com'r LANE: Why can't you require it?

Mr. HARRIMAN: That is the question I would like to have decided.

Com'r LANE: There is power in the Commission to make a joint route and joint rate.

Mr. HARRIMAN: You might take it up, and I am quite interested, if the Commission have it on their minds to open up the line as fast as possible, but they have closed the gateway in every instance.

Com'r LANE: We found that the Sacramento gateway was closed from Portland around to Sacramento.

Mr. HARRIMAN: Yes. Nobody would have ever thought any business would have been done at Sacramento around by the way of Portland.

Com'r LANE: Well, there was some competitive business.

Mr. HARRIMAN: It would not amount to anything, it would not have been a fleabite.

Mr. KELLOGG: Take the Canadian Pacific.

Mr. HARRIMAN: There you have got it again; you are in a different territory. What are the grain rates on the Canadian Pacific for like distances as compared with the Union Pacific?

Mr. KELLOGG: I don't know.

Mr. HARRIMAN: What are the conditions on the Canadian Pa-

cific as compared with the Union Pacific. What do they have to pay for fuel and labor? Everything else is in a very different condition from any railroad in the United States. If we could have the same control of our management that the Canadian Pacific have, and the same cost for material and labor, I think we could probably operate our lines for less cost and less charge.

Mr. KELLOGG: Well, will you name some transcontinental line which you consider a fair comparison with the Union Pacific on the question of rates?

Mr. HARRIMAN: I do not believe there is one.

1353 Mr. KELLOGG: You think they are entitled to higher rates than any of them?

Mr. HARRIMAN: No, I do not. I think they are charging the same rates, and possibly less for like commodities.

Mr. KELLOGG: Is it not a fact that the Southern Pacific and Santa Fe and Union Pacific traffic is largely the same class?

Mr. HARRIMAN: Not exactly the same.

Mr. KELLOGG: Not exactly the same, but it is largely the same class?

Mr. HARRIMAN: The Atchison has developed a very large business on lumber and coal on their eastern lines more than we have, and more than the Southern Pacific has, but you will find that we charge no higher rate for the movement of the products of California to the markets in the east than the Atchison does. You will find we charge no higher for like commodities at any local points than the Atchison does, or Northern Pacific, or Great Northern.

Mr. KELLOGG: Your rate per ton per mile is higher on your system than any one of them, and yours is the only one that has not been decreased; therefore I want to know whether it was due to superior management or whether it was——

Mr. HARRIMAN: You have got in there, which is also shown by the Union Pacific, the fact that we have a lot of branch lines, and the rate on the branch line service is higher than on the main line.

Mr. KELLOGG: I have not included it on the Southern Pacific.

Mr. HARRIMAN: The Southern Pacific has not so many branch lines; it has a higher class of traffic than the Atchison or any other transcontinental lines other than the Union Pacific.

Mr. LOVETT: In that connection, they both have a very much larger business?

Mr. HARRIMAN: Yes, and their rates on their local business are relatively of the same parity with local rates on any other

1354 line. They could not be any higher, and possibly because we have developed more local business, our rates may be lower; I don't know; it may be our local rates are compared with local rates on other lines are lower, and that is the reason we have developed more local traffic.

Mr. KELLOGG: While I am looking up the matter, I would like Mr. Severance to ask some questions about three or four matters that occurred out west, that I don't know about.

Mr. SEVERANCE: You want to make a statement with reference to the ownership of the Mongolia and Manchuria.

Mr. HARRIMAN: As I remember it, the president of the Pacific Mail Steamship Company stated——

Mr. SEVERANCE: The vice-president; the president is here.

Mr. HARRIMAN: The president is now stating it. The vice-president of the Pacific Mail Steamship Company stated in his testimony in San Francisco that the ownership of the Mongolia & Manchuria were in my name or belonged to me, and that the money paid for the rental of those steamers was sent to me. Now, that was reported here in the New York papers as being a fact, and in fact one of the papers wrote—went to the trouble of writing an editorial showing that I was using my official position to further my own personal benefit.

Now, the fact is—and I believe it was shown in that—at that time—but not reported here in the New York papers—I believe at the same hearing—that the beneficial ownership of those boats was in the Oregon Short Line, and had been immediately assigned to me by the Oregon Short Line, and that the rental for those ships was paid to the Oregon Short Line. The ships were taken in my name for the purpose of convenience when we negotiated for the purchase of them. They were partly completed, and Mr. Schwerin came to me with the statement that if the Pacific Mail was to take the title to those ships, that I would have to give a personal
1655 guarantee. Now, I did not think that I was called upon to give a personal guarantee, and another thing, the Pacific Mail was largely in debt then for vessels already constructed, and so I decided to take the ships in my own name in order to hasten the closing of the negotiations and the changes in the boats which had to be made; they were partly constructed, and they had to be changed to suit our trade. They have always been held in the interest of the Oregon Short Line; the annual reports of the Oregon Short Line show their ownership and show the rental which was received for them.

Mr. SEVERANCE: Who fixed that rental, Mr. Harriman?

Mr. HARRIMAN: It was a matter between myself and Mr. Schwerin as being a fair rental for the risk and amount involved.

Mr. SEVERANCE: And Mr. Schwerin is vice-president of the Pacific Mail?

Mr. HARRIMAN: Yes, and I am the president of the Oregon Short Line. It was not a very important——

Mr. SEVERANCE: You are president of the Pacific Mail, but not as president of the Pacific Mail, but divorcing yourself, as president of the Short Line, you made the trade?

Mr. HARRIMAN: It was not a very important transaction.

Mr. SEVERANCE: Only involved four or five million dollars in ships, did it?

Mr. HARRIMAN: It amounted to over five million dollars in the purchase, but I thought you had reference to the rental.

Mr. SEVERANCE: That rental was fixed between Mr. Schwerin and yourself, and at the time you were president of both the Oregon Short Line and the Pacific Mail?

Mr. HARRIMAN: I undoubtedly was.

Mr. SEVERANCE: And you took the advice of your vice-president as to what would be fair from the standpoint of the Pacific Mail?

Mr. HARRIMAN: Not exactly that. It was a matter of
1665 what would be fair to the Oregon Short Line for the risk and amount involved.

Mr. SEVERANCE: You bought those ships before you had any specific authority to do it from the Short Line?

Mr. HARRIMAN: Absolutely. It was one of those things you had to do sometimes. Mr. Schwerin did not know that—I told him when we found there was a complication about taking the title to the ships—I said "You take them right in my name."

Mr. SEVERANCE: You afterwards reported that to the executive committee of the Short Line, and it was approved as it appeared on the record?

Mr. HARRIMAN: Yes, we had a right to get the ships.

Mr. SEVERANCE: Now, one other matter Judge Lovett wanted me to ask you—You never had any personal interest in the matter?

Mr. HARRIMAN: In what?

Mr. SEVERANCE: In those ships?

Mr. HARRIMAN: Not a bit.

Mr. SEVERANCE: You bought them, and the Short Line——

Mr. HARRIMAN: They were turned over exactly at what they cost—and the contract was assigned to them, I guess.

Mr. SEVERANCE: At the time we were taking testimony in Portland, Ore., it appeared that the Northern Pacific and Great Northern roads jointly were building a line into Portland, commonly known in that country as the North Bank Route. You have heard that?

Mr. HARRIMAN: Yes.

Mr. SEVERANCE: And it also appeared that some one of your companies—no one there seemed to know which one, or whether it was yourself individually, had been doing what could be done perhaps to obstruct the building of that road, by trouble over rights of way and injunction suits and various things. Will you kindly tell us which one of your corporations it was that was interested?

1667 Mr. HARRIMAN: I think the records show that. You will have to go to somebody else about that.

Mr. SEVERANCE: You don't know?

Mr. HARRIMAN: They conduct those matters out in that territory, and they are doing what they can to protect our interests there. No, I could not tell you.

Mr. SEVERANCE: Nobody there seemed to know.

Mr. HARRIMAN: If they do not, I do not, because it is all in their hands.

Mr. SEVERANCE: And you don't know, then at whose instance that was done, or anything about it?

Mr. HARRIMAN: Well, I cannot say I don't know anything about it. I know in a general way that there is a corporation out there that has had some interest on the north bank of the Columbia River.

Mr. SEVERANCE: Who owns the stock of that corporation?

Mr. HARRIMAN: I could not tell you.

Mr. SEVERANCE: Is it one of the companies that you are president of?

Mr. HARRIMAN: I am not sure; I could not tell you that.

Mr. SEVERANCE: You don't even know that?

Mr. HARRIMAN: I don't even know that; it may or may not be.

Mr. SEVERANCE: You also have another corporation, have you not, that is about to build a line up to Puget Sound from Portland?

Mr. HARRIMAN: Yes, we have.

Mr. SEVERANCE: That work is progressing now?

Mr. HARRIMAN: That work is progressing very extensively too, and the Northern Pacific is doing everything it can to obstruct it.

Mr. SEVERANCE: The situation in that territory is that the Northern Pacific and Great Northern are obstructing you as far as they can going up the Columbia River and up to the Sound, and you are obstructing them in getting into Portland?

Mr. HARRIMAN: Whenever we can.

1668 Mr. SEVERANCE: And those are the methods, taken by yourself and the other railroad people, to facilitate the building of railroads and the development of the country?

Mr. HARRIMAN: That is what we want to avoid in this frank arrangement with the Atchison road, referred to a little while ago.

Mr. SEVERANCE: Your idea of the frank arrangement is that one company shall keep out of the other's territory?

Mr. HARRIMAN: No, sir; we shall do everything we can to develop territory adjacent to our lines, and so much so that where it is necessary we may join together.

Mr. SEVERANCE: It is in pursuance of that benevolent idea that you are endeavoring to prevent those lines getting into Portland?

Mr. HARRIMAN: No; I object; it is a business purpose, pure and simple, to save unnecessary investment of capital. A double track line from Portland to Seattle and Tacoma could do four or five times the business that two single track roads would do, at a less cost. The public is interested to that extent, that this business shall be conducted on lines at the least cost, and therefore eventually at the less charge.

Mr. SEVERANCE: Then I will repeat my question: Is it in pursuance of this view of yours as to good sound policy in railroading, that you are endeavoring to prevent your rivals spending money to get into Portland?

Mr. HARRIMAN: No; I think that is probably a sort of business arrangement; we all have, to give us some consideration, in our attempt to reach Puget Sound territory.

Mr. SEVERANCE: That is the reason for it, is it, and up to this time it has been a matter of litigation?

Mr. HARRIMAN: Yes; but we proceeded all right I think we have come to a conclusion recently whereby we have got our terminals at Seattle and Tacoma—I don't know but we have at Portland.

Mr. SEVERANCE: And did the conclusion also include them to go on there building at North Bank?

1669 Mr. HARRIMAN: That is very small, hardly worth considering.

Com'r LANE: Have you bought any right of way from Portland up?

Mr. HARRIMAN: Yes, we have done it at very great expense, in a very short time—the terminal properties in Seattle and Portland.

Com'r LANE: The information was you had terminals at Seattle and Tacoma, but had bought no right of way?

Mr. HARRIMAN: It is a question of location, naturally. We do not proceed to buy right of way until we know how our road has been located. We do not begin locating our road until we get terminal property. We turned around the usual methods: we have had a good deal of experience in that; you get a railroad up to a place and they hold you up for terminals. If you have not got your road constructed they would give you facilities that you could not otherwise get if you had the line completed to the boundaries. The construction of that road has been delayed mostly by the obstruction that has been put upon our getting the necessary franchise rights at Seattle. I told those people up there, when I was there just after the San Francisco fire, that it was not a question of our reaching them, but a question of their reaching us; just as soon as they gave us proper rights, the road would be constructed and it would not be begun only from Portland but begun from Seattle down.

Mr. SEVERANCE: One other matter I wanted to ask you about: You stated here when Mr. Kellogg was interrogating you with reference to the fluctuations in the price of bonds during 1898 and 1899, that there was a good active big bond market in that particular time; it would have been difficult to float bonds at earlier dates in the year, particularly in June?

Mr. HARRIMAN: Yes.

Mr. SEVERANCE: Now the Financial Chronicle is a recognized authority as to quotations?

Mr. HARRIMAN: Yes, sir.

1670 Mr. SEVERANCE: Now, if it should appear from the Financial Chronicle in its resume of the prices for 1899, that standard issues of bonds were higher in June at the time the resolution was passed——

Mr. HARRIMAN: And also in September?

Mr. SEVERANCE: —than they were in October and November would that change your opinion?

Mr. HARRIMAN: I think very likely it would; I don't see how it could have been.

Mr. SEVERANCE: Let me call your attention to some. I have the publication here, and I will ask you if these are fair bonds to treat as standard issues. For instance, I will ask you whether you regard the Union Pacific 50 year gold bonds of 1947 as a standard issue?

Mr. HARRIMAN: Yes.

Mr. SEVERANCE: They are good bonds aren't they?

Mr. HARRIMAN: Pretty good.

Mr. SEVERANCE: Now, it appears by the Financial Chronicle that in the month of May, 1899, those bonds sold from 106⅛ to 109; in the month of June of the same year from 107⅝ to 108½, and going over to the month of October they got down to 102¾ to 104¼.

Mr. HARRIMAN: What were they in September?

Mr. SEVERANCE: And in September 103⅜ to 105⅛; in October, the month you took the bonds, 102¾ to 104¼; November 103 to 104; December 101½ to 104½.

Mr. HARRIMAN: I think the prices in May and June were probably with the coupons on.

Mr. SEVERANCE: Let us go back a little from them and see. When are these coupons payable?

Mr. HARRIMAN: I think they are July and January; I don't know.

Mr. SEVERANCE: How far back do you want to go? We will take January then, just after the coupons had been clipped. The range during January was 102⅞ to 10 ¾.

Mr. HARRIMAN: Have you got any other bonds?

Mr. SEVERANCE: I thought you knew about Union Pacific.

1671 Mr. HARRIMAN: That was a bond that did not vary more than 2 or 3 per cent. in the whole year round, and I do not think it has changed now. Wait a minute—why can't you ask about the Alton bonds that have gone from 95 or 96 at that time down to the neighborhood of 80 now? Why don't you compare the Union Pacific as a standard bond? Why it has not gone down in the same ratio?

Mr. SEVERANCE: Just let me ask you some questions. I am going to give you a large assortment of bonds and find out if there are any more of them that appreciated 31 points or anything like it in those months?

Mr. HARRIMAN: Let me ask you this: Suppose Burlington bonds sold at 75 in the spring, what were they selling at in the autumn?

Mr. SEVERANCE: I will come to the Burlington. Your prices a little earlier in the year, of Union Pacific. January they ranged from 102⅞ to 106¾; February 103½ to 105; in March 103⅞ to 105½.

Mr. HARRIMAN: I will concede to all that. That is, Union Pacifific bonds that have all been placed, don't vary more than 2 or 3 per cent. in the whole year.

Mr. SEVERANCE: What do you think of 1905—five per cent. bonds Southern Pacific of California?

Mr. HARRIMAN: They were not a new issue; there was not any block of those bonds to be sold.

Mr. SEVERANCE: Are they good bonds?

Mr. HARRIMAN: You have got to find some large block of bonds that had to be sold.

Mr. SEVERANCE: They are good bonds.

Mr. HARRIMAN: Yes, they are very good bonds.

Mr. SEVERANCE: So that we shall be perfectly fair, they seem to have gone off a little and then went up again, in March 107½ to

108⅜; in April 108¼ to 109¼; May 106½ to 107½; June 106⅜ to 108—that was the poor month in which the subscription was made—and in October 107 to 108. There was not very much change in that, was there?

Mr. HARRIMAN: No, sir.

Mr. SEVERANCE: Now take Southern Pacific collateral trust of 1949?

1672 Mr. HARRIMAN: They were all placed; they would not vary much during the whole six months or year.

Mr. SEVERANCE: I want to see whether they had any surprising appreciation in value during those few months. In May, 85 to 86½; in June, 84½ to 85⅝; running over to this fatal month of October, 82½ to 84¼; November, 83¾ to 85¾. Those market conditions you spoke of did not operate as to them?

Mr. HARRIMAN: Not very much.

Mr. SEVERANCE: Houston & Texas Central—that is a Southern Pacific road?

Mr. HARRIMAN: What is the use? You can take all of those bonds that were placed in the market; they don't vary more than 2 or 3 per cent. on any conditions, because there are none for sale.

Mr. SEVERANCE: Well, I will drop the Harriman lines as not being affected by the market, other than the Alton road, and take up some of the others. You spoke of C. B. & Q., did you?

Mr. HARRIMAN: The C. B. & Q. bonds sold at 75 in the spring of 1899, 3½ per cent. bonds.

Mr. SEVERANCE: They do not appear.

Mr. HARRIMAN: I think they were sold in the spring of 1899, weren't they?

Mr. SEVERANCE: There is nothing to show it here; there is no bond of the C. B. & Q. that sold below par at any time in that year—no reference to C. B. & Q. bonds of any issue that was below par at any time during the year. Now what is the bonds—the L. & Missouri River first, 1900; they are listed under the head of Chicago & Alton—do you know what those bonds are?

Mr. HARRIMAN: No, I don't know. I suppose they were all placed bonds too.

Mr. SEVERANCE: There is no quotation on them between February and October; but in February 104, October 103¾. I do not find that Burlington issue you spoke of mentioned here at all.

1673 There are other Burlington issues here. There is debentures of 1913 here. Are they traded in very much?

Mr. HARRIMAN: What debentures?

Mr. SEVERANCE: Burlington.

Mr. HARRIMAN: I don't know.

Mr. SEVERANCE: They seem to have been 110¾ to 112½ in June, and 109½ to 111½ in October; and the consolidated bonds of the Burlington were 116⅛ to 117¾ in June and 113⅜ to 114¼ in October. There was no market boom in those bonds between those dates, was there, Mr. Harriman?

Mr. HARRIMAN: Apparently not.

Mr. SEVERANCE: Have you any other line you can suggest?

Mr. HARRIMAN: No, I have not looked it up.

Mr. SEVERANCE: I was trying to find some of these. How is the Southern Railway—that is a pretty good line, isn't it—they are consolidated bonds of 1894; they are bonds which you are familiar with, aren't you?

Mr. HARRIMAN: No.

Mr. SEVERANCE: They seem to have sold in June at 110½ to 112½ and in October 107¼ to 109. There was not any boom in them, was there? See if I can find the Baltimore & Ohio. Are you familiar with the prior lien 1905 3½ per cent. Baltimore & Ohio bonds?

Mr. HARRIMAN: No.

Mr. SEVERANCE: Did you ever hear of them?

Mr. HARRIMAN: I think likely.

Mr. SEVERANCE: They sold in the month of June of that year at prices ranging from 99¾ to 100⅞, and in October from 93½ to 96. Then the next issue are the gold bonds four per cent's of 1940 of the Baltimore & Ohio, in June, from 100¾ to 102⅝; in October from 96 to 99¼; Southwestern division first general 3½ per cent. bonds 94½ to 96⅛ in June, and 90 to 92½ in October. Was there any special circumstance that would take them out of the general run of the market?

Mr. HARRIMAN: I don't know; I *know don't* anything about them.

1674 Mr. SEVERANCE: It probably won't be necessary to go through this whole list, but I do not find any change for the better in the market, Mr. Harriman, in any particular. I will offer in evidence the article entitled "Retrospect of 1898," from the Chronicle, January 7, 1899. There is no use of offering the whole article, but the first two paragraphs of it. Judge Lovett suggests that it may be considered that this article—in fact the whole of the Chronicle, I suppose, for the two years may be considered as evidence, with the right of any one to refer to it.

Mr. HARRIMAN: The whole Chronicle?

Mr. SEVERANCE: The whole Chronicle.

Mr. HARRIMAN: Everything.

Mr. SEVERANCE: For both years, with the right of Judge Lovett or ourselves to refer to it if we do so desire. I would like to read into the record a few lines from that retrospect of 1898, under this agreement we have just made as follows:

Commercial & Financial Chronicle.

January 7, 1899, p. 5.

"Retrospect of 1898.

The improvement in affairs noted in 1897 made further decided progress during 1898, and the year was one of growing activity and rising prosperity. Four leading conditions may be said to have controlled the course of affairs. (1) Further victories for sound money,

(2) good crops, (3) unprecedented exports of merchandise, and (4) a successful foreign war. There were some other noteworthy features, such as easy money, large gold imports and low foreign exchange rates. But these were simply attendant circumstances. They followed from the revival of confidence and the phenomenal trade balance recorded in our favor.

In some respects the closing month, December, was the most auspicious of the whole year. Elation and buoyancy were
1675 then all pervading. Such leading industries as the cotton goods trade, which had previously lagged behind, now fell in line with the general improvement. The year was noteworthy all through for the many new high records established in every direction, indicative of the growth and expansion in progress. In the rising tide, each month seemed to carry the movement one stage further in advance, so that aggregates previously unexcelled were again and again surpassed. But December out-distanced even the most striking of its predecessors. To give only a few illustrations, never previous to December 1898 had the bank clearings either for New York or for the whole country for any month of any year been of such extraordinary proportions; never before had the deposits of the Clearing House banks reached such dimensions; never before had the monthly stock sales or the monthly bond sales on the New York Stock Exchange mounted so high; never before had iron production been on such an unexampled scale."

That was the winter you were conducting these negotiations, was it not?

Mr. HARRIMAN: What is that you are reading from?

Mr. SEVERANCE: I am reading from the Financial Chronicle, of January 7, 1899, the retrospect of 1898, published just at the time your negotiations were in progress.

Mr. HARRIMAN: Oh, that is all right.

Mr. SEVERANCE: As you stated this morning. Now I will offer in evidence and put in the record the quotations for Chicago and Alton refunding 3 per cent bonds of 1949, stock exchange, reported in the Chronicle, and the prices for the Chicago & Alton Railway 3½ per cent. bonds of 1950 at the New York Stock Exchange, as likewise reported, beginning with the time they first came on the market down to the present—down to December, 1906, beginning with October, 1900.

The table referred to is as follows:

1676 *Prices for Chicago & Alton Refunding 3 Per Cent. Bonds of 1949 at N. Y. Stock Exchange as Reported in Commercial & Financial Chronicle.*

Month.	1900. Low.	1900. High.	1901. Low.	1901. High.	1902. Low.	1902. High.
January	.....	.....	93	94	87⅝	88
February	.....	.....	92½	92½	87¼	88
March	.....	.....	93½	93½	87⅛	87½
April	.....	.....	90	90	85	86
May	.....	.....	91½	91½	85	86
June	.....	.....	92½	92½	85	85½
July	.....	.....	90	90	85	86
August	.....	.....	88	89	84½	85
September	.....	.....	87½	88	84½	85¼
October	.....	.....	86	88	82½	83¼
November	92⅞	93	87	87½	82⅛	82½
December	93	93	87½	88	82½	83¼

Month.	1903. Low.	1903. High.	1904 Low.	1904 High.	1905. Low.	1905. High.
January	82⅞	83½	81½	83	84⅜	85
February	83¼	83¼	82	84	85	85½
March	82	83	83¼	84½	86	86¾
April	80	82⅛	82¼	83¼	84¼	85
May	81⅝	82	83	83¼	84½	85¾
June	81	81⅝	82¾	85	84⅜	85½
July	80¼	81	84	83¼	84¾	86
August	80½	81	84	84	84⅜	85
September	81	81⅝	84¾	85	84½	85
October	79¾	83	83	83	82⅝	83¼
November	81½	82⅜	83	85	82¼	83⅛
December	81	82	83	85	82¼	83⅛

1677

Month.	1906. Low.	1906. High.
January	82⅛	82½
February	81½	82½
March	81	82
April	80	80½
May	80	80½
June	79	80½
July	80½	81
August	80	80½
September	80½	80½
October	78½	83
November	80½	80½
December	79½	79¾

Prices for Chicago & Alton Railway 3½ Per Cent. Bonds of 1950 at N. Y. Stock Exchange, as Reported in Commercial & Financial Chronicle.

Month.	1900. Low.	1900. High.	1901. Low.	1901. High.	1902. Low.	1902. High.
January	.....	.....	83½	85	84½	84½
February	.....	.....	84½	86	84	84¾
March	.....	.....	84⅝	85½	84	84¼
April	.....	.....	84½	86⅛	84¼	84⅞
May	.....	.....	84¼	86	84	85
June	.....	.....	86	87⅛	85	86
July	.....	.....	84	85½	83	83¾
August	.....	.....	84	85	81¾	83½
September	.....	.....	84	85	81	82¼
October	81½	84	84½	85¼	79	81½
November	82¼	85⅝	84⅞	86½	78¾	81
December	84⅜	86	85⅝	86½	78	81

1678 Month.	1903. Low.	1903. High.	1904. Low.	1904. High.	1905. Low.	1905. High.
January	78	79½	74½	77	80½	83
February	77	78½	75	76¾	82	82⅝
March	75	77⅛	75	77¼	81⅞	82⅜
April	74	77	76	77¾	81½	82¼
May	76	77½	77½	80	80½	82½
June	75¾	76½	78½	79¾	80¼	82
July	71	74¾	78	79	79¾	80½
August	70¾	73⅝	78	79¼	80	83½
September	72½	73½	79	80⅝	82¼	83¼
October	71¼	75	80	81½	81	82¾
November	72½	74½	80⅛	82¾	80½	81½
December	73	73½	82	82⅞	79½	80¾

Month.	1906. Low.	1906. High.
January	78½	81½
February	80¼	82
March	80	80¾
April	80⅛	80½
May	78	79¾
June	78½	80½
July	76¾	78
August	76¾	77½
September	77	77¾
October	78¼	80¾
November	77	78½
December	76½	78

Mr. KELLOGG: Mr. Harriman, I looked over these figures, and I want to call your attention that in spite of the fact that the
1679 Union Pacific and the Southern Pacific have not materially reduced their rates in ten years, I notice the ratio of operating expenses to gross earnings have very much decreased during the ten years on both roads, and especially on the Union Pacific. Do you know that?

Mr. HARRIMAN: I think likely that is so.

Mr. KELLOGG: In other words, according to your report of 1906, it cost you substantially 55 per cent. of your gross earnings to operate, while in 1896 it cost you 62 per cent.—in ten years there is a reduction of practically 7 per cent.?

Mr. HARRIMAN: Just read that, will you?

Mr. KELLOGG (showing counsel paper): That is one of the reasons why they are less. There is another (showing counsel paper).

Mr. KELLOGG: I guess you had better read those. You can read them. I don't care what you read.

Mr. HARRIMAN: I don't think those are the kind of things you want.

Mr. KELLOGG: No, sir; I want it; I want to know the reason why.

Mr. HARRIMAN: I don't want to read it out here; it takes too long.

Mr. KELLOGG: You can tell it then. I want to know.

Mr. HARRIMAN: All right.

Mr. KELLOGG: Now, your rates have not gone down, and yet your ratio of operating expenses to gross earnings have gone down. Your ratio of conducting transportation to gross earnings is very much decreased, isn't it?

Mr. HARRIMAN: Yes, and the price of labor and the price of materials all gone up.

Mr. KELLOGG: And your gross earnings have doubled; but labor and materials are all included in those operating expenses.

Mr. HARRIMAN: They are all gone up.

Mr. KELLOGG: In spite of the fact that labor and materials are going up, your operating expenses have decreased?

Mr. HARRIMAN: Proportionately. Our operating expenses
1680 have not increased, but our percentage of operating expenses.

Mr. MILBURN: Mr. Harriman has testified the rates have decreased about 17 per cent.

Mr. HARRIMAN: About 17 per cent.

Mr. MILBURN: That is earnings per ton per mile, which is an entirely different thing.

Mr. KELLOGG: It is a very good indication of what the road is earning.

Mr. MILBURN: You cannot have an increase per ton per mile with a decrease of rates.

Mr. KELLOGG: It is a fact, isn't it, that in nearly all other parts of the country the rate per ton per mile—the rates have gone down on the roads, although the material and labor has increased in price?

Mr. HARRIMAN: It is so on all roads.

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: Not all other roads, but all roads.

Mr. KELLOGG: Now, is it not a fact that within the last ten years nearly all products from the Atlantic Seaboard to California have been increased ten cents a hundred?

Mr. HARRIMAN: That may be. I had not anything to do with that.

Mr. KELLOGG: Then the rates have not been reduced much, have they?

Mr. HARRIMAN: In what time is that?

Mr. KELLOGG: About 1904 just previous thereto. Do you know that from nearly all eastern points to all California points the rates on all classes of products, commodity rates, and other rates were increased substantially ten cents a hundred?

Mr. HARRIMAN: You will have to go to the traffic men for that. What were they in 1904 as compared with 1902 and 1901?

Mr. KELLOGG: They were higher in 1904 than in 1902 and 1901?

Mr. HARRIMAN: They were, eh?

Mr. KELLOGG: Yes, sir. They were increased just prior to
1681 1904. Now, here is the tariff with the increases. Do you wish to look at it?

Mr. HARRIMAN: I really don't know the reasons, but I presume that the price of these very things that you spoke about has increased materially during that time.

Mr. KELLOGG: The tariff I refer to is the westbound transcontinental freight bureau tariff.

Mr. HARRIMAN: I had nothing to do with that.

Mr. KELLOGG: Of January 18, 1904.

Mr. HARRIMAN: The tariff on all railroads on all commodities was alike.

Mr. KELLOGG: On all Pacific railroads, certainly.

Mr. HARRIMAN: I mean on all railroads from the Atlantic Coast Line to the Pacific, it don't make any difference which way they went.

Mr. KELLOGG: Oh, certainly not; that is all right.

Mr. HARRIMAN: Did it make any difference whether they went Union Pacific or Southern Pacific or Great Northern?

Mr. KELLOGG: They were increased on all of them.

Mr. HARRIMAN: That does not bear on this question.

Mr. KELLOGG: It bears on the reasonableness of your rates, and it bears upon the question of whether the rates have been decreased on the Pacific roads, as you say.

Mr. HARRIMAN: There may have been reasons why they should have been increased. Is there any law against our increasing rates?

Mr. KELLOGG: That is just what we are inquiring into, whether they should be or should not be increased.

Mr. HARRIMAN: I think perhaps I can tell you.

Mr. KELLOGG: Tell me.

Mr. HARRIMAN: In the first place, the Union Pacific and Southern Pacific have expended over $250,000,000 in new improvements of their lines, and the extensions and the acquisitions of terminals.

Mr. KELLOGG: Out of their earnings?

Mr. HARRIMAN: Some out of their earnings and some from the issue of securities.

1682 Mr. KELLOGG: How much out of the earnings?

Mr. HARRIMAN: I could not tell you now; the annual reports will show. It all goes into a general fund. You have been talking on one part of this management of these properties, and that has been mostly in regard to the purchase of securities. The management of the Union Pacific and Southern Pacific have not given their time to buying securities or selling securities. The purchase of securities was only incident—since the 1st of July—was only incident to the forced acquisition of Northern Pacific, of Great Northern, and the rise in their market value that made it advisable and necessary for us to change that investment into other things.

Mr. KELLOGG: You have explained that once.

Mr. HARRIMAN: Now, then, there is another side to this management of these properties, and that is the physical management of the properties in the interest of the stockholders and the public.

Mr. KELLOGG: Won't you answer my question?

Mr. HARRIMAN: Wait one minute; let me go on. I am answering the question you asked me, and I insist upon answering.

Mr. HARRIMAN: Since we have acquired these properties we have expended in improvements, additions and extensions, over $250,000,000, that has been expended in the acquisition of terminal properties, the construction of sidetracks, passing tracks, second tracks, reduction of grades, straightening of lines, elimination of curvature thereby, the purchase of equipment. The allied lines, Union Pacific and Southern Pacific, have purchased in that time over 50,000 freight cars, purchased nearly 1200 passenger cars; they have purchased over 1500 locomotives of higher capacity than former locomotives; they have rerailed about 7500 miles of railroad, putting in over a million tons of rails of heavier weight—80 or 90 pounds to the yard; they have put in automatic block signals, safety signals upon 3,200 miles—more than any other railroad in the world, and they have got under construction, authorized and under construction, 1500 miles more. Now, all these expenditures

1683 have to be given a great deal of thought and a great deal of time, and it does not leave much of the time of the management to the purpose of going into what you have been terming this buying and selling of securities. The result of their expenditures, largely made in the employment of labor, purchase of material in sections of the country tributary to our own lines, has increased the volume of business in that territory, has employed labor, distributed money in that territory and increased the volume of business, which has largely added to the earnings of the allied lines, enabled the better conduct of the properties, has enabled the movement of larger traffic, quicker development of the territory, and therefore a less percentage of cost in moving the traffic than it would have been if the lines had been left approximately in the same condition that they were when we got them. Now, I will give you an little illustration here. The first thing that was done on the Union Pacific—the very first move made on the Union Pacific, on

the lines between Cheyenne and Ogden, that was the mountain division, and if you had taken the trouble to read this little paper it will show—you have been brought up in a prairie country where everything is level. The important matter was for us to consider how we could get the best line through the Rocky Mountains, as a protective measure, as much as anything else, so that we could operate it to advantage and at the least cost, and permit more business to go over it. In the first place we altered—the whole thing I think was about 480 miles,—and out of that 480 miles we rebuilt about half of it, practically went over 50 per cent. of the whole line. We saved in distance about 30 miles out of the whole. The maximum grade on the old line varied from 97.68 feet to the mile—75.3—72.22—68.6. On the reconstruction the grade was reduced to 43.3—that is our mountain grade. The maximum curvature was reduced from five to six degrees, from 1 to 1½ and 3 and 4 degrees.

The total angle of degrees of the old line was over 11,000.
1684 On the new line was a little over 4,000. There was a saving of nearly 7,000 angles—degrees of angles, or that would be really 22 circles; that is, the trains were saved going around 22 times in making that distance. I think that is about all. That is the first thing that we did. Those improvements, which cost all these millions of dollars, have enabled us to develop a larger traffic, permit a greater traffic to go over those lines, and to reduce the percentage of the cost of operation.

Mr. KELLOGG: Well, now, Mr. Harriman, that condition, to a greater or less extent, has been going on, or that change, rather—on all of the American Railroads.

Mr. HARRIMAN: No, sir; it has not; not to that extent.

Mr. KELLOGG: Haven't every one of them spent millions in improvements?

Mr. HARRIMAN: They are now, but they have not done it as quick as we did.

Mr. KELLOGG: Didn't they commence to spend them immediately after the panic of 1896?

Mr. HARRIMAN: Not so drastic.

Mr. KELLOGG: The Pennsylvania?

Mr. HARRIMAN: The Pennsylvania has, but if it had begun in 1896 with the drastic expenditures it is now making, it would not have suffered as it has in the last four or five years.

Mr. KELLOGG: Did not the St. Paul & Northwestern?

Mr. HARRIMAN: Not to such an extent.

Mr. KELLOGG: The Northern Pacific and the Atchison?

Mr. HARRIMAN: No, they have veneered.

Mr. KELLOGG: No other railroads have improved as the Union Pacific has?

Mr. HARRIMAN: No, sir; not one in the country.

Mr. KELLOGG: None has been managed as well?

Mr. HARRIMAN: I do not say that. I say none of them have had the enormous expenditure put on them.

Mr. KELLOGG: Have you been enabled to pay your divi-
1685 dends and operating expenses and also earn that amount of money to put into the property.

Mr. HARRIMAN: No, sir; we had to borrow money.

Mr. KELLOGG: How much did you bond the Union Pacific for improvements?

Mr. HARRIMAN: You have got it all in our annual reports.

Mr. KELLOGG: Have you bonded the Union Pacific for one dollar for improvements? Haven't you taken every dollar out of earnings and paid the dividends besides?

Mr. HARRIMAN: $250,000,000?

Mr. KELLOGG: The Union Pacific has not spent $250,000,000.

Mr. HARRIMAN: I am not separating them. I was speaking in round numbers of the allied lines.

Mr. KELLOGG: I want actual facts; I don't want round numbers.

Mr. HARRIMAN: Our annual reports will show it.

Mr. KELLOGG: How much money have you spent on Union Pacific?

Mr. HARRIMAN: I can't remember that part of it.

Mr. KELLOGG: How do you know you spent any, then, if you can't remember?

Mr. HARRIMAN: We certainly did not reduce these grades and eliminate that curvature and add cars and locomotives to the Union Pacific without expending something for it.

Mr. KELLOGG: We are considering this question of rates. You had $100,000,000 of bonds—of the Union Pacific original bonds to start with, and you have got $100,000,000 yet, haven't you?

Mr. HARRIMAN: Undoubtedly.

Mr. KELLOGG: The other $100,000,000 were issued to purchase stock with and retire stocks. Now, then, haven't you made your improvements on the Union Pacific out of earnings?

Mr. HARRIMAN: I think part of that $100,000,000 of bonds was reserved for just such improvements.

1686 Mr. KELLOGG: Well, do you know?

Mr. HARRIMAN: Yes, I know they were. We had a certain amount of cash on hand under the reorganization.

Mr. KELLOGG: How much was on hand for improvements?

Mr. HARRIMAN: I think we had about $5,000,000 of cash provided after the reorganization.

Mr. KELLOGG: How much was on hand for improvements when the reorganization took place? Can you tell?

Mr. HARRIMAN: I think about $5,000,000 of cash was on hand.

Mr. KELLOGG: $5,000,000 of cash?

Mr. HARRIMAN: One minute, and I will give you—my mind has got to travel back now.

Mr. KELLOGG: Give it to us as near as you can.

Mr. HARRIMAN: We had a considerable of first mortgage bonds, I think you referred to. I don't think they were all used at that time.

Mr. KELLOGG: About what do you think was on hand?

Mr. HARRIMAN: I don't remember that. I think there was something over $5,000,000.

Mr. KELLOGG: How many bonds, in your opinion?

Mr. HARRIMAN: $5,000,000 in cash, and I think something over $5,000,000 in bonds.

Mr. KELLOGG: Something over $10,000,000 you mean?

Mr. HARRIMAN: I think so—Wait one minute—then we sold our Pullman equipment for about a million and a half of dollars and put that into freight cars.

Mr. KELLOGG: You had to buy other equipment?

Mr. HARRIMAN: No; we made a contract with the Pullman Company to supply that equipment themselves. Then all the sales of lands have gone into improvements, and everything that we could gather together in any way we have put into the improvements on the property.

1687 Mr. KELLOGG: The land grant you mean—the gift of the Government?

Mr. HARRIMAN: I don't know there was any gift of the Government; I had nothing to do with that; there was no gift of the Government.

Mr. KELLOGG: Now, in addition to that you have taken a large amount of earnings of the Union Pacific and put it in the property, haven't you?

Mr. HARRIMAN: We have taken everything that we could get and put it into the property.

Mr. KELLOGG: Have you taken a large amount of net earnings?

Mr. HARRIMAN: Instead of distributing it to the stockholders we put it into the property.

Mr. KELLOGG: Now, in addition to that——

Mr. HARRIMAN: Whatever we have taken out of earnings we put into the property when we could have distributed it to the stockholders.

Mr. KELLOGG: Don't you think a railroad company whose rates have not decreased materially in ten years, whose percentage of operating expenses have decreased, which can pay 10 per cent. dividends on its stock and still have a large surplus——

Mr. HARRIMAN: Is pretty well managed.

Mr. KELLOGG (continuing): —could reduce the rate a little—pretty well managed and could afford to reduce the rates.

Mr. HARRIMAN: It could have reduced the rates if the rates were reduced in like manner on other lines.

Mr. KELLOGG: They could not reduce unless some other line——

Mr. HARRIMAN: Certainly we could not.

Mr. KELLOGG: Then competition is the only thing that will force down the rate?

Mr. HARRIMAN: That is possibly so, competition between communities and competition of railroads.

Mr. KELLOGG: And therefore, there being no competition, the rates have not been forced down.

Mr. HARRIMAN: There is competition in our territory—very drastic competition.

1688 Mr. KELLOGG: Do you think that 10 per cent. dividends for a railroad as a permanent thing, which company can earn a large amount in addition to that to put in the property every year, is a fair rate of dividend?

Mr. HARRIMAN: Now, Mr. Kellogg, from 1893 or 1894 to 1898,

70 per cent. of the capital invested in railroads was paying no dividends, and it would be quite consistent that a ten per cent. dividend to distribute over an average of twenty years, from a railroad that had not received anything for ten years, and perhaps for five or six or eight years, received a fair compensation—what would you think would be a fair return to a railroad?

Mr. KELLOGG: I am not on the stand; I am not an expert.

Mr. HARRIMAN: Well, I thought you were. Now, the Union Pacific in the first place does not receive 10 per cent. dividends from traffic. It received whatever dividends from traffic, less the amount that is paid from the income from these investments.

Mr. KELLOGG: When the dividend of the Union Pacific Railroad Company on the 15th of August last was declared—I think it was August 15th—there was a statement of its net earnings from operation made to the Board of Directors, was there not (showing Mr. Harriman a paper)?

Mr. HARRIMAN (after examining paper): Yes, sir; I believe that is right. Now, then, we declared a dividend of five per cent.

Mr. KELLOGG: Semi-annual or annual?

Mr. HARRIMAN: Semi-annual. Three per cent. out of the surplus which is shown here from traffic, and two per cent. out of the surplus that is shown from receipts from rentals and other sources in excess of miscellaneous expenses. In other words, these receipts from other sources and from traffic are put down here as $7,767,000, and then there is to be added to that a dividend on the Southern Pacific, about two million and a quarter, making about ten million for the
1689 year. So from that ten million of receipts from investments we paid a dividend at the rate of four per cent. per annum, and out of the receipts from traffic, we paid a dividend at the rate of six per cent. per annum.

Mr. KELLOGG: I notice here that after paying your preferred dividends, and all your prior fixed charges, including rentals, your surplus was substantially twenty five million dollars.

Mr. HARRIMAN: That is right.

Mr. KELLOGG: It took $19,000,000 of that to pay the common stock dividend for a year at ten per cent., did it not?

Mr. HARRIMAN: That is the way we used it.

Mr. KELLOGG: That $25,000,000 surplus included all the income of the Union Pacific?

Mr. HARRIMAN: All the income, did it?

Mr. KELLOGG: Did it? I thought so.

Mr. HARRIMAN: Let me put it my way.

Mr. KELLOGG: Put it your way then; you have it anyhow.

Mr. HARRIMAN: I am going to try to.

Mr. KELLOGG: What was the total income of the Union Pacific road, after paying its interest, fixed charges, rentals and its preferred dividends?

Mr. HARRIMAN: The total income?

Mr. KELLOGG: The total income.

Mr. HARRIMAN: It was $25,219,000, shown by this statement.

Mr. KELLOGG: Yes. Now then,——

Mr. HARRIMAN: But wait a minute. The income included in that, from sources other than traffic, was $7,767,000 so that the income from traffic, less the dividend on preferred stock and the interest on bonded debt, was $17,500,000, in round numbers—a little less, $17,450,000.

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: You can't pay ten per cent. out of that. Every railroad has to have more than its actual earnings from which to pay a dividend. That is, it has to have something more. It
1690 cannot distribute exactly what its net earnings are. If it did, it would soon go bankrupt. It has to have a surplus with which to maintain and improve its property and to provide a margin on which it can base a credit in case it has to borrow money in case of some extraordinary emergency. The old method of distributing whatever earnings they have is what largely led to the bankruptcy or trouble of many of the lines. In addition to that $17,000,000, we paid at the rate of six per cent. per annum out of that seventeen and a half million dollars, which would have taken about twelve million dollars and the other was a margin of safety. Now, then, out of the $7,700,000, receipt from other sources, to which you could add the two and a quarter million, received from the Southern Pacific, making it round numbers, ten million dollars, we paid a dividend at the rate of four per cent. which would have taken eight million dollars, and the balance was carried to the credit of profit and loss.

Mr. KELLOGG: Then I understand you, Mr. Harriman, that from the earnings of the road itself, a ten per cent. dividend was not justified?

Mr. HARRIMAN: I did not say it was not justified.

Mr. KELLOGG: Well, exclusive of its income from stocks or other sources?

Mr. HARRIMAN: You would not have paid that dividend.

Mr. KELLOGG: You could not have paid it, could you?

Mr HARRIMAN: Not very well.

Mr. KELLOGG: That is, you think six per cent. was justified.

Mr. HARRIMAN: Absolutely.

Mr. KELLOGG: And that four per cent. came from earnings other than operation of the road.

Mr. HARRIMAN: Other than traffic.

Mr. KELLOGG: As a matter of fact one hundred million dollars out of $195,000,000 of your stock was issued for other purposes than running the Union Pacific Road, was it not?

1691 Mr. HARRIMAN: There is no doubt about that.

Mr. KELLOGG: So that that dividend should come out of the income from other sources, should it not?

Mr. HARRIMAN: Well, it did.

Mr. KELLOGG: You used a part of the earnings of the Union Pacific road, necessarily, did you not, to pay dividends on stocks issued to buy securities with.

Mr. HARRIMAN: Some part of it. We paid on the whole capital stock, a certain proportion of the income from traffic, and a certain proportion of the income from investments.

Mr. KELLOGG: In other words, your income from your investments would not have paid the dividends at ten per cent. upon the one hundred million dollars of stock issued to buy stock, would it? That would have been $10,000,000.

Mr. HARRIMAN: Yes; it was just about $10,000,000.

Mr. KELLOGG: I thought you said it was $7,000,000.

Mr. HARRIMAN: $7,000,000, and the dividends that we received from the Southern Pacific of two and a half million, would have made about $10,000,000.

Mr. KELLOGG: You did not receive that in that year.

Mr. HARRIMAN: It was taken out of the earnings of that year, the Southern Pacific earnings. It is shown in the annual report. I think the annual report includes it.

Mr. KELLOGG: Then if the stock, $95,000,000, was issued for operating the road, representing the road that carried the freight for the people, ten per cent. of that would only have been $9,500,000, would it not?

Mr. HARRIMAN: About that; about $10,000,000.

Mr. KELLOGG: And the earnings from the operations of the road would have paid that and left a large surplus, would they not?

Mr. HARRIMAN: About the same as it is there—just about the same. It would have taken about six or seven million dollars as a margin of safety to reinvest in that property from the earnings of that year, to maintain the property up to its highest standard. There may be years that we will not earn so much.

1692 Mr. LOVETT: I would suggest, Mr. Kellogg, that even part of that was issued for the Oregon Short Line.

Mr. KELLOGG: Do you not think a road that can earn a surplus over ten per cent. of its common stock, which was very largely increased on the reorganization over the debts it owed before——

Mr. HARRIMAN: I don't know whether it was increased. Wait a minute. You make that statement. I don't know whether it was increased on the reorganization or not. I doubt whether it was. I think the stock was issued to take up other securities, or in lieu of other securities, that were already outstanding. I don't know whether it did or not, but I do not concede that point.

Mr. KELLOGG: The total obligations of the Union Pacific were increased $36,000,000, were they not?

Mr. HARRIMAN: I think the Union Pacific stockholders are entitled to receive ten per cent. or fifteen per cent., if they can do it legitimately and properly, and give proper service to the territory reached by it or adjacent to it, and do it at no greater charge than that to similar territory in any other part of the country, and give better service than in any other part of the country.

Mr. KELLOGG: Do you think the——

Mr. HARRIMAN: I think the service rendered has something to do with the charge made.

Mr. KELLOGG: That is, you think the service of the Union Pacific entitles it to a higher rate for hauling freight than the same freight would be hauled for by other roads?

Mr. HARRIMAN: It does not get a higher rate for hauling the

same freight under relative conditions on other roads. Maybe it received lower rates. Now, if it has but put itself in a condition where it can conduct that same traffic at less cost than other roads, it is entitled to the difference. If it sacrificed dividends, if it waited for dividends, it is entitled to receive them in the end.

Mr. KELLOGG: I am trying to find out whether——

1693 Mr. HARRIMAN: You are trying to find out whether we ought not to reduce our rates on the Union Pacific.

Mr. KELLOGG: Yes, sir.

Mr. HARRIMAN: And if we did reduce our rates on the Union Pacific, it would create such a scamper all over this country, that you would not hear the end of it. Just as long as you can keep some of those lines solvent, the Union Pacific will continue to earn all the money it is earning now. If you are going to throw some of them into bankruptcy and create chaos, you may reduce our earnings.

Mr. KELLOGG: The Pacific roads do not seem in imminent danger of bankruptcy.

Mr. HARRIMAN: I don't think they are; and I don't think there is any imminent danger of our having our rates reduced.

Mr. KELLOGG: If you have your way, I should say not.

Mr. HARRIMAN: No, even if you have your way.

Mr. KELLOGG: Coming back again, I want to know if you think that a road that can pay ten per cent. on its capital, issued for the purpose of constructing and operating the road, equipping it, and have a large surplus, is not receiving too much income.

Mr. HARRIMAN: No, sir; I don't think so.

Mr. KELLOGG: You do not think so?

Mr. HARRIMAN: No, sir; not after the risk that has been attached to it and the experience they had had for ten years previous.

Mr. KELLOGG: Do you think——

Mr. HARRIMAN: Mr. Kellogg, do you think that the stockholders of any line are required to put their money into the extension or improvement of that line on the basis on which they could lend the money out on bonded mortgage in the City of New York, four and a half or five per cent., without taking any risk?

Mr. KELLOGG: No, sir; I do not think so.

Mr. HARRIMAN: I think the stockholders are entitled, just the same as any other business enterprise, to a fair return for the risk taken and the work done.

1694 Mr. KELLOGG: I quite agree with you.

Mr. HARRIMAN: And the service rendered.

Mr. KELLOGG: I quite agree with you. Then after the payment of the $19,444,980 out of the surplus reported to the Board, you had $5,674,922 left?

Mr. HARRIMAN: I suppose your figures are right.

Mr. KELLOGG: And $2,000,000 more, to come from the Southern Pacific?

Mr. HARRIMAN: Yes, and it will be two million and a quarter more this year when we get the total income from the Southern Pacific.

Mr. KELLOGG: Did you declare six per cent. out of earnings and four per cent. out of stocks?

Mr. HARRIMAN: I presume so.

Mr. KELLOGG: Let me read the resolution.

Mr. HARRIMAN: Wait a minute. If the records have their statements wrong, I am not responsible for it, but the statement was made and the dividend declared, two per cent. out of income from investment, and three per cent. out of income from traffic.

Mr. KELLOGG: Perhaps that was it. I will read the resolution. This was the meeting of August 15th. The first resolution was with reference to the preferred dividends.

"*Resolved* (2) that a semi-annual dividend of five dollars per share upon the common capital stock of this company be, and such dividend is hereby declared, payable October 1st, 1905, to stockholders of record at 12 o'clock M. on the 15th day of September, 1906."

That was the meeting of August 15th.

"The chairman stated that as a number of the directors were unable to attend the meeting, it seemed proper that an announcement of the dividend should be deferred until they could be informed of the action taken and he suggested therefore that the announcement and publication of the dividend, provision for the closing of the transfer books, and also the question which had been discussed, as to the particular revenues against which portions of the dividend should be charged, be referred to the Executive Committee, where-
1695 upon, by motion duly made and seconded, it was unanimously resolved that the Executive Committee is hereby authorized and empowered to announce and publish the declaration of such dividend at such time as it may deem proper and to authorize and provide for the closing of the transfer books, for the purpose of said dividend, and for the purpose of the annual meeting of the stockholders to be held Tuesday, October 9, 1906, and to specify the income or other fund against which such dividend shall be charged, and to take such other action in connection with the declaration, payment and notice of such dividend, as such committee may be necessary or advisable."

And again:

"That for the purpose of such dividend and of the annual meeting of the stockholders, to be held Tuesday, October 9, 1906, the stock transfer books of this company shall be closed at twelve o'clock M. on the 15th day of September, 1906, and reopened at ten o'clock A. M. on the 10th day of October, 1906.

"That the secretary of this company be and he is hereby authorized and directed to notify the secretary of the New York Stock Exchange, on the 17th instant, and before the hour fixed for the opening of said Exchange, on said date, of the declaration of said dividends. And the treasurer of this company, be and he is hereby authorized and directed to furnish notice of said dividends by publication of an advertisement in the usual form in papers published in the city of New York, as the Chairman of the Executive Committee shall direct."

I read those resolutions in evidence and asked Mr. Millar if there

was submitted at either one of those meetings a statement showing out of what revenues the dividend was to be paid, the net earnings of the Union Pacific and the balance left after the payment of the five per cent. semi-annual dividend on the common stock and two per cent. on the preferred. He said he was away from the
1696 city. In response to that, this statement was given out, and I find no such action of the committee. I may be mistaken. Of course I have not read all your records.

Mr. HARRIMAN: The records you have may not be exactly correct.

Mr. KELLOGG: I do not say it is not true, but I do not find it.

Mr. HARRIMAN: I know that is the way it was done. I was there. I will tell you how that dividend was declared, gentlemen, if you would like to know it.

Mr. KELLOGG: All right, sir.

Mr. HARRIMAN: On the 19th day of July, I think it was, or, at any rate, at the July meeting of the Union Pacific Railroad, at which there was a very full attendance, I stated to the Board that in view of the increased earnings—we had estimated, but I thought we ought not to consider the question of dividend until we had the actual figures, and that the estimates for the earnings on the Southern Pacific, notwithstanding the Chicago fire, were so surprising that I thought we should wait until we got the accurate figures of that, so as to be sure that our statements were correct, and that if they were found to be correct by the actual statements or figures, we should increase the dividend on the Union Pacific materially, and that I would bring the matter up again at the August meeting, and in the meantime I would like them all to be considering the question, and informing themselves on the subject. At the August meeting we had the June figures, and they were presented in this form. I then told them that the Southern Pacific—I am not sure whether the Southern Pacific had met before or after the Union Pacific. Did it, Judge Lovett? Do you remember?

Mr. KELLOGG: The meeting was on the same day, was it not?

Mr. LOVETT: The Southern Pacific met before the Union Pacific, on the same day.

Mr. HARRIMAN: This statement was prepared before the comptroller knew that there was any dividend to be declared on
1697 the Southern Pacific, and I presented this statement to them. Well, we had not the actual figures even then. We had a part of the estimate. I think the month of June was only estimated even at that meeting. We had not gotten in the actual figures, but it was approximately enough. When the figures were presented of the income, the Southern Pacific Board of Directors declared a dividend of two and a half per cent. Forty-five per cent. of that had to go to the Union Pacific. Immediately after that we held a meeting of the Union Pacific. I then stated to them that to the income from sources other than I figured would have to be added, or ought to be added, that two and a half per cent. which would make ten million dollars for the year. Then the discussion took place, and finally the action of the declaration of the five per cent. dividend and the method of charging it. Of course it must have been

intended to charge it from some other than the usual way. Otherwise, they would not have referred it to the Executive Committee to do it. Now, the Board of Directors had that full month in which to consider that whole question. The Executive Committee met the next day at three o'clock. The ordinary time would have been half past eleven in the morning. That was their regular day for meeting, but because of my having to go to the funeral of a very old friend of mine, the meeting was deferred until I got back, and we did not get together until three o'clock in the afternoon. At that meeting the resolutions were passed which I think you read. Judge Lovett, have you the record there of the Executive Committee?

Mr. LOVETT: Yes.

Mr. HARRIMAN: Well, does not the Executive Committee record show that the declaration of the dividend was to be three per cent. from receipts from traffic, and two per cent. from receipts from income from other sources?

Mr. LOVETT: I was under the impression that it did. It appears not to be, though. The annual report of the stockholders states it was so charged.

1698 Mr. HARRIMAN: Well, there is a mistake. Those were the times during the vacation of the regular secretary of the company, but it was so stated to the Board of Directors, and it is evident that it was so, from the record that you have already read, that it was referred to the Executive Committee to be charged in such manner as they might deem best.

Now then, it got to be after three o'clock. Also, we had communicated, or I had communicated, particularly with one of the Executive Committee who lived in the west, and I did not want to take any action, until at least he might be heard from. So far as I remember, he assented, did he not, Mr. Millar?

Mr. MILLAR: He acknowledged the receipt.

Mr. LOVETT: The subject was referred to the Executive Committee, and it may have been at a subsequent meeting of the committee that it was acted upon.

Mr. HARRIMAN: I am quite sure there was action by the Executive Committee directing that this charge be made, as I say, two per cent. to income from investments and three per cent. to income from traffic.

It got to be after three o'clock in New York, and it was then a question of whether it was advisable to announce that dividend at once and have it come out in London before it did in New York, or to give the New York market the advantage of it. We discussed that in the Executive Committee, and we decided that it was best to have the announcement of the Union Pacific dividend made in New York before it was in London; that is, while the New York markets were open.

Mr. KELLOGG: Who were the members of the Executive Committee present at that discussion?

Mr. HARRIMAN: The records show it; I do not remember.

Mr. KELLOGG: Messrs. Harriman, Lovett and Stillman, was it not?

Mr. HARRIMAN: I suppose that is so.

Mr. KELLOGG: Who were the directors absent from the meeting?

Mr. HARRIMAN: I don't remember that. The particular
1699 man I communicated with was Mr. Hughitt. That is all; and I wanted to hear from him particularly.

Mr. KELLOGG: Go on and finish your statement.

Mr. HARRIMAN: We had a full Board in July. They were all notified that it was expected we would increase our dividends materially; and in August, if they did not come to that August meeting, it was their own fault, but it was difficult to reach some of the directors. They were off on yachting trips, and some in the west. Mr. Earling was off on the St. Paul road. Mr. Valentine was ill. Mr. Hughitt was in Chicago, and communicated with. So I left directions, after conferring with the Executive Committee, that the announcement should be made as stated, I think, in the minutes which you read. Then I left that afternoon and went off on a yacht. I was on the Sound when it was done. I was not there the next day, but the announcement was made in the Stock Exchange, before ten o'clock the next morning, and the full advantage of the declaration of that dividend was given to the New York market rather than to any other market.

Mr. KELLOGG: Did you complete your statement, Mr. Harriman?

Mr. HARRIMAN: Well, I wanted to find out what our records were. Judge Lovett confirms me in my recollection that I stated to the Board, and to the Executive Committee, that the intention was to charge, as it was stated in the annual report—that the distribution of that dividend might be charged as I stated, two per cent. from income from investments and three per cent. to income from traffic. And I want to say in your suggestion there about ten per cent. return upon stock, that really the reason—one reason for many railroads being able to return dividends at all to the stockholders, is the fact that they have issued low rate of interest bonds, and that the total net earnings of money of our railroads do not exceed five or six per cent. on the total amount of capital invested; that the return to
1700 the stock is only on the saving that they make because of issuing or obtaining part of their capital from insuance of bonds.

Mr. KELLOGG: Well, that depends, Mr. Harriman, whether the stock represents anything. You don't know what the $95,000,000 of the Union Pacific stock does represent?

Mr. HARRIMAN: I know this, that the Union Pacific could not be put where it is now for anything like its capitalization; that the expenditures which have been made on it have increased so much in value that it could not be replaced there for anything like its capitalization.

Mr. KELLOGG: Now, after the meeting in July, did you state to the Board, what you thought the dividend should be?

Mr. HARRIMAN: No, I told them I thought it should be materially increased.

Mr. KELLOGG: Southern Pacific or Union Pacific?

Mr. HARRIMAN: I told them we probably were on the verge of a

distribution to the stockholders of the Southern Pacific, when they got their full statement.

Mr. KELLOGG: At the meeting which took place on the 15th of August, on the same date, the Southern Pacific Board made and adopted identically the same sort of resolution, did it not?

Mr. HARRIMAN: Yes, but there was no statement to the Board of Directors of the Southern Pacific that there would be any division in the method of charging the dividend to any different accounts.

Mr. KELLOGG: I know, but——

Mr. HARRIMAN: One of the reasons why the Southern Pacific was able to make a distribution was because of its having been able to refund its high rate bonds at a lower rate.

Mr. KELLOGG: Now the Southern Pacific resolution declaring a dividend which was adopted on the same date was as follows:

"*Resolved* that a semi-annual dividend of $2.50 per share, to be known as first dividend, be and such dividend is hereby de-
1701 clared on the common, capital stock of this company, payable October 1st, 1905, to bearers of dividend warrants No. 1, annexed to certificates representing such stock, upon presentation and surrender of such warrants to the Assistant Treasurer of this Company at his office, No. 120 Broadway, New York.

The Chairman stated that, as a number of the directors were unable to attend the meeting, it seemed proper that announcement of the dividends should be deferred until they could be informed of the action taken at the meeting. And he suggested, therefore, that the announcement and publication of the dividend and any other action deemed necessary, be referred to the Executive Committee. Whereupon, on motion duly made and seconded, it was unanimously resolved, that the Executive Committee be, and it is hereby empowered to announce and publish the declaration of such dividend at such time and make such provision for the payment therefor as the said committee may deem appropriate. The Executive Committe- may at three o'clock or some time next day."

Mr. HARRIMAN: I don't think exactly the same time.

Mr. KELLOGG: Well, within a few moments.

Mr. HARRIMAN: Yes.

Mr. KELLOGG: And there were present at that executive meeting, Messrs. De Forrest, Harriman, Lovett and Stillman, only one different director from the Executive Committee which met in the Union Pacific.

Mr. HARRIMAN: That might be.

Mr. KELLOGG: Is there any other instance in the history of the Union or Southern Pacific since you have been connected with them when any dividend was declared or increased, that the announcement was deferred to be given out by the Executive Committee.

Mr. HARRIMAN: No, I don't remember. I don't know whether there was. Was there, Mr. Millar?

Mr. MILLAR: Yes, it has been generally given out by the Executive Committee on the Stock Exchange next morning.

Mr. HARRIMAN: On the following morning?

1702 Mr. MILLAR: Yes.

Mr. HARRIMAN: Not the same day.

Mr. MILLAR: Not regularly the same day.

Mr. HARRIMAN: Mr. Millar tells me it has been usually our method of referring it to the Executive Committee and that usually they announced it to the Stock Exchange the next morning.

Mr. KELLOGG: But this was announced the second morning?

Mr. HARRIMAN: Yes. The reason for that I have given, because I did not happen to be at the office that morning, on account of my going to a funeral, to attend the Executive Committee as usual.

Mr. KELLOGG: Was there any other reason for deferring the action of the Executive Committee until three o'clock in the afternoon?

Mr. HARRIMAN: Not that I know of.

Mr. KELLOGG: Was there any reason for deferring the announcement of the dividend for two days other than that?

Mr. HARRIMAN: Well, it had to be deferred until the Executive Committee had acted.

Mr. KELLOGG: You announced to the meeting that you thought it should be deferred until you could inform the absent members of the Board of Directors of the action taken at the meeting. Whom did you inform of the absent members of the Board of each one of these companies?

Mr. HARRIMAN: Well, I particularly, as I remember, telephoned to Mr. Hughitt in Chicago, and got his answer. I inquired the whereabouts of the other two Chicago directors. Those were the ones that I had in my mind, because they were the ones who lived farthest away and might not have been able to have gotten to the meeting in August. I found Mr. Earling was too far away to be communicated with and Mr. Valentine, the other Chicago director, was ill.

Mr. KELLOGG: Mr. Ames, Mr. Cornish, Mr. Hughitt——

1703 Mr. HARRIMAN: Mr. Ames, I believe, was telephoned to at Boston, and found to be away on a yachting trip; that is my recollection.

Mr. KELLOGG: Mr. Cornish was absent?

Mr. HARRIMAN: That may be.

Mr. KELLOGG: Mr. Wilcox, Mr. Appleton, Mr. Smyth, and Mr. Hughitt.

Mr. HARRIMAN: Mr. Wilcox was absent because of the death of his brother.

Mr. KELLOGG: And in the Southern Pacific meeting, Mr. Cornish, Mr. Hughitt, Mr. Mackay, Mr. Wilcox and Mr. Mills, whom of those did you consult?

Mr. HARRIMAN: I don't know as I had any intention of consulting with any of those.

Mr. KELLOGG: The resolution said it was deferred because you thought they should be consulted.

Mr. HARRIMAN: Does it say so? in the Union Pacific as well as the Southern?

Mr. KELLOGG: Yes.

Mr. HARRIMAN: Mr. Mills' son was at the meeting, and I suppose he could confer with his father about it.

Mr. KELLOGG: You said you deferred the action so you could consult with them.

Mr. HARRIMAN: No, so they could be informed.

Mr. KELLOGG: So they could be informed of the action taken at the meeting?

Mr. HARRIMAN: That is right, that was the intention, and that was carried out so far as possible.

Mr. KELLOGG: That is the same language as used in the Union Pacific. Now, if they knew in August or in July that there was going to be an increase in a dividend, why was it necessary to defer the announcement of the dividend to consult with them again, especially as you only consulted one?

Mr. HARRIMAN: It was impossible to reach anybody else.

Mr. KELLOGG: What was the object of reaching anybody? It had been declared absolutely, hadn't it?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: To be paid on a certain date?

1704 Mr. HARRIMAN: Yes.

Mr. KELLOGG: Why should it not have been announced then and there?

Mr. HARRIMAN: Because we did not choose to. We chose to take the usual course of having the Executive Committee act on it.

Mr. KELLOGG: Will you produce the resolution showing the usual course of the dividend——

Mr. HARRIMAN: That is so isn't it, Mr. Millar?

Mr. MILLAR: At times the dividends were declared by the committee and at other times by the Board.

Mr. HARRIMAN: Sometimes, he says, the committee has declared the dividends, and sometimes the Board.

Mr. KELLOGG: Well, now, when the Board declared the dividend, did not the Board announce it immediately, at all times before?

Mr. HARRIMAN: I don't know. Mr. Millar, the secretary says, the custom has been to send the letter to the Stock Exchange the next morning, and this was an unusual thing, Mr. Kellogg, and it was left to the Executive Committee to make the announcement as best it could.

Mr. KELLOGG: Why an unusual thing?

Mr. HARRIMAN: And it was thought that it would meet the next morning and the announcement would be made the next morning, at least that was in my mind, unless I heard something from some other member of the Board.

Mr. KELLOGG: Why an unusual thing?

Mr. HARRIMAN: Well, it was unusual to increase our dividend, to that extent, and it was the first dividend of the Southern Pacific, and it was a little staggering; it was staggering to us, so there was a good deal of discussion about it, and it was a new era in the history of the Southern Pacific, the first dividend that had been paid on it; and the method of handling it and announcing it was thought best to be left to the Executive Committee. It was a coincidence.

Mr. KELLOGG: In your opinion, Mr. Harriman, was the
1705 dividend on the Southern Pacific justified by its earnings?

Mr. HARRIMAN: Yes, sir. Yes, by its earnings and reduction of the cost of labor and materials.

Mr. KELLOGG: In your opinion was the dividend on the Union Pacific justified by its earnings, or was it declared in order to put up the stock?

Mr. HARRIMAN: Why, you have read the statement itself, that it was justified absolutely by the earnings. It has nothing to do with the stock market in any way whatever.

Mr. KELLOGG: Then why did you care whether it was announced the next morning or the second morning, or before the opening at London, or any other place?

Mr. HARRIMAN: I think the record practically shows it, that we did want to have some of the other members informed, and if there was any objection on the part of any member of the Board, that could be informed of it,—and as I said I had in mind the absent member of the executive committee; I don't know whether he was at the July meeting or not.

Com'r LANE: Have you any knowledge or did you have at that time, of any pool in which any of the directors of the Southern or Union Pacific were interested in the sale of the stock?

Mr. HARRIMAN: No, I don't believe any such pool existed.

Com'r LANE: Were there any heavy speculations in that stock, to your knowledge in the intervening days, between the 17th of August and the date in July when the notification was given that there would be any such dividend?

Mr. HARRIMAN: Not to my knowledge.

Com'r LANE: Not to your knowledge?

Mr. HARRIMAN: Not to my knowledge.

Com'r LANE: But you do not know of any combination of men who were interested in the Union or Southern Pacific who bought heavily in that stock between July and August?

1706 Mr. HARRIMAN: No, sir; I do not. I don't think there was any occasion for it, because I think the people interested in Union Pacific had been holding their stock for a long time before. I think they all appreciated the value and that there would come a time when we would have returns from the Southern Pacific and there would be continually increased earnings in the Union Pacific, and the change in its management would make it possible. It would not be necessary for them to make any such speculation between July and August. I do not say that they did not.

Com'r LANE: But you do not know any individual director in either company?

Mr. HARRIMAN: I haven't any idea whether there was anything of that kind or not. I know there was some appreciation in price, and the whole market went up. I might say that one of the influences which induced the declaration of this dividend was that by the middle of August the outlook of business for this year had been pretty well determined; that is, the crops had gotten far enough along so that we could tell pretty well what we would do. In July it

did not look quite so well. In July I think the market was quite depressed, if I remember right. I think there was a drought or something that was on, and after that the conditions changed.

Com'r LANE: Do you remember that the stock appreciated very rapidly after that?

Mr. HARRIMAN: After July?

Com'r LANE: After August 17th?

Mr. HARRIMAN: After August 17th it appreciated because of the payment of this dividend and the publication of the statement.

Com'r LANE: Were you directly or indirectly interested in any stocks, that were bought between the 19th of July and the 17th of August that appreciated?

Mr. HARRIMAN: We——

Mr. MILBURN: Just a moment, please. I do not know
1707 enough about the fact, but I think, to be consistent in my position, that that is obviously an improper question.

Com'r LANE: It certainly is not obviously improper under our ruling.

Mr. MILBURN: I do not mean under your ruling, but from my position, that is what I mean.

Com'r LANE: Yes. I do not understand that he declines at all to answer this line of question.

Mr. MILBURN: Mr. Harriman must take his own responsibility. I am simply here maintaining the consistency of the position that has been taken for him, Mr. Commissioner, and I do say that this question is entirely different from any question that the Commission has passed upon, because whether anybody bought stocks of the Union Pacific at this time or not, to my mind cannot have the remotest bearing on any question that is before us.

Com'r LANE: Before the announcement had been made by the directors and the other stockholders that there would be a dividend?

Mr. MILBURN: I do not see how that would bear on rates or interstate commerce. It might bear on the morality of men, it might bear on the ethics of men. I don't know, if a man is president of a railroad and knows that its earnings are increasing or developing, anything which prevents him from buying stock.

Com'r LANE: I think the position we will have to take on that matter, consistent with our previous rulings, is that where an interstate commerce carrier declares a dividend, we have a right to investigate into all the acts of those who are acting as trustees for the road.

Mr. MILBURN: That is, that there is a right, as I understand it, to call upon every man who may happen to be a director of that corporation, to show his private transaction for a week or a month, or three months?

1708 Mr. HARRIMAN: Every stockholder was notified of the earnings every month, just the same as every director; as soon as they were in they were sent out, and it is our custom to send to every stockholder and mail to his address the earnings as they come in every month, so that every stockholder—and then they were published in the papers—had the same information as the Board of Directors, as to the earnings.

Com'r LANE: But the information given to the Directors in July was private knowledge?

Mr. HARRIMAN: They could not have any knowledge of that, but they knew from the earnings, the same as we did, that there was a possibility of increase in dividend. In fact, the papers began to notice it, if I remember right, that there was a possibility and probability of a dividend on the Southern Pacific, and also a probability of increase in dividend on the Union Pacific; unless some director may have said something about it—I did not, and I doubt whether they did; but simply taken from the statements sent out each month by the company.

Com'r LANE: I asked you before, when objection was made by your counsel, and of course you have the right to decline to answer——

Mr. HARRIMAN: I should let that take the same course; I have bought Union Pacific all my life, and I could not tell you whether I bought any in July or not. I have bought Union Pacific ever since I have had any connection with it; it seems to me I have done nothing else, and I have advised everybody else to buy it too.

Com'r LANE: And you decline to answer that on the direction of counsel?

Mr. HARRIMAN: Yes.

Com'r LANE: And if we should direct you to answer, on his advice you decline?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: The stockholders did not know that a ten per cent. dividend would be declared on the common stock of the Union Pacific and five per cent. on the stock of the Southern Pacific, did they?

1709 Mr. HARRIMAN: They could not know until it was done——

Mr. KELLOGG: You know——

Mr. HARRIMAN: Wait a minute. I didn't know. How could the stockholders know until it was done? Wouldn't it be just as certain if they were informed that it had been done as if they had been informed that it would be done?

Mr. KELLOGG: You know, Mr. Harriman, that if you said so there would be a 10 per cent. dividend on the Union Pacific?

Mr. HARRIMAN: I had very grave doubts in my own mind until I had the backing up of the Board of Directors and Executive Committee.

Mr. KELLOGG: But you knew when your mind was made up, that would settle it, didn't you?

Mr. HARRIMAN: No, I did not. I have got some pretty strenuous associates with me.

Mr. KELLOGG: Have you ever been overruled on one single thing from the beginning of your management of the Union Pacific up to the present time?

Mr. HARRIMAN: I have not been overruled by you.

Mr. KELLOGG: No, sir. I am incapable of it.

Mr. HARRIMAN: Well, I don't know.

Mr. KELLOGG: Your actions in every respect, everything you have done and recommended to the Board, has been carried out.

Mr. HARRIMAN: I should be very proud of it, if it had been. The results as shown by the statement you have read, I should be very proud if I could say that.

Mr. KELLOGG: Now, you knew a long while before that dividend was declared whether it would be 10, or 5, or 6 or 7 per cent., didn't you?

Mr. HARRIMAN: Well I can't say that I am willing to answer that question. I think those things were passing in my mind, as they were in the minds of other directors. I certainly could not have done it without the assent of the majority of the Board, and
1710 there was not a dissenting voice; there was some discussion, but not a dissenting voice.

Mr. KELLOGG: The statement you say is sent to the stockholders is the usual monthly statement of the gross earnings?

Mr. HARRIMAN: Gross earnings and net, each month.

Mr. KELLOGG: The net is not known for——

Mr. HARRIMAN: Well, we make the estimate of the last month, you know.

Mr. KELLOGG: Yes, it is an estimate.

Mr. HARRIMAN: The last month is an estimate.

Mr. KELLOGG: Is that mailed to every stockholder, the net, every month?

Mr. HARRIMAN: Every month.

Mr. KELLOGG: But the stockholders of course did not know what the Board of Directors might declare?

Mr. HARRIMAN: Mr. Kellogg, what is the use—how could they have trusted the management of their affairs to the Board of Directors——

Mr. KELLOGG: Did you or any director buy any Union and Southern Pacific stock in anticipation of that dividend?

Mr. MILBURN: That has all been passed upon, Mr. Kellogg.

Mr. SEVERANCE: Passed upon by you, Mr. Milburn?

Mr. HARRIMAN: Mr. Kellogg, I bought Union Pacific stock in 1898 at $25 a share, in anticipation of that dividend, and I kept it up. When I bought that stock for $25, one of my associates dubbed me as a desperate speculator who had more nerve than any man he knew. That was in anticipation of this dividend. I bought it in the panic that was produced by the Northern Pacific corner, and I bought it after the San Francisco fire, and it was bought in anticipation of that dividend.

Com'r CLEMENTS: Now, having told what you did in that year——

Mr. HARRIMAN: I could not tell you when I bought it.
1711 There is no use of cross-questioning me, I am not going to answer anything I am advised by counsel not to.

Com'r CLEMENTS: I want to ask you, having told what occurred in that year at that time——

Mr. HARRIMAN: This was in 1906.

Com'r CLEMENTS: Let me ask you a question. What is your own

personal objection to telling what you bought and what you paid for it during this intervening time?

Mr. HARRIMAN: A matter of principle that is involved.

Com'r CLEMENTS: A matter of what?

Mr. HARRIMAN: A matter of principle, absolutely.

Com'r CLEMENTS: What is the question of principle involved, by which you personally refused to disclose these facts?

Mr. HARRIMAN: I am going to refer to Mr. Milburn to express just what he has before.

Mr. MILBURN: I have stated it.

Com'r CLEMENTS: I want him to give his personal reason why he objects to answering the question.

Mr. MILBURN: He has adopted my reasons.

Mr. HARRIMAN: I have no reason whatever.

Com'r CLEMENTS: If he says he adopts the reason suggested by you, that is one thing, but if he has any reason, I would like to hear it.

Mr. MILBURN: Mr. Harriman has the freedom of the occasion, of answering just what he wants. I took the objection because I did not want you to appear, when the Commission as to one matter goes into the domain of private transaction, to object, and then when the questions go again into that domain, that I do not object. It is a perfectly proper position for me to take as counsel. Now, Mr. Harriman, and I have stated the reasons which I think were acute in this case, because it would be neither improper, morally, legally or any other way, if stocks had been bought. But it is within the principle that they are private transactions on his part, and they are not in any way subject to inquiry by this Commission
1712 and that, Mr. Commissioner, is one of the valuable rights of every citizen. It is the question that comes up in court all the time, so that a witness—neither I as counsel nor the witness on the stand, is doing an unusual thing, or an extraordinary thing in raising the question that an investigation is extending beyond a public matter into his private business.

Com'r CLEMENTS: But notwithstanding your advice, he goes on and undertakes to tell what he did do, and what he paid for it, at certain times, and refuses to tell about other times. I want to know why, if he is going to show part of his hand, why doesn't he show it all? Are we not entitled to know the whole truth if we are any of it?

Mr. HARRIMAN: I withdraw for the purposes of this investigation what I did say.

Mr. MILBURN: I would ask to have it stricken from the record.

Com'r CLEMENTS: I am not objecting to it, but I wanted to see what the balance was.

Mr. HARRIMAN: There wasn't any balance.

Mr MILBURN: Mr. Harriman can overrule me——

Mr. HARRIMAN: I am not going to do anything I am advised by counsel not to do.

Com'r CLEMENTS: These carriers are engaged in interstate commerce, in a business which affects the public interests, and ought there to be any city of refuge where part of the facts can be hidden

from the public which are interested in these matters, and at will such of them as he chooses to disclose in his own behalf can be brought to the light.

Mr. MILBURN: I should think, if Mr. Harriman will excuse me, I do not believe in any city of refuge, and I know of no city of refuge. There has been none here that I know of. I think the Commission has the right to know every transaction of this railroad company, and we have exposed every transaction of this railroad company; we have withheld absolutely nothing. I would not advise anything being withheld for one moment of the transactions
1713 of this railroad company. You know everything now that this railroad company has done. For instance, take the very question that we have up here; Mr. Harriman in July bought Union Pacific stock. In what way is that a transaction of this railroad company? What light does that throw upon the condition of this railroad company, or the transactions of this railroad company? If there were some ethica- principle which should have led him not to do it, it is a thing which concerns him himself. If we are to lay down the rule here that no director of a public utility corporation shall buy a share of stock when he has reason to believe that the earnings are going to justify an increase of the dividends——

Com'r CLEMENTS: When the management buys stock, it might throw a great deal of light on the manner and methods in which the conductors are carrying on their business. I don't know what it would show.

Mr. MILBURN: I don't know either, sir. I am not objecting on that ground. I say it would show nothing about the Union Pacific. Here are its earnings and here is the situation under which the dividend was declared. Nothing can be effected by that, whether I bought shares of Union Pacific in July or August or whether Mr. Harriman did, or whether any one else did.

Com'r LANE: You have in New York a provision as to an accounting system for railroads?

Com'r LANE: Under which they shall have to keep accounts of separate items in an accurate way and uniformly. Now, may it not be that the same general practice which led to the adoption of that rule in our law, might lead to the adoption of a rule in law requiring corporations of this character to make announcement of their dividends upon the day when they are declared?

Mr. MILBURN: Supposing we did.

Com'r LANE: We would like to go into the facts and see what the reasons might be why such a rule should or should not be adopted, and see the necessity for it.

1714 Mr. MILBURN: Does anybody need any information as to whether there should be a rule like that or not? Why not establish a rule, if that should be the rule?

Com'r LANE: We of course have no power.

Mr. HARRIMAN: I think, Mr. Milburn, this was an exceptional case. The dividends were declared on one day and referred to the Executive Committee, which was to meet the next morning, and if they had met the next morning the dividend would have been announced. The unfortunate thing was, I was not able to attend the

meeting that morning, and then we were met face to face with the fact of whether we should give the announcement to London or give it to New York, and that is where the trouble was. If I had been to the executive committee meeting in the morning it would have been announced, and the letter sent to the Stock Exchange that morning instead of the next morning.

Mr. KELLOGG: That does not answer the question as to whether——.

Mr. HARRIMAN: No, that was not answering the question as to the purchase of stock. Now, it does seem to me that if this commission might be inspired to look into the affairs of corporations by information that they might receive, therefore they might be inspired to look into the affairs of an individual that might be connected with a large corporation as to whether he held any stock or not—it might be the public curiosity of somebody to find out whether a person connected or in the management of some of these large corporations was interested in the stock or not, and to how much, and therefore they might at any time investigate the affairs of that individual and bring him up and ask him whether he had any stock of the corporation in which he was instrumental in managing. Am I not right in that?

Mr. KELLOGG: And the Commission——

Com'r LANE: If he is a trustee do you think there is any particular reason why he should not make a disclosure of that kind?

1715 Mr. HARRIMAN: I don't think—that is not a disclosure——

Mr. MILBURN: I think I am responsible for those grounds that were assigned. I am either wrong or I am right.

Mr. HARRIMAN: If you want to pass an act that no trustee of any corporation shall have any interest in the stock of that corporation, why that would be perfectly right, but it would be pretty hard to find proper men to do it.

The CHAIRMAN: Having reference to your last question, the record may show that the same objections were made as before, and they are overruled and the witness is directed to answer, and he still refuses. Now, is there anything further?

Mr. KELLOGG: That is all.

The CHAIRMAN: Mr. Milburn, do you desire to interrogate Mr. Harriman?

Mr. MILBURN: No questions.

Com'r CLEMENTS: The conference that was had between you and Mr. Cassatt was brought about by whose suggestions?

Mr. HARRIMAN: Not by anybody. I happened to go into Bar Harbor in a yacht, and Mr. Cassatt happened to be ill, and recovering from an attack of whooping cough, and I went up to make a personal call; and the first knowledge that I had of any sale of the Baltimore & Ohio—I remember since yesterday—of the sale of any Baltimore & Ohio stock by the Pennsylvania Railroad was given to me then, and that is why the discussion came up, and I do not think there was any discussion at that time as to whether we should buy any of it or not. I don't think it was mentioned. I remember that he gave me the information that the Pennsylvania Railroad

had sold some of its holdings in Baltimore & Ohio to Messrs. Kuhn, Loeb & Co. I had not at that time a notion of purchasing.

Mr. LOVETT: Speak louder, Mr. Harriman, please.

Mr. HARRIMAN: At the time I went to Bar Harbor I was with my family on a yacht and went into Bar Harbor; and it
1716 was just at the time when Mr. Cassatt was recovering from the effects of his attack of whooping cough; and I made a social call on him; I don't suppose I was with him more than perhaps half an hour; and he then stated to me that he had sold some of their holdings of Baltimore & Ohio to Messrs. Kuhn, Loeb & Co.; and I don't remember that there was anything said at that time about the possibility of the Union Pacific or my acquiring any part of that stock; I don't think there was. That was the first information I had about it.

Com'r CLEMENTS: Had it already been sold then to Kuhn, Loeb & Co., did he say?

Mr. HARRIMAN: I understood him to say so.

Com'r CLEMENTS: Did he say how much?

Mr. HARRIMAN: My impression is he told me about half of their holdings.

Com'r CLEMENTS: Then what time after that—what step did you take, or the Union Pacific take to acquire it?

Mr. HARRIMAN: Well, it was some time after that, after I returned to New York, that the matter was brought up for consideration.

Mr. CLEMENTS: How was that brought up?

Mr. HARRIMAN: That was brought up—I don't remember exactly. We were informed then by Messrs. Kuhn, Loeb & Co. that they had this stock, and that if I had any interest in acquiring it, that they would negotiate for it.

Com'r CLEMENTS: Did Mr. Cassatt state why he was disposing of it on behalf of the Pennsylvania Railroad, and his reasons for it?

Mr. HARRIMAN: No, sir.

Com'r CLEMENTS: Did you ever have any further conversation or talk with Mr. Cassatt, or any officer of the Pennsylvania Railroad, about it?

Mr. HARRIMAN: I don't think I saw Mr. Cassatt after that; I am not sure; but I don't think I saw him.

Com'r CLEMENTS: Now, Mr. Harriman, I would like you
1717 to tell me upon what theory your calculation is made by which you testify that the freight rates on the Chicago & Alton road have been reduced about 30 per cent., and on the Union Pacific about 17 per cent., within the period you have mentioned there?

Mr. HARRIMAN: I think the figures that I have shown there——

Com'r CLEMENTS: How do you get the percentage on that?

Mr. HARRIMAN: In 1898 the average rate on the Chicago & Alton was .866 of a cent. In 1906 it was .639 of a cent.

Com'r CLEMENTS: Is that the average rate per ton per mile?

Mr. HARRIMAN: Per ton per mile, yes. Now, then, .866 is about 30 per cent. greater than .639.

Com'r CLEMENTS: The basis of that percentage is on the average rate per ton per mile.

Mr. HARRIMAN: Yes, sir.

Com'r CLEMENTS: Well, now, I think you have already said today in the course of your testimony that that is not a safe rule.

Mr. HARRIMAN: That is not. I believe the reduction in the Chicago & Alton was somewhat due to the increase in its coal country, the improvements on the Chicago & Alton enabled more mines to be opened, and there was an increase in the coal production; but it is a well known fact the rates in that section of the country—I think that that is the fact—have been more largely reduced than any other section of the country, the Middle West.

Com'r CLEMENTS: The increase of tonnage of a low grade might tend to bring down the cost per ton per mile.

Mr. HARRIMAN: Yes, sir, without any reduction in some parts of the rates.

Com'r CLEMENTS: Well, on any rates, wouldn't it have that effect?

Mr. HARRIMAN: Yes, sir; it might have that effect, too.

1718 Com'r CLEMENTS: You might not change any rate on any article, and yet if the percentage of the whole tonnage had largely gone to heavy low grade freight, that would show a reduction per mile per ton.

Mr. HARRIMAN: Yes sir; an average reduction, or the reverse of that; an increase in high price commodities might tend to show an increase in the average rate per ton per mile. There is not any doubt about it, and it is somewhat of a fallacy, that average per ton per mile in estimating. I quite agree with you on that, and think there should be some other method adopted.

Com'r CLEMENTS: Well, that is only one pointer which may be very misleading.

Mr. HARRIMAN: It is misleading, undoubtedly.

Com'r CLEMENTS: It is a fact, is it not, that all the trans-continental roads through a joint agency, that is who published their rate, did make large increases, or increases on a large number of commodities, both east and west?

Mr. HARRIMAN: I am not conversant with that. I think they did, to meet the conditions, because of increased cost of labor and material and increased cost of operation.

Com'r CLEMENTS: Well, you have said this morning, I think, that it would not be necessarily wrong for the road, to earn fifteen per cent. on its capitalization.

Mr. HARRIMAN: Why, certainly not.

Com'r CLEMENTS: Where would you fix the limit?

Mr. HARRIMAN: One hundred per cent. if you like.

Com'r CLEMENTS: From a fair just standpoint.

Mr. HARRIMAN: As long as it is properly conducted and gives proper facilities for the proper transportation of its business, and no higher rate than is relatively charged by any other railroad, it is within the bounds of propriety.

Com'r CLEMENTS: How far would you go now, if it was done

that way, before you would say it was an excessive and extortionate profit?

Mr. HARRIMAN: It could not be an extortionate profit—
1719 an extortionate charge you might say—it is the charge, not the profit, which is extortionate. If one method of financing or managing a road or operating a road puts it in a better position than some of the other roads, there is no reason why its stockholders should not receive the benefit therefrom.

Com'r CLEMENTS: How much, one hundred per cent.?

Mr. HARRIMAN: It would not make any difference. I do not think the percentages bear on that. What are you going to do with it? Are you going to donate it to the government, or what?

Com'r CLEMENTS: There are several ways by which you might let the shippers keep it.

Mr. HARRIMAN: If you will let us reduce our rate and don't let any other railroad reduce their rate, we will get all the business.

Com'r CLEMENTS: Now, you say as long as the road does the service, and does it as cheap as any other under like conditions and circumstances, that it does not make any difference how much they make.

Mr. HARRIMAN: I don't think it makes very much difference, if the same rates prevail on every railroad, and every shipper has the same rate.

Com'r CLEMENTS: Now, if all the railroads by some concerted means make the same rates on the same commodity between the same points, how would you ever find the standard of comparison by which to test the validity of your rates, because your road and the other roads have all made the same rate on the same article at the same time by agreement and not by competition.

Mr. HARRIMAN: Well, I think——

Com'r CLEMENTS: Your rates would justify theirs, and theirs would justify yours, according to your statement?

Mr. HARRIMAN: Possibly theirs would justify ours, I don't know that they would, or ours might justify theirs.

Com'r CLEMENTS: Well, by comparison——

Mr. HARRIMAN (interrupting): That is a pretty broad
1720 question. I think there should be some regulation. If as I stated to Mr. Lane, the railroads were legally entitled to make agreements——

Com'r CLEMENTS: When you say make agreements——

Mr. HARRIMAN (interrupting): Permanent agreements.

Com'r CLEMENTS: When you say make agreements, you mean make rates?

Mr. HARRIMAN: No, agreements for transportation, agreements for the establishment of lines upon which the traffic could be conducted at less cost.

Com'r CLEMENTS: There is not anything in the law that I know of against your making agreements with connecting lines.

Mr. HARRIMAN: But I mean agreements that would be permanent and standing, for ninety-nine years or one thousand years.

Com'r CLEMENTS: What kind of agreements do you mean?

Mr. HARRIMAN: Operating agreements.

Com'r CLEMENTS: Fixing rates between competing lines?

Mr. HARRIMAN: No; not necessarily between competing lines, but operating agreements where parts of lines could be used, and distribution of traffic.

Com'r CLEMENTS: Do you mean distribution of traffic between the different competing lines?

Mr. HARRIMAN: Distribution of traffic between the different competing lines under proper regulation.

Com'r CLEMENTS: Now, for what purpose would you have the roads do that?

Mr. HARRIMAN: For the purpose of reducing the cost of the business.

Com'r CLEMENTS: Does it not also have the effect of preventing the reduction of rates by one road, if the road enters into an agreement by which each road is to get so much anyhow? What inducement is there for any road to make a lower rate?

Mr. HARRIMAN: The same inducement there would be for
1721 any merchant or manufacturer who has to reach a market with his goods. So long as you gentlemen are in existence I don't suppose there would be much difficulty in arriving at some plan, whereby those matters could be regulated, provided the railroads had the counter right to distribute their traffic where it could be handled to the best advantage.

Com'r CLEMENTS: Don't you think that would tend to enable all the railroads to charge all that the traffic would bear?

Mr. HARRIMAN: No, I don't think so. I think it would enable the railroads to conduct their traffic at less cost than they are at present, and would enable them in the end to do it at less charge than is now made.

Com'r CLEMENTS: Well, if they have a right to agree to divide the business and cease competition, and there is no need then to compete, and so long as the property will bring more than freight rate, isn't there a constant tendency on the part of roads, and a perfectly natural one, to increase their profit?

Mr. HARRIMAN: Suppose they did increase their profit, if it did not injure anybody?

Mr. CLEMENTS: How can you take it without taking it from somebody? Does not the consumer or the shipper pay it?

Mr. HARRIMAN: The shipper of consumer may pay it, but if he gets a proper profit on his business should not the railroad get one too?

Com'r CLEMENTS: What is to become of the consumer who consumes the goods that the shipper ships and the railroad carrries?

Mr. HARRIMAN: The consumer in order to get the withal to purchase what he buys from the shipper, has to produce something else and sell it to some other consumer; it is rolling around in a ring all the time.

Com'r CLEMENTS: Do you think there is in the domain of good morals any limit to which the carrier may take their profits?

1722 Mr. HARRIMAN: That is not it. I think you are going beyond the line. I maintain that any transportation line

that could get itself into the condition where it could transport cheaper than other lines similarly situated, is entitled to all the profit it could make, provided it charged no more therefor than the other lines were charging for similar business.

Com'r CLEMENTS: If they all agree on what they will all charge, what is to hinder them from——

Mr. HARRIMAN (interrupting): I don't believe they will all agree. I don't believe they ought to have the right to agree on anything they should do without proper regulation; and I so stated this morning, in answer to Mr. Lane's question.

Com'r CLEMENTS: That regulation would be to put a limit on the profits they might make, by limiting the charges.

Mr. HARRIMAN: Yes, you might limit the rate at which all the railroads should conduct their traffic, but you should not say that one railroad should charge so much, and another railroad should charge so much, more or less; but if the rates were fixed so that all railroads charged the same reasonable rates, why, any railroad that got itself in proper condition to take transportation at less cost than railroad, should receive the full benefit for it.

Com'r CLEMENTS: You did not claim they should be all allowed to join together and divide the business or make rate agreements so as to——

Mr. HARRIMAN (interrupting): I do not say this, that there should be some act passed so as to enable the railroads to make some such agreements, under proper regulations well known to the public and well known to somebody constituting as you gentlemen are, and under authority of some such body—that there should be some such law whereby the railroads can transact their business lawfully as well as intelligently.

Com'r CLEMENTS: You think that authority ought to be vested with the power of putting a limitation on the charges of railroads?

Mr. HARRIMAN: Proper reasonable charges by the rail-
1723 road, I have no objection to that; but the point I made was, that one railroad should not be regulated to the exclusion of other railroads.

Com'r CLEMENTS: Well, the Government gets money for 2½ and 3 per cent. and good securities of other concerns are taken at a premium, at 3 and 4 and 5 per cent., and——

Mr. HARRIMAN (interrupting): Not many of them.

Com'r CLEMENTS: And it is usury for a bank or other persons to take more than 6 or 7 or some other amount that is fixed by legislation. Now, is there no point of fairness and good morals and principles that governs in all lines of business and enters into legislation and other matters—is there no point beyond which the rates of a railroad should be shown to be unreasonably high because of an excessive profit?

Mr. HARRIMAN: Do you think between Omaha and Denver, for instance, if the Burlington & Quincy took its traffic for less cost than the Union Pacific could, that the rate on the Burlington & Quincy should be reduced, and not on the Union Pacific?

Com'r CLEMENTS: You have not quite answered my question, and have asked me one.

Mr. HARRIMAN: I know, but I am trying to answer your question by asking one.

Com'r CLEMENTS: Do you think there should be any limit or ought not to be any limit?

Mr. HARRIMAN: On all railroads?

Com'r CLEMENTS: Any railroad?

Mr. HARRIMAN: Well, I don't think you can specify on one railroad. It depends. The charges on one railroad must relatively be the same as on all railroads doing similar business.

Com'r CLEMENTS: The question you put to me, if it was a dealer in other articles out here on the street, the one that could not do it at the lowest price would have to take the lowest price made by his competitor, whether he could afford to do it or not.

Mr. HARRIMAN: Then he would go into bankruptcy, maybe.

1724 Com'r CLEMENTS: That might be so.

Mr. HARRIMAN: One railroad might be capitalized for less than its worth, or its credit might be higher, and it might issue bonds at a low rate, which would enable it to raise capital at a lower rate than the other road; the stockholders ought to get the benefit of the credit.

Com'r CLEMENTS: Do you think the Government or the people should guarantee every railroad, whether built improperly or not, or keep out of bankruptcy?

Mr. HARRIMAN: I think it would be to the interest—not of the Government—but to the interest of the people, that that railroad should receive a fair return to enable it to conduct its business at a profit.

Com'r CLEMENTS: You would hardly think it was justifiable that the public should be required to pay such rates as to guarantee that no railroad, however improperly operated, should be kept out of bankruptcy——

Mr. HARRIMAN (interrupting): There should be allowed a charge——

Com'r CLEMENTS (interrupting): On a basis which could do that?

Mr. HARRIMAN: I think that when a transportation property has developed its system like any manufacturer, so that it can produce the goods for less cost than another, it should not be forced to charge less for its goods than the others, similarly transportation lines, do for theirs.

Com'r CLEMENTS: Ought the charges then to be on the basis of that one which is the worst located and constructed and operated?

Mr. HARRIMAN: It should be on a fair and reasonable basis for all lines alike.

Com'r CLEMENTS: You spoke of being in Alaska, on the coast of Alaska in the spring or summer in which a certain important action was taken in regard to the reorganization of the Chicago & Alton.

Mr. HARRIMAN: Yes, in the spring of 1899.

Com'r CLEMENTS: And that you were not present. You
1725 do not mean to have us understand by that, do you, that you did not understand what was going to be done, and that it had not your approval in a general way?

Mr. HARRIMAN: No, that is what I had on my mind, that before I left for Alaska, that the readjustment of the Chicago & Alton finances had all been agreed to, and that it was contemplated to issue these 3 per cent. bonds, and that these people who represented the syndicate who purchased the Chicago & Alton had agreed to take it; that is exactly what I wanted to convey; and during the summer of 1899, I was not here when the details were attended to, and therefore——

Com'r CLEMENTS: And at the time the deal was made of record you were not here?

Mr. HARRIMAN: But it was under my agreement, so far as I was concerned, to do that very thing, and the commitments were made, probably six months before it was finally effected.

Com'r CLEMENTS: What was the use of this apparent dummy in that transaction, Mr. Stanton, who appears by the record to have title to securities, and that he made an offer to the Chicago & Alton Railway Company. Now how did he get it? You say he had no interest in it?

Mr. HARRIMAN: Did I say he had no interest in it?

Com'r CLEMENTS: I understood you to say so.

Mr. HARRIMAN: I don't know whether he had or not, but that was a detail which I suppose was necessary to conduct or carry out the arrangements which had all been agreed upon by the parties in interest, and I presume they had to have somebody there whom they could consummate the transaction through; it may have been legally required or it may have been a matter of convenience.

Com'r CLEMENTS: What was the reason that made it necessary to do it that way?

Mr. HARRIMAN: I don't know why, as I told you before, and I don't know why they adopted that method. That information must be obtained somewhere else.

1726 Com'r CLEMENTS: Was it not due to the fact that the men who had the real interest in the securities of the old company were the ones who would have the real interest in the new Alton Company?

Mr. HARRIMAN: I don't think there is any doubt about that.

Com'r CLEMENTS: And that they could not very well transfer their own property to themselves in a double capacity.

Mr. HARRIMAN: That may have been; I cannot confirm that; it may have been, or it may not. I believe before I went away to Alaska that all this matter, the method of financing and readjusting the Chicago & Alton was agreed upon, and it was carried on mostly while I was away. The details were arranged mostly while I was away.

Com'r HARLAN: I understood you to say that you thought it would be a wise thing to have a law permitting the consolidation of railroads?

Mr. HARRIMAN: The combination of lines; I don't say consolidation of railroads.

Com'r HARLAN: The combination of lines, rather, and that it would result in the connections of the roads and possibly reflect itself in the rates, that is, giving lower rates to the people.

Mr. HARRIMAN: Yes.

Com'r HARLAN: And that if such a law were passed, you thought it would also be wise to have this Commission, or some other power, to review and pass upon the terms of such a combination?

Mr. HARRIMAN: That is right, as to whether they were proper.

Com'r HARLAN: Do you think it would also be wise if this Commission were given the power by Congress to regulate the issuing of stocks and bonds by railroad corporations, in other words, suppose instead of issuing stocks and bonds of the Chicago & Alton Railroad Company, according to your pleasure, you had been compelled to appeal to this body or some similar body for such authority?

1727 Mr. HARRIMAN: I would rather give that question a little more thought. It is new to me. I doubt whether that would not lead to a good many complications, which would perhaps lead to adjustments in the construction of railroads——

Com'r HARLAN: You would have been able to issue them if you had been compelled to appeal to some governmental power?

Mr. HARRIMAN: I don't know whether we would or not, but I think if we had gone to some governmental power and shown to them that what we intended to do would tend to improve the Chicago & Alton Railroad so that it could transport three times as much traffic as it had before, and did not increase the distribution to its security holders other than four or five per cent. on the amount of new money which went into the property, I don't think that the issuing of those securities bears on the subject one iota; if people choose to buy securities which may be issued, anticipating that the increase in population and increase in volume of business, whereby they may have some chance to get a return on them,—I don't think the Commission or any other body ought to interfere with them.

Com'r HARLAN: Well, I understand you are looking forward to a time when there will be dividends on this common stock of the New Chicago & Alton?

Mr. HARRIMAN: Well, I think if we had been able to maintain the same rate in 1906 or 1905 that was charged in 1898, that we would have been paying 8 or 10 per cent. or 11 per cent. on the common stock of the Chicago & Alton. We expected by putting this new money into Chicago & Alton to give the territory tributary to it an opportunity to expand and to increase the volume of business that would pass over the Chicago & Alton Railway; but the benefit was all absorbed in the reduction of the rate.

Com'r LANE: What year did you take up the Union Pacific?

Mr. HARRIMAN: 1898.

1728 Com'r LANE: From that time you have increased your holdings in railroads until your line extends out to Portland, and by water from there across the Pacific; takes in the line then

from Ogden to San Francisco, and from there across the Pacific to the Orient; and from San Francisco back down and south to New Orleans, and from New Orleans to New York by water; you have a certain control over the Illinois Central and a certain control over the Chicago & Alton; you have approximately $30,000,000 of stock in the Baltimore & Ohio; you have a large holding in the New York Central; and all these holdings trace from the original taking over of the Union Pacific, and the issuance of the $100,000,000 of bonds; is that so?

Mr. HARRIMAN: All these latter holdings trace to the proceeds of the sale of the Northern Pacific and Great Northern.

Com'r LANE: All the profits which you have made out of that transaction?

Mr. HARRIMAN: Well, out of that transaction, but that was not out of traffic; it had nothing to do with rates or income from traffic. It was only the handling of the——

Com'r LANE: The handling of the money which you realized upon the sale of securities of the Union Pacific Road?

Mr. HARRIMAN: That is all a reinvestment.

Com'r LANE: Where is that thing going to stop?

Mr. HARRIMAN: I don't—I think it has stopped. I don't think we have any more—I would go on with it if I thought we could realize something more than we have got from these investments, I would go on and buy some more things.

Com'r LANE: Supposing you concentrated two or three more you might take some other line and go right into New York?

Mr. MILBURN: Why not?

Mr. HARRIMAN: Suppose we had a line from New York to San Francisco; I suppose that is what you mean; would it not be a
1729 good thing—not that we have any idea of doing it, but would it not be a good thing?

Com'r LANE: Supposing that you got the Santa Fe.

Mr. HARRIMAN: You would not let us get it.

Com'r LANE: How could we help it?

Mr. HARRIMAN: How could you help it? I think you would bring out your power to enforce the conditions of the Sherman Anti-Trust Act pretty quick. If you will let us, I will go and take the Santa Fe to-morrow.

Mr. LANE: You would take it to-morrow?

Mr. HARRIMAN: Why, certainly I would; I would not have any hesitation; it is a pretty good property.

Com'r LANE: Then it is only the restriction of the law that keeps you from taking it?

Mr. HARRIMAN: I would go on as long as I lived.

Com'r LANE: Then after you had gotten through with the Santa Fe and had taken it, you would also take the Northern Pacific and Great Northern, if you could get them?

Mr. HARRIMAN: If you would let me.

Com'r LANE: And your power, which you have, would gradually increase as you took one road after another, so that you might spread not only over the Pacific coast, but spread out over the Atlantic coast.

Mr. HARRIMAN: Yes; but hasn't your organization increased its power?

Com'r LANE: It undoubtedly has. That is what I am coming to. Do you think the law itself should intervene there and should restrict you in your power to use money raised for railroad purposes and raised on railroad securities to the actual improvement of that railroad, or should you be allowed to use it for the acquisition of other railroads?

Mr. HARRIMAN: I think we should be allowed to use it for the acquisition of other railroads, under proper regulation.

Com'r LANE: Now, what——

Mr. HARRIMAN: One minute. What I mean by that is
1730 this. This is probably an illustration which I might make.

As the law exists, railroads are prevented from consolidating or combining. If interests in certain lines have been forced to purchase the securities of other railroads in which they wanted some dominating influence,—not that we have purchased since the 1st of July; these purchases we made since the 1st of July were not specially for that purpose—but take the instance of the Burlington & Quincy & Great Northern, and Northern Pacific; it was not a good thing for the Northern Pacific and the Great Northern and Burlington, or for the Northern Pacific and Great Northern to buy all the stock and eliminate fom the situation 15,000 or 16,000 small stockholders; that is what they did. They turned those 15,000 or 16,000 small stockholders from stockholders into creditors, so that they were eliminated from the development of the business on the lines of railroad. They did not care anything about it as long as they got the interest on the bonds. Now, if we had some legal method whereby the Burlington and Northern Pacific and Great Northern, under some legal restriction, had been permitted to make contracts by which they could approximately have accomplished the same thing, it would not have been necessary to issue the $200,000,000 of bonds to acquire the Burlington stock, and the ownership of these securities would have been in the hands of the people, where I believe it is better it should be.

We have never gone to the extent of eliminating so far as we could possibly avoid it, ownership by small people in our property; we have been partners of theirs and have tried to be partners of the public.

Com'r LANE: And you want the powers of the Commission still further increased——

Mr. HARRIMAN (interrupting): I cannot say that I do, unless we have our powers increased.

Com'r LANE: You want your powers increased so that you can combine, and you want us given power in the first place to insure the rate——

1731 Mr. HARRIMAN: Yes, to regulate and go hand in hand with us. There is no other country in the world where the business interests are so antagonized by the Government as this one. You take any other country in the world where the transportation lines are as important a part of it as they are in this country, they go hand in hand. Even Japan, poor little Japan—not poor little

Japan, but a small Nation like that, the Government takes a practical interest in encouraging transportation facilities.

Com'r LANE: There is no other Government in the world that has given so much land and money to the railroads as this——

Mr. HARRIMAN: But there is no other country in which railroads have improved the country as in this country.

Com'r LANE: Is there any other country in the world where transportation lines have yielded such large profits?

Mr. HARRIMAN: I think if you will go back twenty years, I think you will find the average profits of those lines have not been so very large. From 1894, or from the panic of 1893 until 1898, I think you will find that about 70 per cent. of the securities of the railroads of this country were without dividends, and——

Com'r LANE: Certainly——

Mr. HARRIMAN: Wait a minute. In 1898, if you will remember, it was just at the time in 1897 and 1898, when all these bankrupt properties were being reorganized and paying assessments instead of dividends. You talk about 10 per cent. dividend on the Union Pacific. When I took hold of the Union Pacific, we were just paying 10 per cent. assessment on our stock.

Mr. KELLOGG: And getting preferred stock for it?

Mr. HARRIMAN: And getting preferred stock for it, which was problematical as to its value.

Mr. KELLOGG: And they were getting their full amount of the common stock which they had in the old line?

1732 Mr. HARRIMAN: Yes, but it was problematical what it would be worth. But they were called upon to pay a 10 per cent. assessment on a stock the market value of which was only about 30 per cent.

Com'r LANE: Is it not a fact that every regulative act upon the railroad is the result of some policy pursued by the railroads themselves?

Mr. HARRIMAN: I believe you are right. I think the railroads themselves are more to blame than any factor, for the condition that exists today, the antagonisms between the people and the legislatures and the railroads themselves. I think the management of the railroads themselves are more or less to blame than any other cause, and they had a right to agree and they had the right to get together, but they were always squabbling and never got together, and they lost the respect of the communities which they served. I have no apologies to make for the railroads at all.

The CHAIRMAN: Are there any other questions?

Mr. KELLOGG: Yes, I forgot a railroad or two which Mr. Harriman bought, which I would like to mention in the morning. It is pretty late now.

The CHAIRMAN: If you will be good enough to see that the witnesses who are to follow Mr. Harriman are present in the morning, it will expedite matters. I assume his examination will not occupy much time.

Mr. KELLOGG: No, it will be short.

At 4:50 p. m. the Commission adjourned to Wednesday, February 27, 1907, at 10 a. m.

1733 NEW YORK, *February* 27, 1907.

The Commission met pursuant to adjournment, at 10 a. m.

Present:

Commissioners Knapp, Clements, Harlan and Lane.

Messrs. Kellogg and Severance, for the Commission.

Messrs. Lovett, Milburn and Evarts, for the Union Pacific Railroad Company.

Mr. Cravath, for Otto H. Kahn and others.

EDWARD H. HARRIMAN resumed.

Mr. KELLOGG: Mr. Harriman, you are familiar with the St. Joseph & Grand Island Railroad?

Mr. HARRIMAN: Fairly well, so, yes, sir.

Mr. KELLOGG: I noticed by the statement that the Union Pacific Railroad purchased the stock of the St. Joe & Grand Island since July 1st, 1906.

Mr. HARRIMAN: Yes, sir; that is right.

Mr. KELLOGG: Now, $2,242,540—of whom were these stocks purchased?

Mr. HARRIMAN: Purchased from me, and so stated in the record.

Mr. KELLOGG: And that appears in the record in this case?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: When did you acquire those stocks?

Mr. MILBURN: That is on the same line, your Honors.

Mr. KELLOGG: I just want to make the record cover the St. Joe & Grand Island.

Mr. MILBURN: And the record may cover it in the same way.

Mr. HARRIMAN: I make the same answer.

The CHAIRMAN: Is there any objection to his stating the time when he purchased it?

Mr. MILBURN: Yes, it is all on the same line.

1734 The CHAIRMAN: The objection is made for the same reasons as heretofore advanced, and it is overruled, and the witness declines to answer.

Mr. KELLOGG: You decline to answer?

Mr. HARRIMAN: On the same grounds.

Mr. KELLOGG: What did you pay for those stocks?

Mr. MILBURN: The same objections.

The CHAIRMAN: The same ruling.

Mr. HARRIMAN: I decline to answer, on the same grounds.

Mr. KELLOGG: Is not the St. Joe & Grand Island a parallel and competing line to the Union Pacific?

Mr. HARRIMAN: I should say not.

Mr. KELLOGG: It starts from St. Joseph——

Mr. HARRIMAN: It was part of the old system of the Union Pacific originally.

Mr. KELLOGG: And it starts from St. Joseph and runs to a point on the Union Pacific at Grand Island?

Mr. HARRIMAN: Yes.

Mr. KELLOGG: Prior to the reorganization of the Union Pacific

road the St. Joe & Grand Island was owned, or at least operated, by the Union Pacific, was it not?

Mr. HARRIMAN: I believe it was.

Mr. KELLOGG: During the reorganization or prior to the reorganization, is it not a fact that the receivers of the Union Pacific road refused to assume the obligations and burden of operating the St. Joe & Grand Island?

Mr. HARRIMAN: That I don't know. I know very little about the Union Pacific prior to the reorganization.

Mr. KELLOGG: You have no knowledge of that fact?

Mr. HARRIMAN: No.

Mr. KELLOGG: It was not reorganized by the reorganization committee of the Union Pacific?

Mr. HARRIMAN: And included, in the system, no.

Mr. KELLOGG: And for a number of years after the Union Pacific was reorganized, the St. Joe & Grand Island was an independent line?

1735 Mr. HARRIMAN: Absolutely.

Mr. KELLOGG: Do you know who did control it during those years by stock ownership?

Mr. HARRIMAN: I don't think anybody controlled it by stock ownership.

Mr. KELLOGG: You don't think so?

Mr. HARRIMAN: No, I don't think there was any one interested that held the control of it.

Mr. KELLOGG: Whom were the interests in the Board that had the direction of its affairs prior to the acquisition by you?

Mr. HARRIMAN: Prior to the acquisition by the Union Pacific?

Mr KELLOGG: Yes.

Mr. HARRIMAN: Well, it was, I think, very largely I that had an influence, or through some of my associates.

Mr. KELLOGG: That was after your purchase or prior to your purchase?

Mr. HARRIMAN: That I don't know.

Mr. KELLOGG: You don't know?

Mr. HARRIMAN: I don't remember.

Mr. KELLOGG: Of whom were the New York Central stocks purchased?

Mr. HARRIMAN: They were purchased in the market through brokers and bankers.

Mr. KELLOGG: Were any of the directors of the Union Pacific interested directly or indirectly in the New York Central stocks at the time they were sold?

Mr. MILBURN: That is the same line.

Mr. KELLOGG: I mean these particular New York Central stocks?

Mr. MILBURN: Same objection.

The CHAIRMAN: The same objections are made and they are overruled, and the witness declines to answer.

Mr. KELLOGG: You decline to answer for the same reasons?

Mr. HARRIMAN: Yes.

1736 Mr. KELLOGG: I mean at the time the Union Pacific bought these shares of New York Central stock, were any of the directors interested in the sale of those particular shares?

The CHAIRMAN: It will be understood that the question relates to that time.

Mr. KELLOGG: And the same position is taken?

Mr. MILBURN: Yes, and the same answer.

Mr. KELLOGG: You testified yesterday, Mr. Harriman, to $22,000,000 having been spent upon the Chicago & Alton Railroad since the acquisition of it by your syndicate, or about $22,000,000?

Mr. HARRIMAN: About $22,000,000.

Mr. KELLOGG: Now, as a matter of fact, where did you get that statement?

Mr. HARRIMAN: From the president of the Chicago & Alton Railroad.

Mr. KELLOGG: Does not that statement include $2,274,000 in round numbers of car trust certificates, and $1,000,000 borrowed from Kuhn, Loeb & Co., making $3,274,000 that are not included in the obligations of the Chicago & Alton Railroad which I asked you, to wit, $122,000,000?

Mr. HARRIMAN: If I had that statement I gave you yesterday I might tell you.

Mr. KELLOGG: Well, I have not got that statement.

Mr. HARRIMAN: I think I handed it back to you. It showed that after spending $22,000,000 that the disbursement to the security holders was something like $840,000 more than it was in 1898. It might possibly be, if it is a fact, that the interest on that $3,900,000 should be added to the charge, which would make it practically $150,000 more, so that even if that were so, the charge would have been increased $1,000,000 after the expenditure of $22,370,000, instead of $850,000, and the only way I can do it is to take it up by the figures themselves.

Mr. KELLOGG: We probably can get that from Mr. Felton, can't we?

1737 Mr. HARRIMAN: No, I don't think Mr. Felton made that. Mr. Milburn handed me that statement yesterday, and I suppose it was made up by Mr. Mahl.

Mr. KELLOGG: You did, Mr. Harriman, hand it to me (handing paper). Here it is.

Mr. HARRIMAN: Who made the statement up?

Mr. KELLOGG: There is the statement.

Mr. HARRIMAN: No, this is not the statement, because that is not my figuring. This is the statement showing the expenditure. You asked for the statement showing the distribution to security holders.

Mr. KELLOGG: Oh, no, you misunderstand me. I want to know—this is the statement I referred to, this statement shows that from January 1st, 1899, to January 1st, 1907, there was a grand total spent upon the property of $22,377,219.04 which you testified to yesterday.

Mr. HARRIMAN: That is right.

Mr. KELLOGG: Now, then, I wish to know if it is not a fact that

$3,274,000 of that was car trust certificates, $2,274,000, and borrowed from Kuhn, Loeb & Co., $1,000,000 which items are not included in the capitalization of $122,000,000 which I asked about yesterday?

Mr. HARRIMAN: I don't know about the capitalization? I am now talking about the distribution to the security holders. I think that possibly you are right, but all I want to emphasize is that the distribution to the security holders of the Chicago & Alton is no greater now than it was in 1898, after spending $22,000,000 on the property and deducting interest on that amount?

Mr. KELLOGG: You have fully explained that.

Mr. HARRIMAN: That is what I want to emphasize. Now you have the figures and I am willing to concede it, if it is $3,000,000 on $122,000,000, for the purpose of getting through with this matter.

Mr. KELLOGG: I will be through with it in a moment. Then as a matter of fact, that $3,274,000——

Mr. HARRIMAN: If your figures are correct, and it has not been included, I am willing to concede it.

1738 Mr. KELLOGG: Then that should be deducted from the $22,377,000 which were spent out of the securities which you name?

Mr. HARRIMAN: I did not say it was spent on the securities but it was spent on the property and the distribution to security holders was no greater.

Mr. KELLOGG: Was not $451,000 of that item of $22,377,219 spent prior to your acquisition of the stock of the Chicago & Alton Railroad, and out of the railroad company's money prior to your acquisition, $451,000?

Mr. HARRIMAN: You mean prior to January 1st, 1899?

Mr. KELLOGG: Prior to January 1st, 1899.

Mr. HARRIMAN: Not unless this statement is incorrect.

Mr KELLOGG: If that is true, then the figures of $18,000,000 which the comptroller of the Alton says was spent on this property out of the $122,000,000 of securities, would be substantially correct, would it not?

Mr. HARRIMAN: Well, I don't know about that?

Mr. KELLOGG: Deduct $3,725,000 from $5,227,000——

Mr. HARRIMAN: But that does not alter the fact that $22,000,000 was spent on the property.

Mr. KELLOGG: But it does not alter the fact that $22,000,000 was not spent out of the $122,000,000.

Mr. HARRIMAN: I did not say anything about the $122,000,000. You are harping on that. I had nothing to do with that. It does not bear on this question.

Mr. KELLOGG: That is all, Mr. Harriman.

Mr. MILBURN: No questions.

The CHAIRMAN: If there is no further statement then Mr. Harriman will be excused.

1739 OTTO H. KAHN, called as a witness, being duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Mr. SEVERANCE: Where do you live?

Mr. KAHN: In Morristown, New Jersey.

Mr. SEVERANCE: What is your business?

Mr. KAHN: Banker.

Mr. SEVERANCE: Of what firm of bankers are you a member?

Mr. KAHN: Kuhn, Loeb & Co.

Mr. SEVERANCE: How long have you been a member of Kuhn, Loeb & Co.?

Mr. KAHN: About ten years.

Mr. SEVERANCE: Is that a copartnership or corporation?

Mr. KAHN: Copartnership.

Mr. SEVERANCE: Who are the copartners?

Mr. KAHN: Jacob H. Schiff, Felix M. Warburg, Paul M. Warburg, Mortimer Schiff, Louis A. Heinsheimer and myself.

Mr. SEVERANCE: For how many years has the firm been composed of those gentlemen?

Mr. KAHN: Of these particular gentlemen since about three years.

Mr. SEVERANCE: Who were the partners in Kuhn, Loeb & Co. at the time of the reorganization of the Union Pacific Railroad Company?

Mr. KAHN: Of the Union Pacific Railroad Company?

Mr. SEVERANCE: Yes.

Mr. KAHN: Jacob H. Schiff, Abraham Wolf, Felix M. Warburg, Louis A. Heinsheimer, and myself.

Mr. SEVERANCE: At that time, Mr. Kahn, and prior to the reorganization, the firm of Kuhn, Loeb & Co., were quite largely interested in the Union Pacific, were they not?

Mr. KAHN: At the time of the reorganization?

Mr. SEVERANCE: Yes.

1740 Mr. KAHN: Undoubtedly.

Mr. SEVERANCE: And who were the committee of reorganization, do you remember?

Mr. KAHN: I don't remember exactly, no.

Mr. SEVERANCE: Was any member of your firm a member of that committee?

Mr. KAHN: That is ten years back; I don't remember it exactly, but the records would of course show it.

Mr. SEVERANCE: I call your attention to the printed plan of reorganization to refresh your memory. After inspecting that, can you state, was any member of your firm a member of the committee?

Mr. KAHN: Yes, Jacob H. Schiff was a member of the committee.

Mr. SEVERANCE: And what relation did Kuhn, Loeb & Co. bear to the transaction?

Mr. KAHN: They were bankers to the committee.

Mr. SEVERANCE: In connection with the reorganization of the Union Pacific and its subsequent management, what particular member of Kuhn, Loeb & Co. was particularly interested more than the others?

Mr. KAHN: I was a member of the Executive Committee and Mr. Schiff was on the Board, and as far as the details were concerned, I would be more conversant with them than Mr. Schiff would.

Mr. SEVERANCE: Did that statement include the reorganization as well as the subsequent management?

Mr. KAHN: Chiefly the subsequent management.

Mr. SEVERANCE: Were you familiar with the method of reorganizing the company and with the properties at that time?

Mr. KAHN: Fairly so, yes.

Mr. SEVERANCE: Will you state whether, in the reorganization of the Union Pacific there was any scaling down of securities of the old company which it succeeded, or was there any on the other hand an enlargement of the securities put out?

Mr. KAHN: I should say there was both; that is, in lieu of
1741 the high interest-bearing bonds, the six per cent. bonds, there were issued four per cent. bonds and stock.

Mr. SEVERANCE: But the aggregate of the face value of the securities was quite largely increased, was it not?

Mr. KAHN: To the extent, I believe, of giving for the old six per cent. bonds new four per cent. bonds, and an appropriate proportion of stocks, and also giving in for the assessment which was furnished in cash, preferred stock and new common stock.

Mr. SEVERANCE: Now at the time your firm, as bankers for the committee, and Mr. Schiff as member of the committee, took hold of the Union Pacific, it was in the hands of receivers, was it not?

Mr. KAHN: Yes.

Mr. SEVERANCE: And had been operated by receivers for several years?

Mr. KAHN: Yes.

Mr. SEVERANCE: Had the interest on the old bonds been paid during the receivership?

Mr. KAHN: Not on all of them.

Mr. SEVERANCE: Prior to the reorganization, did the Union Pacific have quite a number of branch lines which did not participate in the reorganization?

Mr. KAHN: I believe so.

Mr. SEVERANCE: Can you name them?

Mr. KAHN: No; I could not be certain that I was naming them correctly.

Mr. SEVERANCE: Do you remember the St. Joe & Grand Island was one, or don't you?

Mr. KAHN: I believe so; I am not certain about that.

Mr. SEVERANCE: You are not certain about that?

Mr. KAHN: I don't believe anybody could be about the affairs of the company which date back ten years, except the records would show it.

Mr. SEVERANCE: Well, you were connected with the reorganization as committeeman, and I thought possibly you might remember.

Mr. KAHN: No.

1742 Mr. SEVERANCE: Now you spoke about the interest on the bonds being scaled down. Is it not a fact, sir, that you issued the six per cent. bonds you have mentioned, new bonds dollar for

dollar, bearing four per cent. interest, and running for a long period of time, and also an amount equal to 50 per cent. of the face of the bonds in preferred stock of the new corporation?

Mr. KAHN: The records would show whether we did or not.

Mr. SEVERANCE: Well, don't you know as a matter of fact that you did that?

Mr. KAHN: I don't remember the details of the re-organization, but you have the plan of the re-organization before you, which shows exactly what was done.

Mr. SEVERANCE: Then you don't remember whether that was done or not?

Mr. KAHN: I don't remember the exact details of the transaction, which dates back ten years.

Mr. SEVERANCE: I want this on the record, so I will show you that (handing paper). Having inspected that, can you now answer whether I am correct in my statement?

Mr. KAHN: Yes.

Mr. SEVERANCE: What was the aggregate capitalization of the new Union Pacific Road under the re-organization, stock and bonds?

Mr. KAHN: That also would show from the records.

Mr. SEVERANCE: Well, it is right there in front of you. Let me ask you if this is correct. $100,000,000 of bonds, is that right?

Mr. KAHN: Not all of which were issued at the reorganization.

Mr. SEVERANCE: Have not they been issued?

Mr. KAHN: Since, but not at that time.

Mr. SEVERANCE: How many of them were not issued at that time?

Mr. KAHN: It does not appear quite clearly from this plan. It says for the actual purpose of re-organization, there were is-
1743 sued in round figures $51,000,000, and there were reserved to dispose of equipment obligations and re-organization, and corporate uses, $13,000,000, and the balance reserved for settlement of the debt to the United States and for extraordinary requirements, in round figures, $36,000,000.

Mr. SEVERANCE: Those bonds were used, were they not, or the proceeds of them, to settle the debt to the United States?

Mr. KAHN: I believe not. I believe that quite a considerable amount was turned over to the new company, and was later on sold for its corporate purposes.

Mr. SEVERANCE: But you paid the Government in excess of the amount of those bonds, didn't you?

Mr. KAHN: We did.

Mr. SEVERANCE: Well you finally got out $100,000,000 of the bonds of the new company, didn't you?

Mr. KAHN: But not all at the reorganization.

Mr. SEVERANCE: No, but can you tell me how many were not used for the purpose of reorganization, and to pay the Government debt?

Mr. KAHN: This plan does not show, but I remember that a considerable amount was turned over to the new company and was

sold later on by the new company, for its corporate purposes, equipment, improvement and so on.

Mr. SEVERANCE: Mr. Harriman yesterday testified that it was his recollection that it was something in excess of $5,000,000; is that your recollection?

Mr. KAHN: I could not recollect the exact amount; it may have been $5,000,000, it may have been $10,000,000.

Mr. SEVERANCE: How much preferred stock did the new company issue, $75,000,000?

Mr. KAHN: It issued in the reorganization in round figures $47,000,000, reserved to dispose of equipment obligations and reorganization and corporate uses $7,000,000, and balance reserved for settlement of the debt to the United States, and for extraordinary requirements, in round figures $21,000,000.

1744 Mr. SEVERANCE: You eventually got out the $75,000,000.

Mr. KAHN: That makes a total of $75,000,000.

Mr. SEVERANCE: You think you got out the $75,000,000?

Mr. KAHN: That makes a total of $75,000,000—it was approximately that.

Mr. SEVERANCE: Then, Mr. Kahn, how much did you pay the government in settlement of that debt—it was in excess of $50,000,000, wasn't it—you recall it was over $50,000,000 finally paid?

Mr. KAHN: I think so.

Mr. SEVERANCE: There was first, a contract or arrangement to pay less than $50,000,000, and that was disapproved of by the president, and it was increased to something over $50,000,000.

Mr. KAHN: I think so.

Mr. SEVERANCE: You issued also $61,000,000 of common stock, did you not?

Mr. KAHN: Yes.

Mr. SEVERANCE: What was that common stock issued for?

Mr. KAHN: According to the plan of reorganization, that common stock was issued in exchange for common stock of the Union Pacific Railway Company on which assessments were paid under the plan.

Mr. SEVERANCE: How much was the assessment that was called on common stock—$10 a share wasn't it?

Mr. KAHN: I think it was $15.

Mr. SEVERANCE: Or $15—which was it?

Mr. KAHN: The common stock, the plan says will be assessed at the rate of $15. a share.

Mr. SEVERANCE: Now, what did the subscribers to that $15. a share get for it?

Mr. KAHN: They got the amount of the assessment in new preferred stock at par and also received par of common stock in common stock of the new company. I am quoting from the plan.

Mr. SEVERANCE: So that in a nutshell, the plan of reorganization contemplated the issuance of $100,000,000 of bonds, $75,-

1745 000,000 of preferred stock, a portion of which was used to pay the common stockholders of the old corporation for their assessment of $15. a share, and $61,000,000 of common stock which

was exchanged dollar for dollar for the common stock of the bankrupt road?

Mr. KAHN: That is right.

Mr. SEVERANCE: Making a total capitalization of $236,000,000. Now the old corporation had outstanding a capital stock and funded debt of only $201,294,882, did it not?

Mr. KAHN: I don't see that the plan shows. Of course I don't remember the exact figures.

Mr. SEVERANCE: You could not tell without figuring up. That is correct, however, Mr. Kahn.

Mr. KAHN: Yes, here it is—the total funded debt, $140,425,682.

Mr. SEVERANCE: What was the capital stock?

Mr. KAHN: $60,868,500.

Mr. SEVERANCE: That makes a total of $201,294,882?

Mr. KAHN: Correct.

Mr. SEVERANCE: As against a total issue of securities by the new company of $236,000,000—an increase of $34,705,818.

Mr. KAHN: The comparison is not quite correct, because part of the new capitalization was used later on for additional equipment and other improvements; it was not all used to take up the $201,000,000 of old capitalization.

Mr. SEVERANCE: How much of it was so used?

Mr. KAHN: I don't know the exact figure. I should say common and preferred together probably somewheres in the neighborhood of $20,000,000, but I am not positive.

Mr. SEVERANCE: You say the common and preferred together?

Mr. KAHN: I did not mean common; I meant bonds and preferred stock together.

Mr. SEVERANCE: Now, every share of the common stock
1746 of the present Union Pacific, so far as it was issued at the time of the reorganization, was issued in exchange for common stock of the old road, wasn't it?

Mr. KAHN: So far as it was issued in the reorganization—yes.

Mr. SEVERANCE: $61,000,000?

Mr. KAHN: Yes.

Mr. SEVERANCE: That is correct, and do you know anything about what that old stock represented?

Mr. KAHN: No, I do not.

Mr. SEVERANCE: You know at that time it was worth very little, don't you—I mean in the market?

Mr. KAHN: I know it had been worth 150 and more.

Mr. SEVERANCE: Yes, I know; but at the time of the reorganization, it was worth very little?

Mr. KAHN: Of course; it was stock of a bankrupt road.

Mr. SEVERANCE: And still it went in at par, and that is the same class of stock that is now selling at 170 or 180—whatever it is—the common stock of the new road.

Mr. KAHN: It is the same character of stock.

Mr. SEVERANCE: Part of the same stock?

Mr. KAHN: Part of the same stock.

Mr. SEVERANCE: Now, the preferred stock of the Union Pacific

which was then issued, was issued as a bonus upon the exchange of the bonds of the old corporation for the bonds of the new corporation, was it not?

Mr. KAHN: I do not think as a bonus. It was issued as a fair trade, refunding a six per cent. bond for a four per cent. bond and for fifty per cent. of preferred stock; in other words, getting an old six per cent. bond—interest at the rate of four per cent. on the new bond, and at the rate of two per cent. on the new preferred stock.

Mr. SEVERANCE: So that it is your opinion, then, is it, that in capitalizing a railroad, it is immaterial what the par value
1747 of the securities may be; you look only to the rate of interest or dividends that are to be paid on the securities; is that your view?

Mr. KAHN: I am not competent to express opinions on railroad questions.

Mr. SEVERANCE: You just expressed one; you said it was a fair trade because it was an exchange of six per cent. bonds for new four per cent. bonds and half that amount of stock.

Mr. KAHN: I referred to this particular case; but I am not prepared to answer a general, theoretical question as to capitalization of railroads; I am not competent to answer.

Mr. SEVERANCE: You say it was a perfectly fair way to consider the capitalization of the Union Pacific?

Mr. KAHN: In that particular instance, yes.

Mr. SEVERANCE: So that you think the capitalization so far as the Union Pacific is concerned, not giving any opinion on any other road, is fair if based on the amount that is to be paid out as interest and dividends, without reference to the face value of the stock?

Mr. KAHN: I am not prepared to say that. I am only saying that this particular scheme of reorganization was the best that at that time it was possible to carry through, and was a fair and reasonable one.

Mr. SEVERANCE: The net result was there and so scaling down of securities as far as the par value, but on the other hand, there was an increase to some extent.

Mr. KAHN: There was a very heavy scaling down of the fixed obligations.

Mr. SEVERANCE: You draw a distinction then, between the dividends on the preferred stock, and the fixed interest charge on the bonds?

Mr. KAHN: In this particular case, yes.

Mr. SEVERANCE: You draw it just the opposite way Mr. Harriman did yesterday, on the Alton.

Mr. KAHN: I am not comparing the Alton with Union Pacific. I am simply referring to this particular reorganization plan.

Mr. SEVERANCE: In this particular, he took in dividends, and you left them out?

1748 Mr. KAHN: In this particular instance, I do not leave them out; I am simply explaining they were substituting for six per cent. bonds a four per cent. bond, and fifty per cent. in preferred stock, making the same return; and that, in this particular reorganization, those were the best terms that were obtainable in order

to carry through the reorganization, which had been attempted by others before, and which had not been carried through, because no terms could be arrived at as between the old bondholders and old stockholders and the reorganization committee.

Mr. SEVERANCE: That is, you mean those were the best terms you could make with the stockholders?

Mr. KAHN: Best terms possible to make with the stockholders and old bondholders.

Mr. SEVERANCE: Now, after the reorganization of the company, did you go on the Board?

Mr. KAHN: Yes, Mr. Schiff and myself went on the Board.

Mr. SEVERANCE: Both Mr. Schiff and yourself?

Mr. KAHN: Yes.

Mr. SEVERANCE: And up to what time did you continue on the Board?

Mr. KAHN: We continued on the Board until about a year ago; and perhaps I might say in this connection, that we went on the Board of the Union Pacific because we recognized that the reorganization of the Union Pacific devolved a considerable more responsibility upon us, towards the public which had bought the bonds, and for that reason we went on the Board; but in going on the Board, of course, we did not cease to be bankers.

Mr. SEVERANCE: Oh, I found that by going through the records.

Mr. KAHN: Nor did we give up our rights to do business with the company; but we did feel it incumbent on us in dealing with the company, to deal at arms' length. In each instance where we had any contracts with the company, our interests were fully dis-
1749 closed, it was entered on the record, and we declined to vote on that particular transaction. In no case in dealing with the Union Pacific——

Mr. SEVERANCE: Now, Mr. Kahn, I have not asked you for this statement, but if you want to make your statement now, go ahead and make it. I asked if you went on the Board and how long.

Mr. KAHN: I want to add that in no case in dealing with the Union Pacific, did our profits exceed a fair and usual banking compensation or commission, and in more than one instance, did we render services to the Union Pacific without any compensation whatever; and about a year ago we reached the conclusion that the Union Pacific—that, firstly, because of great claims upon our own kind, which our own business made upon our time, we were not in a position to give the necessary time and attention to the affairs of the Union Pacific, and being Bankers and not railroad men, and the Union Pacific credit and standing being established beyond peradventure, we thought that we would retire from the Board of the Union Pacific, and we did so retire.

Mr. SEVERANCE: Have you finished your statement, Mr. Kahn? Now, during the time that Mr. Schiff and yourself were directors of the Union Pacific, were you also directors of other roads in the West?

Mr. KAHN: We were directors—I was a director of the Oregon Short Line, became one shortly afterwards, and a director of the Oregon Railroad and Navigation. I think that is all.

Mr. SEVERANCE: Were either of you directors of the Great Northern or Northern Pacific?

Mr. KAHN: Mr. Schiff was director of the Great Northern for a time, and I believe a director of Northern Pacific for a time—I am not sure about the latter.

Mr. SEVERANCE: When?

Mr. KAHN: I don't remember the exact date, but I think he was a director of the Great Northern, and remained a director of the Great Northern until 1901.

Mr. SEVERANCE: Was that the last year that he was in the Great Northern?

1750 Mr. KAHN: I am not sure about it.

Mr. SEVERANCE: Did he go into that Board for the purpose of establishing the credit of the Great Northern, and did he leave it as soon as he had accomplished that?

Mr. KAHN: He had been in the Board of the Great Northern a great many years. I don't know for what reason he went in and I don't know for what reason he left.

Mr. SEVERANCE: You don't think he stayed in the Great Northern because of any sense of duty to put the road on its feet, do you?

Mr. KAHN: I beg your pardon——

Mr. SEVERANCE: You did not stay in the Great Northern from any sense of duty he owed it to put it on its feet?

Mr. KAHN: He had not reorganized the Great Northern Railroad, and the cases were totally different.

Mr. SEVERANCE: The Great Northern never has been reorganized?

Mr. KAHN: Exactly.

Mr. SEVERANCE: Well, now, you say you were both members of the Board of the Union Pacific from the organization of the company down to about a year ago?

Mr. KAHN: Yes.

Mr. SEVERANCE: In addition to being a member of the Board, what position did you occupy with reference to the road?

Mr. KAHN: I was a member of the Executive Committee.

Mr. CRAVATH: When you retired from the Union Pacific Board in particular, you and Mr. Schiff retired from all other Boards at the same time?

Mr. KAHN: Yes.

Mr. SEVERANCE: For the same reason?

Mr. KAHN: For the reason that we were bankers and not railroad men, and we found the demands of our business were such we could not give proper attention to both our banking business and directors.

1751 Mr. SEVERANCE: Well, now, Mr. Kahn, you had been bankers all the time, hadn't you?

Mr. KAHN: We had.

Mr. SEVERANCE: And you had been busy bankers all the time?

Mr. KAHN: Yes.

Mr. SEVERANCE: And had done a large business?

Mr. KAHN: Yes.

Mr. SEVERANCE: And had done a large business with those various roads for which you were directors?

Mr. KAHN: Yes.

Mr. SEVERANCE: Hadn't you?

Mr. KAHN: Yes.

Mr. SEVERANCE: Then what was it that suddenly came over your minds that induced you to depart from your old practice of being bankers and directors at the same time?

Mr. KAHN: As far as Northern Pacific is concerned, the Northern Pacific, as I have said, was established, and its standing and its credit was fixed beyond peradventure.

Mr. SEVERANCE: And that had been so for several years?

Mr. KAHN: That is a question of degree. Every banker feels that when he reorganizes a company, that he owes it a duty for a number of years to stay by it. As far as the Union Pacific is concerned, that, to a certain extent, determined our remaining on the Board; and besides that, our business increased from year to year, and we simply found we were not able to keep pace with our business in both offices.

Mr. SEVERANCE: The Northern Pacific has established its credit in 1901, so that it was able to sell $100,000,000 of bonds without considerable trouble?

Mr. KAHN: The Northern Pacific in 1901, was in the midst of great financial operations, because its credit was good from the beginning, but at the same time, if I say its credit and standing were established beyond peradventure, it is simply a question of degree.

Mr. SEVERANCE: You say in the midst of great financial
1752 operations in 1901. You mean the financial operation of getting out these new securities, do you?

Mr. KAHN: Yes.

Mr. SEVERANCE: And buying these other stocks?

Mr. KAHN: Yes.

Mr. SEVERANCE: And until that operation was concluded, you felt it your duty to remain on the Executive Committee?

Mr. KAHN: I can only repeat in a general sense, in slightly different words, what I have said before. I cannot add anything new to it.

Mr. SEVERANCE: At that time, you had not thought of getting off the Board?

Mr. KAHN: No.

Mr. SEVERANCE: And you did not think of it until about a year ago?

Mr. KAHN: Until about a year ago—yes, we thought of it a very long time before.

Mr. SEVERANCE: But you did not carry out your thoughts.

Mr. KAHN: That plan of retiring from the Board of the Railroad Company was not a sudden conclusion, but was one that had been maturing in our minds for a long time.

Mr. SEVERANCE: By the way, in passing, let me ask you, who is Mr. S. Sigman?

Mr. KAHN: He is one of the clerks in our office.

Mr. SEVERANCE: And has been for several years, hasn't he?
Mr. KAHN: Yes.
Mr. SEVERANCE: Who is E. S. Steiner?
Mr. KAHN: Also a clerk in our office.
Mr. SEVERANCE: And has been for a number of years?
Mr. KAHN: Yes.
Mr. SEVERANCE: Who is Charles Ess,—do you know him? Do you know such a man.
Mr. KAHN: I don't know him.
Mr. SEVERANCE: Now, from the time of the reorganization of the Union Pacific, down, I might say, to the present time,
1753 your bank has been the fiscal agent of the Union Pacific, has it not?
Mr. KAHN: Yes.
Mr. SEVERANCE: And still is?
Mr. KAHN: Still is.
Mr. SEVERANCE: That is, when they wanted to sell securities, they sell them through you, and when they want to buy securities, they buy them through you, as a rule?
Mr. KAHN: Provided that we offer as good or better terms than anybody else.
Mr. SEVERANCE: Well, we will come to that a little later. But, as a matter of fact, whatever may have been the inducements to do it, practically all the securities that have been purchased by—or a very large percentage of the securities purchased by the Union Pacific, and a very large percentage of securities sold by the Union Pacific, have passed through your hands, haven't they?
Mr. KAHN: Yes. That is the practice in the case of all large railroad companies, that they deal with one particular banker.
Mr. SEVERANCE: Yes; and you have been the particular banker of the Union Pacific?
Mr. KAHN: Yes.
Mr. SEVERANCE: In passing, I will ask you, you were one of the incorporators, one of the first directors—not incorporators—one of the first Board of Directors of the Union Pacific named in the articles?
Mr. KAHN: Named in the articles?
Mr. SEVERANCE: Of incorporation?
Mr. KAHN: Of incorporation—I believe so, yes.
Mr. SEVERANCE: When did the Union Pacific commence paying dividends on its preferred stock?
Mr. KAHN: I don't remember the exact date; it is matter of record.
Mr. SEVERANCE: Can you remember about how long after it commenced business?
Mr. KAHN: Not exactly.
Mr. SEVERANCE: You don't remember when. Can you
1754 remember when it commenced paying on its common stock?
Mr. KAHN: Not exactly.
Mr. SEVERANCE: We will get that from somebody. I did not know but you might recollect. The first large financial transaction

which the Union Pacific embarked in after its reorganization, was the acquisition of the Southern Pacific stock, was it not?

Mr. KAHN: Correct.

Mr. SEVERANCE: Who conducted the negotiations for the acquisition of that stock?

Mr. KAHN: These negotiations were conducted by us as fiscal agents for the company, and Mr. Harriman.

Mr. SEVERANCE: With whom were the negotiations had?

Mr. KAHN: With Huntington.

Mr. SEVERANCE: A. G. Huntington?

Mr. KAHN: A. G. Huntington and Speyer & Co.

Mr. SEVERANCE: That is, it was with those two parties. They represented a large block of Southern Pacific stock which controlled the property?

Mr. KAHN: Yes.

Mr. SEVERANCE: That is right.

Mr. KAHN: That is right.

Mr. SEVERANCE: At whose instance did you undertake those negotiations?

Mr. KAHN: Largely at our own instance and of course in conference with Mr. Harriman.

Mr. SEVERANCE: Well, you did not undertake the purchase of those securities as an investment for your house, but you undertook the purchase with the intention of turning them over to the Union Pacific, didn't you, after conversation with Mr. Harriman?

Mr. KAHN: If the Union Pacific wanted them, after mature deliberation by its Board. If they did not want them, we would have been perfectly willing to keep and sell them to somebody else, and it would have been very easy to sell them to somebody else.

Mr. SEVERANCE: Now, Mr. Kahn, before you bought those securities or entered into any contract to buy them, didn't
1755 you have a thorough understanding with Mr. Harriman that the Union Pacific would take them, practically of course, subject to the approval of the Board?

Mr. KAHN: We had this understanding, that we were bound to offer to the Union Pacific. If the Union Pacific did not want them or for any reason could not buy them, then we were stuck with them.

Mr. SEVERANCE: Didn't you have an understanding with Mr. Harriman that he would take them?

Mr. KAHN: Mr. Harriman certainly was in favor of taking them provided they could legally be bought, and providing the remaining members of the Board were of the same opinion.

Mr. SEVERANCE: Did you not consult other members of the Board prior to the acquisition, or to the contract for the acquisition of the securities, besides Mr. Harriman?

Mr. KAHN: Prior to the contract for the acquisition, I don't believe so.

Mr. SEVERANCE: You don't think you talked to any other member of the Union Pacific Board?

Mr. KAHN: I don't believe so.

Mr. SEVERANCE: Are you sure of that?

Mr. KAHN: I say I don't believe so. It is a matter of seven years back and I cannot remember every single step that was taken in that connection, but in a general way we undertook to take the risk of buying that stock. I remember the executors of the Huntington estate wanted a banker's obligation, and were not satisfied with a corporation obligation,—they wanted a banker's obligation to protect them, and there was a question when a certain amount of cash down had to be paid at once, before the Union Pacific or any other railroad company could act or get together, and we simply stood in the breach and took the risk.

Mr. SEVERANCE: Well, Mr. Kahn, you would not undertake to say now, would you, that you consulted with no one other
1756 that Mr. Harriman, on the Northern Pacific Board, before you undertook to take over these securities?

Mr. KAHN: I would not affirm it and would not deny it. It is a matter of seven or eight years back and I cannot remember each single step that was taken in connection with the negotiation at the time, or each single person with whom I talked or did not talk.

Mr. SEVERANCE: But you had a thorough understanding in the matter with Mr. Harriman, and he participated in the negotiation?

Mr. KAHN: He participated in the negotiation.

Mr. SEVERANCE: And you had a thorough understanding with him so far as he was concerned, the Northern Pacific would take the stock?

Mr. KAHN: The understanding with him was, that so far as he was concerned, we were bound to offer that stock to the Union Pacific at cost, plus a reasonable commission for our services in the matter, which we did.

Mr. SEVERANCE: You wrote a communication to the Board, didn't you?

Mr. KAHN: Yes.

Mr. SEVERANCE: In which you said:

"We have purchased 432,700 shares of the Southern Pacific Company of Kentucky, to be paid for as follows:

144,233 shares on February 11th;

268,467 shares on, or at our option before July 10th, with interest at 4% per annum from February 11th, all said shares to be deposited with a Trust Company until entire payment is completed.

We have further purchased the following shares:

200,000 shares to be paid for on, or at our option before March 4th.

45,000 shares to be paid for, one-half on February 5th, and one-half on February 8th.

The average price at which we have made the above purchases, exclusive of interest accruing, is $50.6146 per share."

That is an accurate statement, isn't it?

Mr. KAHN: Certainly.

1757 Mr. SEVERANCE: That is stock you bought from Speyer & Company, and had arranged to buy from Speyer & Company and Mr. Huntington?

Mr. KAHN: Yes.

Mr. SEVERANCE: And then you further add:

"In order that your holdings of Southern Pacific stock may aggregate 750,000 shares, we agree to sell to you on March 4, 1901, 72,300 additional shares at the same price, viz: $50.6146 per share, plus interest at the rate of 4% from February 11, 190–."

From whom did you buy that stock?

Mr. KAHN: From whom did we buy that stock? We undertook to deliver that stock; we bought it in the market.

Mr. SEVERANCE: You bought that in the market and bought that for whatever price you could get it, and made whatever profit you could on it?

Mr. KAHN: Or whatever loss.

Mr. SEVERANCE: Had you not already bought it when you addressed this communication to the Board?

Mr. KAHN: I don't remember. I don't believe we had.

Mr. SEVERANCE: You know perfectly well, Mr. Kahn, do you not, that you had already bought that stock?

Mr. KAHN: I know perfectly well that we had not, now that I think back.

Mr. SEVERANCE: This communication is dated the 4th of February; you say you had not bought it?

Mr. KAHN: I know perfectly well, now that I think back, that we had not bought it.

Mr. SEVERANCE: What were the ruling prices of Northern Pacific stock at that time?

Mr. KAHN: At the time that letter was written, I believe about 49—between 48 and 49.

Mr. SEVERANCE: So you took the chance of its going up above $50 a share?

Mr. KAHN: Which it did.

Mr. SEVERANCE: And you lost money then on it, did you?

Mr. KAHN: I am not saying that.

1758 Mr. SEVERANCE: Oh, you are not? I misunderstand you.

Mr. KAHN: I didn't say that.

Mr. SEVERANCE: Upon that purchase price, you say you were "also to be paid by the company $2.50 a share upon said 750,000 shares of profit to us for the risk assumed in making these purchases"?

Mr. KAHN: That is right.

Mr. SEVERANCE: The risk you assumed was the risk that the Union Pacific Board would not approve of Mr. Harriman's provision relative to the acquirement of this stock, was it?

Mr. KAHN: No; that was only one of the risks. There was an additional risk.

Mr. SEVERANCE: What was it?

Mr. KAHN: The other risk, to which our attention was called by our counsel, was a legal risk. At that time it was not certain whether the Union Pacific or the Oregon Short Line could legally acquire the Southern Pacific stock.

Mr. SEVERANCE: Why?

Mr. KAHN: Because the Southern Pacific Company was a holding company and not a railroad company, and that defect, if it existed, was later on cured by appropriate legislation, I believe. But that time, that risk existed and was forcibly called to our attention by our counsel, and we were told that we were incurring a very substantial risk in standing in the breach.

Mr. SEVERANCE: You thought you were incurring a substantial risk?

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: But you were willing to accept the risk in view of the fact, as you said, that that stock went up above 50.61 a share?

Mr. KAHN: We could not have known that at the time we undertook the risk. It might just as well have gone down. It varied, as all stocks do.

1759 Mr. SEVERANCE: You were a member of the Executive Committee at that time. That was the purpose of the Union Pacific in acquiring this stock?

Mr. KAHN: As I said to you before, I am a pretty poor witness on railroad questions, and whilst I was a director of the Union Pacific, of course I am not an expert on railroad matters; but I understand in a general way that the main purpose of the Union Pacific in acquiring the Southern Pacific was to be certain of not being shut off at Ogden from reaching San Francisco. At that time it had become quite apparent that the Southern Pacific would not remain an independent line, that one or another of the——

Mr. SEVERANCE: Would not what?

Mr. KAHN: Would not remain an independent line, and that one or the other of the large systems would buy it, would get control of it. Reports had come to all of us of negotiations which were being carried on by other large systems to acquire the Southern Pacific. It was, as I understood it, of vital importance to the Union Pacific not to be shut off at Ogden, and to continue to be able to use the line from Ogden to San Francisco. Naturally I also understood that the north and south lines in California were valuable feeders. I always understood also—as I say, I am not competent to pass on these questions very well.

Mr. SEVERANCE: Go on. It is very interesting.

Mr. KAHN: I always understood that the Southern Pacific was bought by the Union Pacific for advantages which it afforded as a connecting line, and it never entered our minds at that time that it could be in any sense considered a competing line.

Mr. SEVERANCE: That never entered your head?

Mr. KAHN: That never entered our heads at the time.

Mr. SEVERANCE: You did not think of such a thing as that?

Mr. KAHN: Never.

Mr. SEVERANCE: You did not know that traffic moved to California both ways, both over the Union Pacific and over the Southern Pacific, Sunset Route?

1760 Mr. KAHN: I was not generally posted on these questions. I only know we bought the Southern Pacific because it was represented to us that it was a necessary supplement to the Union

Pacific, and if we did not buy it the Union Pacific would be bottled up at Ogden.

Mr. SEVERANCE: The Union Pacific owned the line to Portland?

Mr. KAHN: The Union Pacific owned the line to Portland, to Northern California, yes.

Mr. SEVERANCE: So that they could not shut you off from access to the Pacific Ocean?

Mr. KAHN: But they could have shut us off from access to San Francisco by the Southern Pacific, which we had already used theretofore, I believe.

Mr. SEVERANCE: And so, for the sake of getting a line 800 miles long, which you regarded as essential to the Union Pacific, you bought six or seven thousand miles. Is that the idea?

Mr. KAHN: No; I said the lines in California were doubtless an additional inducement.

Mr. SEVERANCE: Was not the Southern Pacific any inducement, the Sunset Route?

Mr. KAHN: I don't believe it was. I understood at that time that it was a nuisance. It certainly was not an inducement at that time.

Mr. SEVERANCE: You regarded it as a nuisance?

Mr. KAHN: As a nuisance.

Mr. SEVERANCE: Do you still regard it as a nuisance?

Mr. KAHN: I don't know.

Mr. SEVERANCE: I do not think there is any question, from what we have learned in the examination in the West, that Mr. Stubbs had made that quite a nuisance to the Union Pacific.

Mr. KAHN: I don't know.

Mr. SEVERANCE: I think you are right. That had been made a nuisance. And because it was a nuisance, and because you wanted a connection into San Francisco for the other reasons you have given——

1751 Mr. KAHN: Excuse me. You put it just the other way on. I said that the necessity of acquiring with the Southern Pacific the line which you call the Sunset route was the very opposite to an inducement. The Union Pacific did not buy the Southern Pacific because the Southern Pacific contained that southern line, but it bought it in spite of that.

Mr. SEVERANCE: That is, the southern line was forced on to you?

Mr. KAHN: I think if at that time the southern line could have been cut off from the Southern Pacific, it would have been preferable to all of us.

Mr. SEVERANCE: Are you still of the same mind?

Mr. KAHN: I am no longer a railroad director, and I have not followed its affairs since then.

Mr. SEVERANCE: Up to a year ago, when you retired from the Board, were you still of the same mind that you would be glad to have the Southern Pacific Sunset Route cut off from the rest of your system?

Mr. KAHN: I believe under the present management that it would have been much improved and made valuable.

Mr. SEVERANCE: Then as I understand it, there is something that

transpired in the four years from 1901 to 1905, when you retired from the Board, that made you change your mind about the desirability of divorcing the Sunset Route from the rest of the Southern Pacific system?

Mr. KAHN: I never had any opinion about it.

Mr. SEVERANCE: Do you know whether the balance of your executive committee, so long as you were a member of that committee were of the opinion that it would be a good thing for the Union Pacific to lop off the Sunset Route?

Mr. KAHN: That question never came up, because it was not a practical question.

Mr. SEVERANCE: You do not remember any gossip about that after the time you bought the Southern Pacific stock?

Mr. KAHN: I do not.

1762 Mr. SEVERANCE: That feeling that the Sunset Route was a nuisance was never discussed after that time.

Mr KAHN: I want to make clear that it was not a nuisance to the Southern Pacific, but I want to bring out again that in my mind, and from what I then heard from those more competent to judge than I, the Southern Pacific was acquired because of its connecting features, and not because of that Sunset Route, which at that time was, I believe, not a profitable part of the system.

Mr. SEVERANCE: And that situation changed, did it, after the new management came into control, so that you ceased to regret having to take in the competing line to the south?

Mr. KAHN: I have no doubt the new management greatly improved that road.

Mr. SEVERANCE: And your regrets over that vanished?

Mr. KAHN: I never referred back to those regrets, nor were there any regrets. I simply stated the fact that it was not an inducement.

Mr. SEVERANCE: Coming back to this purchase of the stock for which you paid $82.50 a share, which would be five per cent. on the purchase price——

Mr. KAHN: Being not five per cent. on the purchase price; being 2½ per cent. on its par value, which is the usual banker's commission.

Mr. SEVERANCE: Two and a half per cent. on the par value is five per cent. on $50. a share, is it not?

Mr. KAHN: If you put it that way.

Mr. SEVERANCE: Figuring on the basis of the money, it is five per cent.

Mr. KAHN: Yes.

Mr. SEVERANCE: What provision was made by your executive committee, or your board, for the payment of this purchase price?

Mr. KAHN: Let me understand that question.

Mr. SEVERANCE: What provision did you make to pay

1763 yourself for this road? I mean what provision did the executive committee or board of directors make to pay Kuhn, Loeb & Co., for this stock?

Mr. KAHN: They paid Kuhn, Loeb & Co. cash for this stock.

Mr. SEVERANCE: How is that?

Mr. KAHN: They paid the cash under the offer.

Mr. SEVERANCE: How did they get that cash?

Mr. KAHN: I think by the issue of convertible bonds, which were sold.

Mr. SEVERANCE: Now, calling your attention to that matter, it appears by the minutes of the meeting at which your proposition was in form laid before the board, namely, a meeting of the Board of Directors of February 20, 1901, that resolution- were adopted accepting your proposition and providing for the issuance of $100,000,000, of convertible bonds. That is right, is it?

Mr. KAHN: That is right.

Mr. SEVERANCE: You were familiar with that at the time?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, those bonds, according to this resolution, were to be offered to the holders of the common and preferred stock of the company for subscription at par?

Mr. KAHN: $40,000,000 of it.

Mr. SEVERANCE: I mean $40,000,000. I will get to that in a moment, $40,000,000?

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: Was that done?

Mr. KAHN: That was done.

Mr. SEVERANCE: What amount of the bonds was taken by the stockholders, all of them?

Mr. KAHN: No; I don't believe all of them. I forget exactly how many, but not all of them.

Mr. SEVERANCE: Give us your best recollection.

Mr. KAHN: I don't want to state anything off-hand which I am not positive about.

Mr. SEVERANCE: Were over half of them?

Mr. KAHN: I think so; yes.

1764 Mr. SEVERANCE: Were over three-quarters of them?

Mr. KAHN: I doubt it, but I am not sure.

Mr. SEVERANCE: You would not deny that at least $30,000,000 of the $40,000,000 were taken by the stockholders, would you?

Mr. KAHN: I wouldn't deny it and I wouldn't affirm it.

Mr. SEVERANCE: But you would be willing to say that in excess of $25,000,000 were taken by the stockholders, would you not?

Mr. KAHN: I believe so.

Mr. SEVERANCE: It appears further on in the same resolution, as follows:

"Whereas, it is important to the company to insure at once funds for present commitments and future requirements, that the said sale of $40,000,000 of bonds be definitely assured, and attending the necessary proceedings for the creation of said bonds, such funds as may be necessary to meet such commitments and requirements be available, Messrs. Kuhn, Loeb & Co., be and they are hereby requested and authorized to agree to underwrite the subscription by the stockholders of this company of said $40,000,000 of the First Lien Convertible Four Per Cent. Gold Bonds of this Company, and this Company hereby undertakes that it will pay to Messrs. Kuhn,

Loeb & Co., or such syndicate as they may form, a commission of two and one-half per cent. upon said $40,000,000 of bonds, and to said Kuhn, Loeb & Co., for their individual services a further commission equal to two and one-half per cent. upon said $40,000,000 of bonds;"

Did you get that five per cent. additional commission?

Mr. KAHN: No; the syndicate got half of it.

Mr. SEVERANCE: Were you a member of the syndicate?

Mr. KAHN: We were certainly members of the syndicate to a reasonable extent; yes. We formed a large syndicate, consisting of probably 100 firms and individuals, to underwrite that issue, as is usual.

1765 Mr. SEVERANCE: Then for your services in inducing these 100 people to underwrite that issue, you got 2½ per cent.?

Mr. KAHN: For our services in protecting and guaranteeing the success of that issue, we got 2½ per cent.

Mr. SEVERANCE: What is that you got?

Mr. KAHN: For our services in guaranteeing the success of that issue, guaranteeing that $40,000,000 would be taken, we got 2½ per cent.

Mr. SEVERANCE: I thought you said the syndicate guaranteed that. You were only a member of the syndicate, were you not?

Mr. KAHN: Yes; but we guaranteed on behalf of the syndicate. As far as the company was concerned, we guaranteed.

Mr. SEVERANCE: You had 100 good solvent firms in that syndicate, did you not?

Mr. KAHN: Yes.

Mr. SEVERANCE: And they agreed to take these bonds?

Mr. KAHN: Yes.

Mr. SEVERANCE: Then what did you do to get 2½ per cent. additional out of the Union Pacific? What did you do for them?

Mr. KAHN: What did we do for them?

Mr. SEVERANCE: Yes; you guaranteed to the Union Pacific that these guarantors would perform their guaranties; is that it?

Mr. KAHN: As far as the Union Pacific is concerned, it is quite immaterial how we split up that 2½ and 2½ per cent. whether we kept one per cent. and gave four per cent. to the syndicate, or whether we kept four per cent. and gave one per cent. to the syndicate; nor do I think it is material here.

Mr. SEVERANCE: As I understand it, the situation is this: You sold to the Union Pacific certain stocks upon which you got a commission of five per cent.?

Mr. KAHN: No, upon which we got a commission of 2½ per cent. on the par value.

1766 Mr. SEVERANCE: $50 a share would be practically five per cent. would it not—50.61?

Mr. KAHN: We got the usual banker's commission, which is 2½ per cent. on the par value, and which was a very reasonable commission, a very moderate commission, for the risk we ran.

Mr. SEVERANCE: I understand that. We will not split hairs, Mr. Kahn, over the fraction of a cent. In substance, you got five per cent. on the price of the stock, did you not?

Mr. KAHN: We got 2½ per cent. on the par value of the stock.

Mr. SEVERANCE: You are pretty good at figures, Mr. Kahn. Can you tell me whether that 2½ per cent. on the par value was 5 per cent. on 50.61?

Mr. KAHN: You can figure it out just as well yourself.

Mr. SEVERANCE: You decline to commit yourself on those figures, do you?

Mr. KAHN: No, I decline to admit that it should be put that way.

Mr. SEVERANCE: In addition to that, however that does figure out—we can get somebody here to figure it—you and your associates also got another commission of five per cent. upon the bonds which were issued to pay yourselves for this stock. That is right, is it not?

Mr. KAHN: Which was an entirely different transaction.

Mr. SEVERANCE: I understand it was a different transaction, but somewhat ties up with the other.

Mr. KAHN: Not as far as the risk and responsibility of this transaction was concerned.

Mr. SEVERANCE: It was not?

Mr. KAHN: No. The one 2½ per cent. was for the risk taken in acquiring the stock of the Southern Pacific for the responsibility involving that, and for ourselves as fiscal agents. The other one we got for guaranteeing and insuring the success of an issue of $40,000,000 of four per cent. convertible bonds at par, which
1767 was an untried issue and a new departure in finance. It was very questionable indeed whether 4 per cent. convertible bonds on a road that had just emerged from bankruptcy would be salable at par, or anywhere near it if it had not been for our active efforts and the syndicate's active efforts. I think I may also say, if it had not been for the moral responsibility which we incurred in coming before the public and practically guaranteeing the goodness and soundness of the security; and for that we received an additional commission. The two transactions are entirely separate, and the risk and responsibility involved are distinctly separate.

Mr. SEVERANCE: And you got that commission of 2½ per cent. as I understand, for this moral responsibility, and the syndicate got 2½ per cent., practically a discount of course, on the bonds for underwriting?

Mr. KAHN: Yes.

Mr. SEVERANCE: And $25,000,000 of the $40,000,000 were not taken by the syndicate at all, or by you, but by the stockholders of the Union Pacific. That is in substance the transaction, is it not?

Mr. KAHN: That is in substance the transaction; yes.

Mr. SEVERANCE: So that the Union Pacific paid to you, with the exception of such amount as might have gone to the other members of your syndicate, these bonds, and about 10 per cent. commission, and the stockholders took about $25,000,000 of the bonds.

Mr. KAHN: No; the Union Pacific paid us 2½ per cent. commission upon the entire $40,000,000, and we ran the risk on the entire $40,000,000 that we undertook to underwrite at par.

Mr. SEVERANCE: Yes, I understand the transaction. I was just getting at it.

Mr. KAHN: I think it is a most unfair way of putting it.

Mr. SEVERANCE: I do not mean to be unfair, Mr. Kahn.

Mr. KAHN: I think you distinctly are, if you state we made 10 per cent.

1768 Mr. SEVERANCE: I do not mean to be unfair. I simply want to get in a nutshell the net figures, without reference to the explanation of why it is done.

Mr. KAHN: That is unfairness. You can't get the net figures without the explanation of how it is done and why it is done.

Mr. SEVERANCE: I think we agree on the figures, and your explanation will go with it. That is all right, Mr. Kahn. We will not have any trouble about that. Now, that money was paid over and the stock was acquired by the Union Pacific. A little later on, as I understand it, the Union Pacific bought some more of this stock. That was the next year, was it not?

Mr. KAHN: It was in 1902; yes.

Mr. SEVERANCE: From whom did they buy that stock?

Mr. KAHN: They bought that stock from Kuhn, Loeb & Co.

Mr. SEVERANCE: What did they pay Kuhn, Loeb & Co., for that?

Mr. KAHN: I think the price as shown on the record is 65.

Mr. SEVERANCE: Was that stock that was acquired by Kuhn, Loeb & Co., for the Union Pacific, or was it stock that Kuhn, Loeb & Co., happened to own and sold to the Union Pacific?

Mr. KAHN: That was stock which Kuhn, Loeb & Co., held individually, and without any reference to the Union Pacific of any kind.

Mr. SEVERANCE: That is, it was not stock you had bought for the Union Pacific the way you did the other?

Mr. KAHN: Not at all.

Mr. SEVERANCE: Mr. Harriman did not participate in those negotiations?

Mr. KAHN: In the negotiation for the purchase?

Mr. SEVERANCE: In the negotiations by which you acquired the $15,000,000 of additional stock?

Mr. KAHN: No.

Mr. SEVERANCE: Nobody except Kuhn, Loeb & Co.

1769 Mr. SEVERANCE: And that you turned over to the company at 65, $9,750,000. Now, will you state what the inducement was to the Union Pacific to acquire that additional stock. They were already in possession of the management of the road.

Mr. KAHN: Yes. At that time, I believe,—I think Mr. Harriman is a better man to ask about that than I, because we did not take part in any transactions which involved dealing with ourselves, and therefore, as I say, I am not a good witness to speak for the Union Pacific side of the case.

Mr. SEVERANCE: I suppose, though, you and Mr. Harriman spoke as you passed by—talked things over?

Mr. KAHN: Certainly we talked things over, but we were not a determining factor in any negotiations with ourselves. Therefore I say I am not a good witness to examine on the Union Pacific side of the case.

Mr. SEVERANCE: But you were present at the discussions on the subject?

Mr. KAHN: Yes. My recollection is that at that time efforts became apparent, which later on crystallized, to form a strong combination against the Union Pacific control of the Southern Pacific, and the Union Pacific directors felt that the holdings of the Union Pacific had better be increased to what Mr. Harriman called yesterday an unquestionable dominating interest. Negotiations were opened with us for the purpose of our holdings of stock, and we sold them at the market price of the day.

Mr. SEVERANCE. With whom did you conduct the negotiations for the sale of that $15,000,000 of stock to the Union Pacific?

Mr. KAHN: Probably with Mr. Harriman.

Mr. SEVERANCE: And you agreed on that sale with Mr. Harriman and turned the stock over to the road at $65 a share?

Mr. KAHN: He made us an offer, I believe, to sell that stock at that price to the Executive Committee or the Board, and
1770 the Executive Committee or the Board accepted the offer.

Mr. SEVERANCE: Previous to that, however, you had agreed on the sale with Mr. Harriman, subject to the ratification of the committee?

Mr. KAHN: Doubtless.

Mr. SEVERANCE: Outside of this $40,000,000 of bonds that were issued in 1901, for the purpose of acquiring or paying for the Southern Pacific stock, there were some more of those bonds, were there not?

Mr. KAHN: Yes.

Mr. SEVERANCE: And some other stocks were acquired; is that true?

Mr. KAHN: That is true.

Mr. SEVERANCE: What were the stocks acquired?

Mr. KAHN: There were acquired about $78,000,000 of Northern Pacific common and preferred stock.

Mr. SEVERANCE: Mr. Kahn, when was the idea of acquiring Northern Pacific stock first taken up by the Union Pacific or any of its officers or directors or committees?

Mr. KAHN: That idea started with the purchase by the Northern Pacific and Great Northern of the Burlington.

Mr. SEVERANCE: And that was prior to 1901, was it not?

Mr. KAHN: No; I believe that was in March, 1901.

Mr. SEVERANCE: I did not mean prior to 1901, but I mean it was prior to April, 1901.

Mr. KAHN: Prior to April, 1901; yes.

Mr. SEVERANCE: Now, with what officials of the Union Pacific did you discuss the advisability of acquiring the Northern Pacific for the Union Pacific?

Mr. KAHN: We discussed the advisability of doing that in April, I believe, with Mr. Harriman.

Mr. SEVERANCE: With Mr. Harriman.

Mr. KAHN: Yes.

Mr. SEVERANCE: There was no action taken, was there, by the Board of Directors, authorizing that acquisition?

1771 Mr. KAHN: No; there was no such action taken, nor was it at that time at all certain that the Union Pacific would finally acquire it or not. It was a very big transaction to undertake for the Union Pacific. The Union Pacific had, as I said before, only a couple of years before emerged from bankruptcy.

Mr. SEVERANCE: Yes, I heard you say that.

Mr. KAHN: It was very questionable whether the Union Pacific would finally conclude to undertake that transaction or not.

Mr. SEVERANCE: Mr. Kahn, am I to understand then that the matter of acquiring the stock of the Northern Pacific was a simple matter of negotiation between Mr. Harriman and yourself, or your firm, and that it was not taken up by the Board of Directors or the Executive Committee of the Union Pacific. I want to be sure I understand you.

Mr. KAHN: I said nothing of the kind.

Mr. SEVERANCE: That is what I want to know.

Mr. KAHN: Oh, no. Mr. Harriman and we, in April, 1901, owing to the acquisition by Northern Pacific and Great Northern of the Burlington, became convinced that it was very desirable that a controlling interest, or at least an influential holding of Northern Pacific, should be concentrated in friendly hands, pending decision of the question. It was not a matter that could be decided in a day or a week, or four weeks, or six weeks, pending the decision of the question of the action, if any, the Union Pacific intended to take in the matter; and it was in pursuance of that idea, and in pursuance of the necessity which we saw for having such a concentrated holding, and knowing also at the same time that the Northern Pacific was a very excellent proposition and was selling at a very cheap price; knowing also, as we did, of certain plans which were on foot for increasing the value of Northern Pacific; being certain that the purchase of Northern Pacific at the then prevailing prices was an advantageous purchase under any circumstances; being perfectly willing to hold the stock for ourselves if the Union

1772 Pacific did not want it; in fact, preferring to hold the stock for ourselves if the Union Pacific did not want it, but at the same time feeling morally bound to give the Union Pacific opportunity to buy it from us if they wanted it;—taking all those things into consideration, we started buying Northern Pacific stock.

Mr. SEVERANCE: You made that start after you had talked with Mr. Harriman, and Mr. Harriman had agreed with you that it was advisable for the Union Pacific to get it?

Mr. KAHN: No; Mr. Harriman had agreed with us that it was desirable that a compact holding the Northern Pacific should be in friendly hands.

Mr. SEVERANCE: When was that talk?

Mr. KAHN: That talk, I should say, was during probably the first fortnight in April.

Mr. SEVERANCE: How is that?

Mr. KAHN: During the first few weeks in April.

Mr. SEVERANCE: During the first two weeks in April?
Mr. KAHN: The first few weeks in April.
Mr. SEVERANCE: 1901?
Mr. KAHN: Yes.

Mr. SEVERANCE: I call your attention to a letter you wrote to Mr. Harriman as chairman of the Executive Committee of the Union Pacific on April 15, 1901, which reads as follows:

"We are the owners and holders of 100,000 shares of preferred stock and 150,000 shares of common stock of the Northern Pacific Railway Company. As in our opinion the acquisition of these shares by the Union Pacific Railroad Company would be of great value to its system, we offer to sell these shares to your company at the price of 101 per share of preferred stock and 102½ per share of common stock."

What advantage to the system did you think it would be to acquire that 250,000 shares of stock?

Mr. KAHN: That is again a railroad question.

Mr. SEVERANCE: But I am quoting from Kuhn, Loeb & Co's. letter to Mr. Harriman.

1773 Mr. KAHN: I know. You are quoting from a letter which was written six or seven years ago, and you are quoting a reference in this letter to a railroad question. In a general way it is quite apparent that it was of great importance and great weight to the Union Pacific to acquire a holding in Northern Pacific, so as to enable it to get its connection into Idaho, Washington and those other States and Territories that Mr. Harriman yesterday referred to. I am not prepared to go into detail in explaining its advantages. I would rather have a railroad expert explain that.

Mr. SEVERANCE: I am merely asking what you meant when you wrote this letter, that is all.

Mr. KAHN: I have just explained to you that I considered at the time that the acquisition of the Burlington by the Northern Pacific and the Great Northern, tended, as I understood it, to shut out the Union Pacific from those territories in the Northwest, and we considered that if it were possible for the Union Pacific to have a substantial holding, and possibly a controlling holding, in Northern Pacific, the Northern Pacific in its turn having half of the control of the Burlington, it would be a very beneficial thing for the Union Pacific. At the same time we were convinced that the stock was selling far below its real value, and the result has shown that our judgment was correct.

Mr. SEVERANCE: I think I understand your position now. You and Mr. Harriman had had a talk, and you had agreed that it was advisable, in view of the purchase of the Burlington by the Great Northern and Northern Pacific, that the Union Pacific should buy the stock of the Northern Pacific, and, if possible, get a control of it for the Union Pacific.

Mr. KAHN: Yes.
Mr. SEVERANCE: That is right?
Mr. KAHN: Yes.

Mr. SEVERANCE: In pursuance of that talk, Kuhn, Loeb & Co went into the market?

Mr. KAHN: Yes.

1774 Mr. SEVERANCE: And you bought this amount of stock, and immediately upon buying it you offered it to the Union Pacific at the prices stated, this first block? I am coming to the additional block in a moment.

Mr. KAHN: Yes; that is so, in a general way, except that you stated that we had agreed with Mr. Harriman that the Union Pacific would buy the stock, whilst I have stated the opposite.

Mr. SEVERANCE: I misunderstood you, then. I did not intend to misquote you.

Mr. KAHN: I said the opposite. I said to you that we agreed with Mr. Harriman that it was very desirable that a substantial holding of Northern Pacific stock should be in friendly hands, and that it was very questionable at that time whether the Union Pacific would finally determine to buy that stock or not, but that we felt committed in any event, morally committed, as soon as we had a substantial holding, to offer it to the Union Pacific, which we did.

Mr. SEVERANCE: If there was no understanding that you were acquiring this stock for the Union Pacific, how did it happen that you wrote this letter to Mr. Harriman on the 15th of April, 1901?

Mr. KAHN: I think this letter is the best evidence that we had no such understanding.

Mr. SEVERANCE: You think it is?

Mr. KAHN: I think it is.

Mr. SEVERANCE: Mr. Harriman, on the same day, answered your letter, and said, among other things:

"I beg to acknowledge receipt of your letter of to-day, offering to sell to this Company 100,000 shares of the Preferred Stock and 150,000 shares of the Common Stock of the Northern Pacific Railway Company, at 101 per cent. per share of Preferred and 102½ per cent. per share of Common Stock, the latter *exdividend-* for which books close to-morrow. I have authority from this Company to purchase any such stock, and I believe with you that the acquisition of this Stock will be of great benefit to this Company."

1775 When did Mr. Harriman get that authority? After his talk with you about the advisability of somebody getting control of the Northern Pacific?

Mr. KAHN: Mr. Harriman signed that letter, and he is responsible for the statements contained in it. I don't know when he got the authority.

Mr. SEVERANCE: You were on the Executive Committee, from where the power would naturally flow, and on the Board, were you not?

Mr. KAHN: Yes; and in pursuance of our general line of policy, I would take a very unsubstantial part in the determination of the Union Pacific side of this case, because we were interested on the other side.

Mr. SEVERANCE: Oh, no. I am speaking about the power that

was given to Mr. Harriman, which I assumed, perhaps incorrectly, was prior to your acquisition of the stock?

Mr. KAHN: Our acquisition?

Mr. SEVERANCE: Yes; prior to your talk which resulted in your buying the stock.

Mr. KAHN: There is nothing here to show it.

Mr. SEVERANCE: You do not know about that? You do not know when he got that authority?

Mr. KAHN: No.

Mr. SEVERANCE: Or how he got it?

Mr. KAHN: No.

Mr. SEVERANCE: Or from whom he got it?

Mr. KAHN: No. If he had any such formal authority, the books, the records, would show it.

Mr. SEVERANCE: You did not doubt his authority? You regarded the transaction as closed, did you not?

Mr. KAHN: He signed the letter as chairman of the Executive Committee of the Union Pacific Railroad.

Mr. SEVERANCE: Yes; of which you were a member?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, I call your attention to a letter of the next day,—the 16th—you have copies there of all the letters—in which you state you are "prepared to make delivery against pay-
1776 ment for the same, which we calculate to be $25,475,000." Was that paid?

Mr. KAHN: That would be the purchase price?

Mr. SEVERANCE: I say, was it paid? Did you get the money?

Mr. KAHN: So I assume. It does not show here. I have no doubt we did.

Mr. SEVERANCE: You turned over the shares and got the money, did you not?

Mr. KAHN: I have no doubt we did.

Mr. SEVERANCE: Then I call your attention to a letter of the 29th of April, 1901, written by Kuhn, Loeb & Co. to Mr. Harriman, in which you offer to sell to the Union Pacific 150,000 shares of preferred, at 102.50 and 120,000 shares of common at 112 per share, that offer to remain open until the next morning.

Mr. KAHN: Yes.

Mr. SEVERANCE: Am I to understand, then that between the time you turned over this first lot to the Union Pacific and then, you had gone on and purchased additional shares?

Mr. KAHN: It does not appear from this that when we offered to the Union Pacific the block of $25,000,000, that was all we had. I don't know if we did or did not. It doesn't show here whether we did or did not, but we went on in exactly the same way I have previously described. For the Union Pacific, the assumption or purchase of all this Northern Pacific stock involved a heavy financial commitment, and I suppose it was determined from instant to instant how far the Union Pacific was prepared to go, whether it wished to go any further than the preferred, $25,000,000. Our method of proceeding was on our own risk and responsibility to go ahead and buy the stock as best we could, feeling certain, as we did, that it was

a most advantageous purchase, in any event, and being perfectly prepared to keep it ourselves if the Union Pacific didn't want it, and preferring to keep it ourselves if the Union Pacific didn't want it,
and at the same time feeling morally bound to offer it to the
1777 Union Pacific from time to time, as we had a substantial amount, at a very slight increase on the price we had paid, I don't believe in any instance exceeding 2½ per cent. upon the amount we had paid. We offered the stock to the Union Pacific at very much lower prices, taking it all through, than it sold for on the day on which our offers were made. In one instance I remember we offered the Union Pacific our holdings of stock at 7 or 8 per cent. below the market price of that day. We did it simply because we considered ourselves morally committed to do that, and we did it in spite of the fact that if we had kept the stock we would have obtained 7 or 8 or 10 or 12 per cent. more for it, and on the same day, at that.

Mr. SEVERANCE: What is that? I did not catch that last.

Mr. KAHN: I said we made the offer to the Union Pacific after we had accumulated a substantial amount, in each instance at what we paid for it plus a very slight commission, and we did that notwithstanding the fact that on the day we made that offer, on the respective days when we made that offer—the market price was very substantially in excess of the price at which we sold to the Union Pacific an option, an opportunity to buy from us.

Mr. SEVERANCE: As I understand then, Mr. Kahn, you went on buying Northern Pacific stock?

Mr. KAHN: Yes.

Mr. SEVERANCE: And you went on buying it with the intention of turning it over to the Union Pacific?

Mr. KAHN: We did not.

Mr. SEVERANCE: You did not?

Mr. KAHN: No; we went on buying it, being perfectly willing, and preferring, to hold it for ourselves, because we knew we were buying something at a price very much below its intrinsic value; but we bought it with the determination to give the Union Pacific
the benefit of our skill in purchasing it, and of our responsi-
1778 bility and risk incurred in purchasing it, and offering it to the Union Pacific at the price at which we bought it, plus a very small commission.

Mr. SEVERANCE: But, Mr. Kahn, however strongly you felt that you were getting this stock for much less than its intrinsic value, it had not occurred to Kuhn, Loeb & Co. to get into the market and buy Northern Pacific stock until the time you thought the Union Pacific ought to have it, and after you had had this talk with Mr. Harriman, whatever the talk was?

Mr. KAHN: Oh, no; the value of the Northern Pacific was very much increased by their obtaining control of the Burlington, and we went into the market the moment the Northern Pacific obtained control of the Burlington.

Mr. SEVERANCE: That was the latter part of March?

Mr. KAHN: That was the latter part of March.

Mr. SEVERANCE: Whatever may have been your intentions, it is a fact, is it not, that as fast as you acquired a substantial block of the Northern Pacific stock that spring, you turned it over to the Union Pacific?

Mr. KAHN: We offered it to the Union Pacific.

Mr. SEVERANCE: You turned it over to them. They got it, did they not?

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: You were not very much astonished when they accepted your offers, were you?

Mr. KAHN: We were not very much astonished, but we were rather distressed, because we would much rather have kept the stock.

Mr. SEVERANCE: But you survived that distress?

Mr. KAHN: We survived it, and let a profit of $63,000,000 go to the Union Pacific out of those transactions.

Mr. SEVERANCE: It was on the 29th you made this offer, of 150,000 shares of preferred and 120,000 shares of common, and that was accepted by Mr. Harriman on the same day, as chairman of the Executive Committee of the Union Pacific? He states the
1779 letter will constitute a contract. That stock was taken and paid for, was it not?

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: I call your attention to another letter of Mr. Harriman, written on that same day, the 29th of April, stating:

"The Union Pacific desires to purchase additional shares to the amount of at least 250,000 shares."

And he desires to know whether they can be procured from or through yourselves, and upon what terms. I do not find any letter in these files in answer to that. What answer did you return to that?

Mr. KAHN: I believe in answer to that letter we offered him all we had, which was, I think, about $15,000,000,000 of the stock, if I remember rightly. I am not sure. Anyhow, we offered him all we had.

Mr SEVERANCE: On the 30th of April, Mr. Harriman addressed you a letter, as follows:

The Union Pacific Railroad Company, for the purpose of financing corporate requirements, desires to sell $25,000,000, face value, of its First Lien Convertible Four Per Cent. Gold bonds. In compliance with the agreement between this Company and yourselves, evidenced by your letter of February 5, 1901, to the undersigned, I am authorized to offer on behalf of the Railroad Company to sell these bonds to you upon the terms mentioned in your letter. I shall be glad to hear promptly whether you will purchase the same.

Upon payment by you or your assigns for these bonds at their face value, less interest to May 1st, when the interest on the bonds begins to run, the Company will be prepared to pay you the 5% commissions as agreed upon February 5, 1901.

Now, there was no arrangement made, was there, in this letter of yours of February, by which you were to have anything to do with any of the bonds other than $40,000,000?

Mr. KAHN: Yes, there was.

Mr. SEVERANCE: Was there? What was it?

1780 Mr. KAHN: I think you will find it in the letter.

Mr. SEVERANCE: The only letter put into the files is the letter with reference to the sale of the stock. There is the resolution following that for the sale of the bonds to you or to your syndicate. Just a moment, Mr. Cravath, and I will look it over and see if we can find it.

Mr. KAHN: I think I can save some time, because I know what it is.

Mr. SEVERANCE: It is not here; just state what it was.

Mr. KAHN: It must have been overlooked, because we put it in there.

Mr. SEVERANCE: It may have been overlooked.

Mr. KAHN: I mean it is in the records, it must have been overlooked, to furnish it to you.

Mr. SEVERANCE: We have here a copy of the records relating to the transaction.

Mr. KAHN: Yes.

Mr. SEVERANCE: Certified by the Secretary, Mr. Millar.

Mr. KAHN: Yes.

Mr. SEVERANCE: And Judge Lovett and Mr. Cravath and I have all looked it over, and we do not find anything there providing that you shall have the right to take the other $60,000,000.

Mr. KAHN: If you send for the record of our correspondence with the company, which is the only record we have of that, you will find that we have that right. You will find we have the correspondence with the company.

Mr. SEVERANCE: Suppose you bring it up here at two o'clock.

Mr. KAHN: I will try to get it—I think you should address that inquiry to the company and not to us.

Mr. SEVERANCE: It appears in evidence of the $40,000,000 in bonds were to be offered to the stockholders.

Mr. KAHN: Yes.

Mr. SEVERANCE: And the stockholders took some $25,-

1781 000,000 in round numbers, you don't know exactly.

Mr. KAHN: Yes.

Mr. SEVERANCE: Now there does not seem to be any offer made to the stockholders of this additional $25,000,000.

Mr. KAHN: No.

Mr. SEVERANCE: Do you mean that there was an agreement in force at that time between the Union Pacific and Kuhn, Loeb & Company, by which you were to have the right to take the additional $60,000,000, at a discount of five per cent.

Mr. KAHN: Certainly.

Mr. SEVERANCE: You do?

Mr. KAHN: I do. We consider that no more than fair. At the time we took a very great responsibility which you do not appreciate, but which existed, and existed to a very great extent, at the time we became responsible for the issue of the Union Pacific four per cent. convertible bonds, when the Union Pacific credit was

not above a four per cent. basis at par at the time we became responsible, and by our efforts to place those bonds and obtain the money for the company, whether it came from the stockholders or from us, it makes no difference. It is the stockholders subscribed it was because we guaranteed the security to a certain extent, anyhow. I mean our pressure and our efforts had a great deal to do with the success of that issue, and if we undertook to become responsible for that issue we considered it ourselves perfectly justifiable, and the railroad company considered it perfectly justifiable to stipulate that any further issue of those bonds should be offered to us at the same price.

Mr. SEVERANCE: Then, as I understand it, in consideration—take the whole transaction together—in consideration of your purchasing the Southern Pacific stock, you got a commission on that?

Mr. KAHN: Yes.

Mr. SEVERANCE: And in consideration of organizing a
1782 syndicate to underwrite the $40,000,000, you got a commission on that?

Mr. KAHN: Yes.

Mr. SEVERANCE: Although $25,000,000 were taken by the stockholders?——

Mr. KAHN: It was not known and could not have been known at the time we agreed to do that.

Mr. SEVERANCE: Let me finish my question. I have been patient with you and trust you will allow me to place my question on the record. Then, as an additional compensation for what you have done, outside of these commissions, you also got the privilege of taking other $60,000,000 with a five per cent. commission. Is that correct?

Mr. KAHN: That is correct.

Mr. LOVETT: I think, in order that the record may be intelligible, it would be well to file that correspondence as an exhibit, because you have been referring to it.

Mr. SEVERANCE: I will do that. Well, at any rate, Mr. Harriman, whether it had been agreed that you should have that right or not, did offer you the $25,000,000 of face value of the bonds.

Mr. KAHN: Yes.

Mr. SEVERANCE: At five per cent. discount?

Mr. KAHN: Yes.

Mr. SEVERANCE: And you took them, didn't you?

Mr. KAHN: We did.

Mr. SEVERANCE: And the proceeds were used to pay you for the Northern Pacific stock you were buying?

Mr. KAHN: Yes.

Mr. SEVERANCE: Then on the 7th of May Mr. Harriman addresses you another letter, stating that "the Union Pacific desired to make additional purchases of the stock, common and preferred, of the Northern Pacific Railway Company to an amount up to but not exceeding $24,500,000 par value in the aggregate of both stocks. On behalf of the executive committee and with its authority, I desire you to make purchases for account of the Union Pacific Rail-

road Company and shall be glad to hear promptly your
1783 views as to the prices at which the stock can be obtained, so far as you can judge."

Mr. KAHN: Yes.

Mr. SEVERANCE: Then you answered that letter, stating "We ourselves own and control 80,000 shares of preferred and 86,000 shares of common stock of the Northern Pacific Railway Company, and we offer to sell these shares to the Union Pacific Railroad Company at the rate of $109.00 per share of preferred stock, ex-dividend for which books close May 10th, and $131.50 per share of common stock. We must ask you to advise us before four o'clock today, if practicable, whether the company will accept this offer, in order that we may govern ourselves accordingly."

Then you pointed out in a foot note, that the prevailing prices were several points in excess of the prices quoted by you.

Mr. KAHN: We quoted that the closing price for common stock was 143½ when we offered it at 131½ and the preferred closed at 110 when we offered it at 109.

Mr. SEVERANCE: And on the same day, Mr. Harriman, as chairman of the executive committee, answered your letter, in which you offered to sell the stock at that price, and he accepts the offer and then gives you additional authority to make additional purchases in the market for account of the Union Pacific Railroad Company of preferred stock in the aggregate a total cash expenditure, of $9,200,000, using your discretion as to price and times of purchase, but not to exceed the average rate of $115.00 per share ex-dividend for which books close May 10th. Did you make any purchase under that authority?

Mr. KAHN: Yes, we purchased some preferred stock and turned it in at cost.

Mr. SEVERANCE: What is that?

1784 Mr. KAHN: We purchased preferred stock on the order of the company and of course turned it in for what we paid for it.

Mr. SEVERANCE: You turned it in without any commission?

Mr. KAHN: Certainly. We might have received the ordinary bankers' commission, but we simply turned it over at cost.

Mr. SEVERANCE: And all the commission you got was the commission of ⅛ per cent. upon that?

Mr. KAHN: It may have been ¼ or ⅛, but from that time on we acted as agent.

Mr. SEVERANCE: Well, there is a regular broker's commission of ⅛, isn't there?

Mr. KAHN: Yes, but we are not brokers; we are bankers; we do not accept orders from clients to purchase stocks in the market; we have not a commission business. We do accept from railroad companies and other large corporations large and discretionary orders requiring particular skill and particular ability to execute orders, but only as I say, if they involve special objects, and if they involve large amounts, and for those we do not charge ⅛ per cent. but we do charge a commission commensurate with the object at stake. We

usually charge from ½ to one per cent. As a rule we charge one per cent. for handling that kind of an order.

Mr. SEVERANCE: Then as I understand it, when stocks are purchased by a member of the Stock Exchange in rather small quantities, the individual who does that is a broker, but when it is done in large quantities, he is a banker, is that it?

Mr. KAHN: No, that depends very much upon the circumstances of the case. A railroad company is not qualified and has not got the facilities to go to half a dozen brokers, and they could not get one broker, but to half a dozen and tell them, "I want to buy ten million, twenty, thirty or forty million dollars of stock," and give them exact orders. What they would do would be to go to a banker in whose ability and skill they have confidence and whom they
1785 know will not take advantage of their order, and they would say "take such means as you deem desirable, and pay as little as possible," and for that the banker would not require the ordinary brokerage commission, which he might have to pay out half a dozen times over, but would require an appropriate commission, which is usually from one-half to one per cent., as a rule one per cent.

Mr. SEVERANCE: That ordinarily your charge against the Union Pacific or any one you are acting for would be one per cent.?

Mr. KAHN: We have acted for a great number of railroad companies in similar circumstances and our charge has been uniformly one per cent. on the par value.

Mr. SEVERANCE: But in the case of the Union Pacific your charge was uniformly two and one half per cent.

Mr. KAHN: Our charge was one per cent. or less for the Union Pacific. Whenever we acted for the Union Pacific, generally less.

Mr. SEVERANCE: I thought you get two and a half per cent. on the Southern Pacific, and that was a large purchase requiring ability and skill.

Mr. KAHN: We did not acquire that stock in the market or on the commission, but at our own risk, and a very substantial risk, and the Union Pacific had the right to take it, as they saw fit.

Mr. SEVERANCE: And that same condition applies to the Northern Pacific, does it?

Mr. KAHN: To a much greater degree, because our responsibility in the Northern Pacific was a very heavy one indeed, and the amount involved was extremely large.

Mr. SEVERANCE: You knew at the time you bought this stock of the Northern Pacific and turned it over to the Union Pacific, of which you were an executive committeeman, that the Northern Pacific and Great Northern had jointly acquired the Burlington?

Mr. KAHN: Yes.

1786 Mr. SEVERANCE: You know that for a large part of the distance traversed by the Union Pacific, it was an active competitor, with the Burlington, didn't you?

Mr. KAHN: The Northern Pacific?

Mr. SEVERANCE: The Union Pacific was an active competitor with the Burlington?

Mr. KAHN: Yes.

Mr. SEVERANCE: You knew that on trans-continental business, the Northern Pacific was a competitor with the Union Pacific, didn't you?

Mr. KAHN: Yes.

Mr. SEVERANCE: You knew that?

Mr. KAHN: Yes.

Mr. SEVERANCE: Will you explain to me, then, why knowing those facts, and of course knowing the law, being a banker, you sought to acquire the control of a competing line in violation of law?

Mr. KAHN: To begin with, knowing the law being a banker; there is a difference between a banker and a lawyer and a difference between a banker's understanding of the law and a lawyer's understanding of the law, sometimes. I mean that in this sense, that the banker is not competent to judge of the niceties of the interstate commerce and anti-trust laws.

Mr. SEVERANCE: Did that occur to you in connection with the matter?

Mr. KAHN: It did, to such an extent that it was a factor in determining the risk we ran. We bought the Northern Pacific stock at a very great risk, legal and otherwise, and we offered it to the Union Pacific, and I was one of the fifteen who determined that the Union Pacific should buy that stock, but when we finally came to determine whether it should buy it or not, I declined to vote on the question, therefore I am the last person you should ask in regard to that matter.

Mr. SEVERANCE: Well, you were turning it over in large bundles day by day?

Mr. KAHN: Not every day, but on three instances.

Mr. SEVERANCE: Well, every few days

Mr. KAHN: No, not every few days.

1787 Mr. SEVERANCE: At that time you bought that stock and turned it over to the Union Pacific for the purpose of enabling the Union Pacific to control the Northern Pacific and through it, the Burlington?

Mr KAHN: Yes.

Mr. SEVERANCE: Or to have a half interest in controlling the Burlington?

Mr. KAHN: Yes.

Mr. SEVERANCE: You did that, knowing they were competitive lines?

Mr. KAHN: Yes, and we did that knowing that we advised that the Oregon Short Line would have the right to hold the Northern Pacific stock.

Mr. SEVERANCE: Why didn't you sell it to the Oregon Short Line?

Mr. KAHN: It was sold to the Union Pacific or through the Union Pacific to the Oregon Short Line, the Union Pacific being simply the financial intermediary, because the Oregon Short Line did not have the cash or the means of raising the money, except through the Union Pacific.

Mr. SEVERANCE: You sold it to a company which you realized

had no right to handle it, as an intermediary, to get it into the hands of another company that had the right?

Mr. KAHN: No, I did not say that.

In the beginning I was not advised that the Union Pacific had not the right, but I was advised they had a clear right to hold it.

Mr. SEVERANCE: And were similarly advised of the physical situation, that they were competing lines.

Mr. KAHN: In a certain sense.

Mr. SEVERANCE: But as to whether or not one competing line could buy another, you did not know anything about it?

Mr. KAHN: The Union Pacific was not buying the Burlington.

Mr. SEVERANCE: It was buying the Northern Pacific, which you said was competing with the Union Pacific.

1788 Mr. KAHN: But I was not told and I did not see it, and I am not sure in my mind now that the Union Pacific and Northern Pacific, taken by themselves, are competing lines in the meaning of the law. I don't know whether they may or may not be.

Mr. SEVERANCE: You don't know about that?

Mr. KAHN: I do not know, no.

Mr. SEVERANCE: Well, the Supreme Courts of the United States say that they are.

Mr. CRAVATH: Five judges out of the nine did.

Mr. SEVERANCE: Yes, I know; that is a majority; that is quite enough.

Mr. CRAVATH: It shows at least a room for doubt in the mind of a layman. They were divided five to four.

Mr. SEVERANCE: They did not divide five to four on that proposition; there was not anything in the dissenting opinion which disagreed with that proposition. Well, so much for the Northern Pacific. Now, you held that stock as has been testified here, I mean the Union Pacific and afterwards the Short Line held that, as has been testified by Mr. Harriman, for a number of years.

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, coming down to the disposition of that stock did you have anything to do with selling it?

Mr. KAHN: Yes, I think we sold nearly all of it.

Mr. SEVERANCE: That is, the Northern Pacific stock or its successors, the Northern Securities and afterwards, the Great Northern and Northern Pacific, which you got for the Northern Pacific, is that right?

Mr. KAHN: Yes.

Mr. SEVERANCE: That was sold through Kuhn, Loeb & Co.

Mr. KAHN: Yes, that was sold through Kuhn, Loeb & Co.

Mr. SEVERANCE: Wasn't it sold by Kuhn, Loeb & Co. for the Union Pacific or the Short Line, or was it sold by Kuhn, Loeb & Co. for their own benefit?

1789 Mr. KAHN: It was sold up to—let me put it this way. It was sold by Kuhn, Loeb & Co. on direct order of the Company, for the company, up to some time in, I think it was, June 1905, when we were no longer directors and a different transaction took place.

Mr. SEVERANCE: That is, as long as you were directors in the selling of that, you acted for the company?

Mr. KAHN: We acted for the company.

Mr. CRAVATH: By directors, you mean——

Mr. SEVERANCE: Directors of the Union Pacific.

Mr. KAHN: Well, we acted simply as brokers in selling it.

Mr. SEVERANCE: What is that?

Mr. KAHN: We acted simply as agents of the company in effecting the sales to the best of our ability, and I think I may say that we did pretty well, and that we worked off a huge amount of stock practically without depressing the market price, just as I may say we did pretty well in buying the Northern Pacific stock, because we bought about $70,000,000 of it, before anybody had any idea we were doing it.

Mr. SEVERANCE: I am glad to have you hand these bouquets to yourself, Mr. Kahn; I think perhaps you did.

Mr. KAHN: I think to a certain extent, these bouquets are displayed to show we were earning our commission and a good deal more, I think.

Mr. SEVERANCE: You charged the ordinary bankers' commission, where you were acting as selling this stock?

Mr. KAHN: Yes.

Mr. SEVERANCE: But that particular matter which involved, according to the statement I have here, some $70,000,000 what was the ordinary bankers' commission?

Mr. KAHN: Well, to use your way of figuring, the ordinary bankers' commission would be from ⅓ to 1/6 of one per cent.

Mr. SEVERANCE: I am not figuring——

Mr. KAHN: I mean if you figure in the Southern Pacific
1790 that the commission amounts to five per cent. you must figure that the commission amounts to ⅓ to 1/6.

Mr. SEVERANCE: Figure it any way you like. What was your bankers' commission?

Mr. KAHN: From ⅓ to 1/6 per cent. of the amount involved.

Mr. CRAVATH: When did those sales begin?

Mr. SEVERANCE: June 30, 1905.

Mr. KAHN: I say between ⅓ and 1/6 of one per cent. of the amount of money involved.

Mr. SEVERANCE: That would be about one per cent., of the par value of the Great Northern?

Mr. KAHN: Between one and one-half of one per cent. or, rather, between one-half per cent. and one per cent.

Mr. SEVERANCE: Later on, I see by this report, that a large amount of the Great Northern and Northern Pacific was sold through Kuhn, Loeb & Co.?

Mr. KAHN: Yes.

Mr. SEVERANCE: Was that sold under a contract?

Mr. KAHN: May I ask under what date?

Mr. SEVERANCE: It begins on the 17th day of Last July and runs down to the 1st of February, 1907, the 17th of last July.

Mr. SEVERANCE: I mean 1906.

Mr. KAHN: There were direct purchases made from the company by us.

Mr. SEVERANCE: What I wanted to get at, were these made pursuant to a single contract or were they various blocks sold from time to time?

Mr. KAHN: They were in various blocks.

Mr. SEVERANCE: And sold under the dates stated?

Mr. KAHN: And sold under the dates stated.

Mr. SEVERANCE: According to this there is a block of $2,800,000 of the capital stock of the Northern Pacific sold the 1st of February for $5,954,000 and odd dollars.

Mr. KAHN: What, a block of how much?

Mr. SEVERANCE: That is what made me think that it must
1791 have been under some contract. That is a pretty high market price for Northern Pacific.

Mr. KAHN: A block of how much? $2,800,000 sold for $5,954,000? That is correct. We sold that at about 250. That would work out about right.

Mr. SEVERANCE: For the Northern Pacific.

Mr. KAHN: Yes.

Mr. SEVERANCE: Are you not mixed up with the Great Northern?

Mr. KAHN: No. We bought Great Northern from the company as high as 335.

Mr. SEVERANCE: This is Northern Pacific.

Mr. KAHN: And we bought Northern Pacific as high as 225.

Mr. SEVERANCE: I am speaking about the 1st of February, 1907, this was only the other day.

Mr. KAHN: The 1st of February, 1907?

Mr. SEVERANCE: Yes, the 1st of February, 1907.

Mr. KAHN: No.

Mr. SEVERANCE: You certainly could not have paid over 200 Northern Pacific stock then, could you?

Mr. KAHN: No—yes, that is right.

Mr. SEVERANCE: You paid 210 for it the 1st of February, did you, for Northern Pacific stock?

Mr. KAHN: Yes.

Mr. SEVERANCE: And that was an independent transaction and not pursuant to any contract?

Mr. KAHN: Yes, an independent transaction.

Mr. SEVERANCE: Just an offer made to you from time to time?

Mr. KAHN: Yes.

Mr. SEVERANCE: Then as I understand you, since last summer all of these sales that have been made to you were made in small or comparatively small blocks?

Mr. KAHN: Yes.

Mr. SEVERANCE: From time to time?

Mr. KAHN: Yes—sales to us or the sales which were made through us?

Mr. SEVERANCE: What?

1792 Mr. KAHN: Did you say the sales to us or through us?

Mr. SEVERANCE: To you.

Mr. KAHN: No, the sales to us were made in quite substantial blocks and the sales through us were smaller blocks.

Mr. SEVERANCE: They are quite substantial blocks but they are smaller than some of the other blocks.

Mr. KAHN: Well, but in the aggregate——

Mr. SEVERANCE: They are in blocks of not less than 2800 shares or more than a million.

Mr. KAHN: Yes.

Mr. SEVERANCE: Some of the sales last summer went as high as seven million, in some of the other stocks.

Mr. KAHN: Yes.

Mr. SEVERANCE: How about the balance of that one hundred million dollars of convertible bonds, the $25,000,000 we accounted for. Did you get the others?

Mr. KAHN: We got the others at the same price.

Mr. SEVERANCE: So you got the whole $100,000,000 outside of what the stockholders took out of the first $40,000,000?

Mr. KAHN: Yes, we bought $40,000,000 at that price.

Mr. SEVERANCE: If you will try to find that correspondence in reference to the agreement—will you?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, Mr. Kahn, what did the firm of Kuhn, Loeb & Co. have to do with the acquisition of the preferred stock of the Chicago & Alton Road by the Union Pacific?

Mr. KAHN: The firm of Kuhn, Loeb & Co. I think it was the end of 1903, December, 1903, I believe it was, issued a circular inviting deposits of Alton preferred stock.

Mr. SEVERANCE: That was the 23rd of December, 1903, wasn't it?

Mr. KAHN: Yes, I have the circular here if you want it.

Mr. SEVERANCE: I have it.

1793 Mr. KAHN: This is the agreement, but I have the circular here.

Mr. SEVERANCE: Let me see the circular. I have the agreement here but I would like to see the circular.

Mr. KAHN: Here it is, (handing paper).

Mr. SEVERANCE: Now, at the time *of* this agreement was made on the 23rd of December, 1903, who were interested in the transaction, what initiated this scheme of having a deposit of that stock with Kuhn, Loeb & Co.?

Mr. KAHN: Well, the scheme was initiated largely by Mr. Harriman, who told us that we ought to try to acquire the Alton outstanding preferred stock, that it might become desirable to deal with that outstanding preferred stock in a block, if it could be done.

Mr. SEVERANCE: Well, at that time was there any talk of getting that in a block to turn over to the Union Pacific?

Mr. KAHN: Well, it was contemplated at the time that the Union Pacific would probably wish to acquire it.

Mr. SEVERANCE: And it was in order to get the stock deposited for the Union Pacific, that is so the Union Pacific could buy it, that the agreement there made the depositors' agreement, was drawn up?

Mr. KAHN: It was largely with that end in view. Of course we

were perfectly free to *see* to another company, but it was our purpose to offer the Union Pacific the opportunity of buying it if we could obtain a substantial block and make it worth while to the Union Pacific to buy it.

Mr. SEVERANCE: You gentlemen at that time had the relations to the Union Pacific which you have stated, and it was the understanding if you could get a substantial block of that stock you would turn it over to the Union Pacific, was it not?

Mr. KAHN: Well, that was coupled with other understandings. It was questioned at that time firstly whether we could get a
1794 substantial block, and secondly if we could get a block which would be sufficiently large to get what we wanted to obtain.

Mr. SEVERANCE: What did it want to obtain?

Mr. KAHN: An ownership which would be sufficient to insure the continuance—to insure the relationship between it and the Alton on such a basis as was mutually satisfactory and mutually beneficial.

Mr. SEVERANCE: That is, you mean by that such an amount of stock as would give a substantial control of the Alton to the Union Pacific?

Mr. KAHN: Well, it might not have been necessary to give a substantial control, but a sufficient amount as I say to insure that the relationship between the Alton and Union Pacific would be maintained on a basis mutually advantageous and harmonious.

Mr. SEVERANCE: What you mean in effect was that it was desired to get a sufficiently large block so that the Union Pacific would either have an actual control or such a voice in the management as would protect its relations with the Chicago & Alton?

Mr. KAHN: As would protect their mutual relations, yes.

Mr. SEVERANCE: This agreement then was drawn up and the deposit of the stock was requested, with your firm?

Mr. KAHN: Yes.

Mr. SEVERANCE: And it was provided that the shares so deposited should be sold at a price to be fixed by Mr. John A. Stewart and Mr. Harriman and John J. Mitchell. You remember that, don't you?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now you did get a deposit of about $10,000,000?

Mr. KAHN: Yes.

Mr. SEVERANCE: And it was sold to the Union Pacific?

Mr. KAHN: Yes, we got—that circular is dated I believe, December, 1903, and it was not sold to the Union Pacific until September, 1904.

Mr. SEVERANCE: I understand.

1795 Mr. KAHN: And it became in the course of [illegible] time very doubtful whether it would be so sold, and it only was so sold when an agreement had been reached between the Rock Island people and the Union Pacific people which was dependent on the delivery by the Union Pacific or the joint deposit of at least $10,000,000 of preferred stock. Having effected that agreement and having thereby accomplished what the Union Pacific wanted, that is a harmonious, or, as Mr. Harriman calls it, the establishment of a frank relationship between the Alton and Union Pacific—having accomplished that agreement with the Rock Island Mr. Harriman came to

us and said I am now prepared to negotiate with you for the acquisition of that stock. But up to that time it was more than doubtful whether it would have been sold to the Union Pacific, and in fact it would not have been so sold, because it would not have been any use to the Union Pacific except in conjunction with that agreement.

Mr. SEVERANCE: That is, that agreement gave to the Union Pacific as the owner of a little more than $10,000,000 of the stock, together with the stock owned by the Rock Island, a control of the road.

Mr. KAHN: Yes.

Mr. SEVERANCE: And the purpose for which you originally got this agreement in shape, which was to turn the stock over to the Union Pacific, in all probability would not have been carried out but for the agreement that was made with the Rock Island?

Mr. KAHN: That is right.

Mr. SEVERANCE: That is right.

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, the price at which this stock was to be sold was not fixed by Kuhn, Loeb & Company, was it?

Mr. KAHN: No, that price was fixed by——

Mr. SEVERANCE: By this Committee?

Mr. KAHN: By Mr. Mitchell and Mr. Stewart, Mr. Harri-
1796 man declining to participate in the fixing of the price and declining to sign the directions to sell it at that price.

Mr. SEVERANCE: Did he? He said yesterday he joined in fixing the price.

Mr. KAHN: He was mistaken. He not only did not join, but expressly declined to join.

Mr. SEVERANCE: He was acting for the Union Pacific?

Mr. KAHN: He was acting for the Union Pacific, and for that reason declined to have anything to do with the vendors' side.

Mr. SEVERANCE: I see. He got out of this agreement at that time and was mistaken in saying he joined in fixing the price?

Mr. KAHN: Yes, he was mistaken. I called his attention to it and he said he was mistaken.

Mr. SEVERANCE: But the price was agreed upon finally at $86.50 a share?

Mr. KAHN: Yes.

Mr. SEVERANCE: Of which $2.50 a share was paid to you gentlemen for having the stock in your possession during that time?

Mr. KAHN: Not only for having the stock in our possession during that time, but for negotiating the sale and doing work in connection with it.

Mr. SEVERANCE: I thought the sale was negotiated by these gentlemen and that they fixed the price.

Mr. KAHN: Jointly with us. We were not bound by their direction.

Mr. SEVERANCE: Were you not?

Mr. KAHN: If you will look through that agreement you will find that we could have refused to accept their directions. Theirs

was a supervision, so to speak, but it was an actual control on their part.

Mr. SEVERANCE: Well, you did not make any question about the price these gentlemen made, did you?

Mr. KAHN: We did indeed.

Mr. SEVERANCE: You did.

Mr. KAHN: Acting for——

1797 Mr. SEVERANCE: Who were you acting for in that, for the Union Pacific or the holders of the stock?

Mr. KAHN: In that case we were acting for the holders of the stock, and perhaps I may be permitted to take issue with Mr. Kellogg in saying that that stock was worthless stock. The stock and bonds together represented exactly the same interest charged or dividend charged which the Alton had been paying for a matter of 20 years, and therefore it was not only reasonable but entirely safe to say that in all normal circumstances that preferred stock was amply able to pay its four per cent, and it is not certainly justified to characterize that stock as worthless stock.

Mr. SEVERANCE: Well, Mr. Kahn, you say in this transaction then you acted so far as you acted at all in the interests of the holders of the stock and not in the interests of the Union Pacific?

Mr. KAHN: Well, practically, yes.

Mr. SEVERANCE: Although you had started out to procure a deposit of the stock so that the Union Pacific could get it?

Mr. KAHN: Well, we acted as you might say as a friend of both parties.

Mr. SEVERANCE: Oh, yes——

Mr. KAHN: Trying to do the right thing by both of them.

Mr. SEVERANCE: As a friend of both parties which side did you take on the question of the price?

Mr. Harriman said he was trying to keep the price down and the others were trying to put it up. Were you a friend of both parties in that contest?

Mr. KAHN: Yes. The depositors wanted 90 and Mr. Harriman did not want to pay it, and they finally agreed upon a basis of 86½.

Mr. SEVERANCE: And you gave advice on that to both parties, did you?

Mr. KAHN: We gave advice on that to both parties, we thought it was a fair price for both parties.

Mr. SEVERANCE: And turned over the stock?

1798 Mr. KAHN: And turned over the stock.

Mr. SEVERANCE: Now, that was in 1904?

Mr. KAHN: Yes.

Mr. SEVERANCE: Have you a list of the sellers of that stock to the Union Pacific in your possession?

Mr. KAHN: I haven't got it in my possession, but——

Mr. SEVERANCE: Have you at your banking office, however?

Mr. KAHN: I doubtless have it at my banking office. I can say in a general way that it consisted of a very large number of people——

Mr. SEVERANCE: I don't want you to state it in a general way unless you are prepared to be specific when I ask you.

Mr. CRAVATH: What is the question?

Mr. SEVERANCE: Whether he has a list of the parties that sold it to the Union Pacific?

Mr. KAHN: I will be specific to that extent, that no one to the best of my recollection, sold more than 3000 shares of that stock, no one party owned more than 3000 shares of that stock, no one depositor deposited more individually than 3000 shares of that stock.

Mr. SEVERANCE: Well, suppose at two o'clock you bring us up the list?

The CHAIRMAN: You are not asked now who they were, but whether you have in your possession, or can produce, a list of the persons and firms who were interested in that transaction?

Mr. CRAVATH: Now, may it please the Commission, I think it is my duty at this point to intercede on behalf of this witness. He had endeavored to be a frank witness, but it must be remembered that Kuhn, Loeb & Co. were bankers, and as bankers they are naturally disposed to guard their own business secrets and particularly to guard the secrets and business of their clients and friends. Mr. Milburn has stated as well the general objections to questions of that character, that I need not restate these objections now, but will simply call your attention to the special circumstances
1799 which seem to me to be peculiar to the case of this witness.

Now, Kuhn, Loeb & Co. being bankers, when Mr. Kahn and Mr. Schiff became directors of the Union Pacific, did, of course, not cease to be bankers. Now one will question their right to conduct banking transactions with the Union Pacific Company. Almost every railroad corporation has upon its board one or more prominent bankers, and doubtless the reason for that is bankers may become familiar with the needs of the company so as to better serve them as bankers in large financial transactions. In this case the record shows that Kuhn, Loeb & Company under a public agreement which any one might inspect by going to their office, and under a public call, invited deposits of this stock. They were acting there as brokers, not as directors of the Union Pacific Company. The record shows that their position was fully revealed to the Union Pacific Company, and when the stock was finally sold Mr. Kahn refrained from voting on the resolution of the executive committee approving the purchase. So that I say that Mr. Kahn in this case was not acting as a director but was acting as a banker and his position is precisely the same as if he had not been a member of the Board. And it seems to me that we have fairly asked this Commission to protect Mr. Kahn against questions which call for the private information of his banking firm and which call for a revelation of the private business of the numerous clients who have dealings with that firm. Mr. Kahn has explained that many stockholders deposited their stock under that agreement. The whole transaction was open and every single detail is now before you, and it seems to me that this Commission, dealing with Interstate commerce and enforcing Federal Laws which can only apply to

Interstate commerce, should not call upon this witness to furnish private information of that character.

So, upon the grounds stated by Mr. Milburn with respect to other questions, and upon the special grounds to which I have just
1800 called attention, I most respectfully and earnestly ask this Commission to rule that such questions should not be pressed.

Mr. SEVERANCE: May I ask just what the particular question is?

The CHAIRMAN: The immediate question is whether he has in his possession or can produce a list.

Mr. SEVERANCE: He may answer that question, it is preliminary.

Mr. CRAVATH: He undoubtedly has a list.

Mr. SEVERANCE: Well, you do not object to his answering this particular question——

Mr. KAHN (interrupting): I have such a list.

Mr. SEVERANCE: Now, will you state whether any of the directors of the Union Pacific Railway Company were the real owners of the shares so deposited with you and sold to the Union Pacific Railroad Company?

Mr. CRAVATH: To that question I repeat the objection which I have just stated.

The CHAIRMAN: The Commission perhaps should be as consistent as are counsel. The objections are overruled and the witness is directed to answer.

Mr. CRAVATH: And the witness refuses to answer upon the special grounds which I have stated and also upon the grounds stated by Mr. Milburn yesterday, which I take it for this purpose may be deemed to be repeated.

Mr. KAHN: Perhaps I may——

Mr. SEVERANCE: Never mind, you have been told not to answer, unless you want to answer the question in defiance of your counsel, but we do not want any explanation unless you intend to answer.

Mr. KAHN: I do not want to explain this particular thing but I want to explain something else.

Mr. SEVERANCE: Now let us all fiddle on the same string.

Com'r CLEMENTS: Do you yourself decline to answer?

Mr. KAHN: I think every self-respecting banker considers——

1801 Com'r CLEMENTS: That is enough. Do you decline to answer?

Mr. KAHN: As far as our relations with our clients are concerned, I decline to answer.

Mr. SEVERANCE: Was Kuhn, Loeb & Company the owner of any of the stock that was turned over?

Mr. KAHN: I don't know whether I ought to answer, but I have no objection to saying yes, of a very insignificant amount.

Com'r LANE: Were any of the directors of the Union Pacific owners of that stock?

Mr. KAHN: I will answer every question relating to our own dealings with the Union Pacific, but I cannot answer questions relating to the deals of our clients with us. Every banker considers

his client's affairs as confidential as a lawyer considers the affairs of his clients or a doctor considers the affairs of his patients, and I cannot be instrumental in disclosing them.

Com'r LANE: You were also a director in the Union Pacific at that time?

Mr. KAHN: I was also a director in the Union Pacific at that time.

Com'r LANE: The question I asked you was whether any of your fellow directors were owners of any of that stock?

Mr. CRAVATH: The Commission will understand that the same objection applies.

Com'r LANE: I understand. I am putting the facts into the question so that he may understand and decline to answer if he chooses.

Mr. CRAVATH: I advise the witness he is not required to answer, for the reasons stated.

The CHAIRMAN: The record may show that the same objections were made to this question, and the objections were overruled and the witness directed to answer, and he declines for the reasons stated.

Mr. SEVERANCE: Now, Mr. Kahn, the firm of Kuhn, Loeb & Company were the syndicate managers of the Alton road, were they not?

Mr. KAHN: Yes.

1802 Mr. SEVERANCE: Now which one was it, Mr. Jacob H. Schiff or Mr. Mortimer Schiff who was one of the purchasers of the stock of the Alton?

Mr. KAHN: Mr. Jacob H. Schiff.

Mr. SEVERANCE: Then in all the transactions where Mr. Schiff appears it was Mr. Jacob H. Schiff instead of Mr. Mortimer Schiff.

Mr. KAHN: Where he appears as one of the purchasers, yes.

Mr. SEVERANCE: How about the reorganization Committee or whatever it was called, was Mr. Jacob H. Schiff?

Mr. KAHN: I don't know that there was a reorganization committee.

Mr. SEVERANCE: It was not technically known as that but in the syndicate was it Mr. Jacob H. Schiff or Mortimer Schiff?

Mr. KAHN: Well, Mr. Mortimer Schiff had most to do with the details of that transaction.

Mr. SEVERANCE: Was it Jacob H. Schiff's money or Kuhn, Loeb & Company's money that was represented there?

Mr. KAHN: I think, Kuhn, Loeb & Company's largely.

Mr. SEVERANCE: Kuhn, Loeb & Co. largely?

Mr. KAHN: I think so.

Mr. SEVERANCE: And Kuhn, Loeb & Co. were the syndicate managers?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, I will ask you, Mr. Kahn, whether or not it is a fact that on the 17th of October, 1899, the firm of Kuhn, Loeb & Company sold to the New York Life Insurance Company, and Godman, Sachs & Company on joint account, or to either one

of those parties, $4,000,000 par value of the Chicago & Alton Railroad 3 per cent. refunding 50 year gold bonds at 96 and interest as syndicate managers?

Mr. KAHN: We never sold any Chicago & Alton 3 per cent. bonds to the New York Life Insurance Company, and we were not directly interested in any purchase by the New York Life
1803 Insurance Company of Alton 3 per cent. bonds, and we know nothing whatsoever of any such purchase made by it. We did sell to a syndicate of bankers a certain amount, I believe you have stated it correctly, of Chicago & Alton 3 per cent. bonds at 96, but whatever they did with it I don't know.

Mr. SEVERANCE: How many of those bonds did you sell at 96 in the fall of 1899? $10,000,000?

Mr. KAHN: I think so, yes.

Mr. SEVERANCE: So as to get it on the record I will ask you whether on the 17th of October you did not sell $4,000,000 of those at 96 and interest for $3,845,333.33 on the 1st of November, $1,500,000 at 96 and interest, amounting to $1,443,750; November 22d, $1,500,000 at 96 and interest for $1,446,375 and December 13, $3,000,000 at 96 and interest for $2,898,500?

Mr. KAHN: Well, I have not checked these figures, I don't know whether they are correct, but substantially you are correct in stating that we sold, but not to the New York Life, but we sold in October and perhaps subsequently $10,000,000 of those bonds at virtually 96.

Mr. SEVERANCE: 96 and interest, wasn't it?

Mr. KAHN: Yes.

Mr. SEVERANCE: Didn't you know that the New York Life Insurance Company were purchasers of those bonds?

Mr. KAHN: We did not. We had no idea of it.

Mr. SEVERANCE: Mr. Cravath desires that we rise now, as he has an appointment, and I am quite willing.

Mr. CRAVATH: I simply said that we understood the usual hour for adjournment was 12:30, and if it is convenient I should like to stop now.

The CHAIRMAN: We will suspend at this point and take a recess until two o'clock.

At 12:30 P. M. a recess was taken until 2 o'clock.

1804 After Recess.

The CHAIRMAN: Mr. Kahn, you may resume the stand, please.

Mr. SEVERANCE: Now, Mr. Kahn, that was all of the bonds that were sold at that time, wasn't it? There were no more of that issue put out or issued by the company until the succeeding spring?

Mr. KAHN: I think so.

Mr. SEVERANCE: How is that?

Mr. KAHN: I think so.

Mr. SEVERANCE: Not until May, were there?

Mr. KAHN: You have the figures; I don't remember the dates.

Mr. SEVERANCE: It was the next spring some time?

Mr. KAHN: I believe so.

Mr. SEVERANCE: Now, I call your attention to the fact that it appears by the Session Laws of the State of New York for the year 1900, that there was passed by the legislature, chapter 42, found on page 93 of the published edition of the laws of New York for 1900, which was entitled "An Act to amend the Banking Law relative to securities in which deposits of savings banks may be invested;" in the first subdivision of that law was a statement that it was an amendment to subdivision 5 of Section 116 of Chapter 689 of the Laws of 1892, entitled "An Act in relation to banking corporations, as amended by chapter 813 of the laws of 1895, chapter 236 of the laws of 1898, chapter 386 of the laws of 1899,"—that that law was amended so as to add after the list of railroad bonds in which savings banks might invest their funds, the words "Chicago & Alton Railroad Company." You were aware of the passage of that law at that time, were you not?

Mr. KAHN: That that law was passed?

Mr. SEVERANCE: Yes.

Mr. KAHN: Yes.

Mr. SEVERANCE: And it was after that law was passed that the bonds were put out in additon to the first lot of $10,000,000,—
1805 that law was passed, I will say to you for your information, on the 26th of February, 1900.

Mr. KAHN: Yes, but I believe the undertaking to take the bonds, was, I believe, absolute and binding in June and July.

Mr. SEVERANCE: Not until the following June or July?

Mr. KAHN: June or July previous—1899.

Mr. SEVERANCE: That is, you mean the agreement by the syndicate to take the bonds?

Mr. KAHN: Yes; I believe the syndicate had obligated to take the bonds in June, 1899. The Savings Bank Law was not passed until the following spring.

Mr. SEVERANCE: What I am interrogating you about is the sale of the bonds by the syndicate.

Mr. KAHN: Yes.

Mr. SEVERANCE: That is to say, at the time the reorganization was in progress, and in the summer of 1899, as you say, there was an absolute agreement on the part of you gentlemen that you would take those bonds at $65 on the hundred?

Mr. KAHN: Yes.

Mr. SEVERANCE: That is right?

Mr. KAHN: The actual agreement was much before that.

Mr. SEVERANCE: And you took the first lot in October—on the 10th of October, didn't you?

Mr. KAHN: I think so.

Mr. SEVERANCE: Yes; and beginning the 17th of October and running down to the 15th of December, you sold the $10,000,000 of the first lot for 96 and interest?

Mr. KAHN: Yes.

Mr. SEVERANCE: That is right.

Mr. KAHN: Right.

Mr. SEVERANCE: Now, on the 2nd of August, 1900, did you also

sell $1,000,000 of those bonds to the Equitable Insurance Company, for 92?

Mr. KAHN: I have no doubt it is correct; I don't remember the exact date.

1806 Mr. SEVERANCE: And on July 22, 1901, did you sell $550,000 of those bonds to the Equitable for 88?

Mr. KAHN: That is probably correct.

Mr. SEVERANCE: What?

Mr. KAHN: That is probably correct, if you have the fact.

Mr. SEVERANCE: Was Mr. Schiff of your firm a director of the Equitable at the time of those sales?

Mr. KAHN: Yes, he was one of sixty directors.

Mr. SEVERANCE: Now, as I understood you this morning, you said that you had nothing to do with selling those $10,000,000 of bonds to the New York Life, that you sold them to Goldman & Sachs?

Mr. KAHN: That is right.

Mr. SEVERANCE: But you were advised, were you not, that Goldman & Sachs turned them over to the Equitable or New York Life, or part of them?

Mr. KAHN: Much later we heard of it.

Mr. SEVERANCE: You did not know it at the time?

Mr. KAHN: We did not know it at the time, and did not know it was intended.

Mr. SEVERANCE: Now, in the inception of the Alton deal, it appeared, I think, very clearly, in the examination of Mr. Harriman yesterday, that Mr. Schiff shared equally with Mr. Harriman and the other gentlemen, Mr. Gould, Mr. Stillman, Schiff and Harriman. That is right, isn't it?

Mr. KAHN: Right.

Mr. SEVERANCE: And it also appeared that there was included in this transaction the turning over to the Chicago & Alton of a 58 mile piece of track out there running from Springfield to Peoria. You remember that, don't you?

Mr. KAHN: Yes.

Mr. SEVERANCE: Did you ever hear of a concern known as the Laclede Construction Company?

Mr. KAHN: Yes.

Mr. SEVERANCE: Were your firm interested in that?

Mr. KAHN: Yes.

Mr. SEVERANCE: Who owned it?

1807 Mr. KAHN: The Laclede Construction Company was owned by a syndicate which was generally known as the Adams syndicate and—shall I tell you the whole story?

Mr. SEVERANCE: Yes.

Mr. KAHN: —which was generally known as the Adams syndicate. That syndicate intended to build a line in Illinois, and we entered into negotiations with that syndicate for the purchase of their line as far as completed.

Mr. SEVERANCE: How is that?

Mr. KAHN: We entered into negotiations with that syndicate for the purchase of their line.

Mr. SEVERANCE: Don't let us be confused. Who are you speaking of when you say "we entered into negotiations?"

Mr. KAHN: I am speaking of the four purchasers.

Mr. SEVERANCE: You are speaking of the four men who bought the Alton?

Mr. KAHN: Yes. We paid the Adams syndicate in round figures $6,000,000 for that line. We sold half of it—the southern half of it—to the Illinois Central for approximately $2,700,000. We sold the northern line to the Alton for $3,000,000 cash, giving us somewhat less than what we actually expended. The difference represented the stock of the Laclede Construction Company at par. In other words, after we had sold one-half of the line to the Illinois Central, and the other half to the Alton, we had left the shares of the Laclede Construction Company stock at a cost of par to ourselves.

Mr. SEVERANCE: Let me ask you a little further: Did the Laclede Construction Company build the line?

Mr. KAHN: It was the constructor of the line, yes.

Mr. SEVERANCE: That is what I mean—it constructed the line?

Mr. KAHN: Yes.

Mr. SEVERANCE: And the corporation was called the St. Louis, Peoria & Northern.

Mr. KAHN: Yes.

1808 Mr. SEVERANCE: And the Laclede Construction Company took a contract, did it, with the St. Louis, Peoria & Northern, to build this line of road?

Mr. KAHN: Yes.

Mr. SEVERANCE: For $6,000,000 did you say?

Mr. KAHN: That is what we paid. We paid $6,000,000 for the rights, franchises and property.

Mr. SEVERANCE: That is, you mean it cost the Laclede Construction Company that?

Mr. KAHN: No, it cost us.

Mr. SEVERANCE: Who is "us?"

Mr. KAHN: I have told you before, the Alton four, purchasers, Stillman, Harriman, Gould and Schiff.

Mr. SEVERANCE: We are getting one step too far along then. In the first place, you say the Laclede Construction Company was organized by what is known as the Adams syndicate?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, was the stock of the Laclede Construction Company acquired from the Adams syndicate by those four gentlemen?

Mr. KAHN: Yes.

Mr. SEVERANCE: Were those four gentlemen members of the Adams syndicate?

Mr. KAHN: No.

Mr. SEVERANCE: They were not?

Mr. KAHN: No.

Mr. SEVERANCE: But they bought the stock of the Laclede Construction Company from the Adams Syndicate?

Mr. KAHN: Yes.

Mr. SEVERANCE: For $6,000,000 cash?

Mr. KAHN: $6,000,000 of cash and some securities.

Mr. SEVERANCE: What kind of securities?

Mr. KAHN: We paid part of it in the so-called Chicago & Alton purchase money certificates. I believe Mr. Harriman explained yesterday that the Chicago & Alton purchase money certificates represented the portion of interest of each holder in the purchase of Chicago & Alton stock.

1809 Mr. SEVERANCE: You paid part of that to this syndicate in these certificates, and the balance of it in cash, and you got the stock?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, did the Laclede Construction Company own anything over and above the railroad?

Mr. KAHN: Not that I know of. They may have owned some material; it was simply a construction company.

Mr. SEVERANCE: And you say they sold the line south of Springfield for $2,700,000?

Mr. KAHN: We did.

Mr. SEVERANCE: That is what I mean—"we?"

Mr. KAHN: I say "we;" I mean the four purchasers.

Com'r LANE: How much cash did the purchasers put in?

Mr. KAHN: They put in what represented $6,000,000 cash.

Com'r LANE: What amount of actual cash did they put in?

Mr. KAHN: Going in, they originally bought Chicago & Alton stock, and for the actual cash value they paid for Chicago & Alton stock, they issued certificates; so the certificates represented actual cash put in.

Com'r LANE: They put in nothing but certificates.

Mr. KAHN: They put in certificates representing $5,500,000 for cash actually paid; and half a million dollars in cash.

Mr. SEVERANCE: That is they put up $5,500,000 of the purchase money certificated of the Alton road, and $500,000 in cash.

Mr. KAHN: Right.

Mr. SEVERANCE: For that they bought all the stock of the Laclede Construction Company?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, the Laclede Construction Company in turn, owned all the stock of the St. Louis, Peoria & Northern Railroad, did they?

Mr. KAHN: Yes.

1810 Mr. SEVERANCE: Was there any mortgage bonds on that road?

Mr. KAHN: Yes.

Mr. SEVERANCE: How much?

Mr. KAHN: I don't know the exact figure, but it was all included in the $6,000,000.

Mr. SEVERANCE: I want to get at that. If there were any bonds outstanding on that road, they were bought by your four gentlemen?

Mr. KAHN: Yes.

Mr. SEVERANCE: Along with the stock?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, that road, it appears by Mr. Harriman's testimony yesterday, was 58 miles long, from Springfield to Peoria.

Mr. KAHN: That was the southern part of it?

Mr. SEVERANCE: That was the northern part.

Mr. KAHN: Northern part, yes

Mr. SEVERANCE: From Peoria to Springfield?

Mr. KAHN: Yes.

Mr. SEVERANCE: Now, how long was the southern part of the road?

Mr. KAHN: I don't remember.

Mr. SEVERANCE: There was nearly 100 miles?

Mr. KAHN: I don't remember exactly.

Mr. SEVERANCE: You remember it was considerably longer than the northern part?

Mr. KAHN: No, I don't remember those details?

Mr. SEVERANCE: And you say you got $2,700,000 for it?

Mr. KAHN: Yes.

Mr. SEVERANCE: Isn't it a fact you got for that road $3,000,000 in bonds of the Illinois Central Railroad company?

Mr. KAHN: Yes.

Mr. SEVERANCE: Secured by a mortgage on the southern end of the Peoria road?

Mr. KAHN: Yes, which bonds were sold at 90.

Mr. SEVERANCE: Were afterwards sold at 90?

Mr. KAHN: Making $2,700,000.

1811 Mr. SEVERANCE: Those were 3 per cent. bonds made by the Illinois road?

Mr. KAHN: Yes.

Mr. SEVERANCE: Didn't you also get $340,000 in cash, or thereabouts, for coal properties owned by the Peoria road along the line of this southern end which you sold to the Illinois Central?

Mr. KAHN: To the best of my knowledge that was included in the sale which we made.

Mr. SEVERANCE: Are you sure about that?

Mr. KAHN: Yes, to the best of my knowledge; I don't remember all the details.

Mr. SEVERANCE: You would not testify to that, would you?

Mr. KAHN: I say as far as I can remember.

Mr. SEVERANCE: Now, just think a moment, Mr. Kahn; don't you recall on reflection that was a separate transaction; that you got $3,000,000 of bonds of the Illinois Central, secured on this road, for the road itself south of Springfield?

Mr. KAHN: Yes.

Mr. SEVERANCE: And $340,000 or thereabouts, for the coal mine?

Mr. KAHN: It may be so; I don't remember the exact facts.

Mr. SEVERANCE: You would not deny it?

Mr. KAHN: I would not deny it.

Mr. SEVERANCE: You remember that you sold the coal mine too, don't you?

Mr. KAHN: I remember the coal mine, yes.

Mr. SEVERANCE: I made a mistake. Didn't you get for that $380,000 in cash, and was not the money paid over to Kuhn, Loeb & Co., that amount of money for the coal property?

Mr. KAHN: I don't remember it.

Mr. SEVERANCE: Now, that line south of Springfield cost more money and was a more valuable line in every way, was it not, than the 58 miles north of Springfield?

Mr. KAHN: I should not think so.

1812 Mr. SEVERANCE: You would not think so?

Mr. KAHN: No, I would not.

Mr. SEVERANCE: Why wouldn't you think so?

Mr. KAHN: Because we would not have paid $6,000,000 for the property if we had not thought it was worth that, and if we had not thought we could get it back.

Mr. SEVERANCE: Isn't it a fact that the line south of Springfield is nearly twice as long as the other?

Mr. KAHN: That I don't know. But there were doubtless circumstances which determined in our minds the relative value of those two pieces.

Mr. SEVERANCE: Was not that a line running from Springfield, the capital of Illinois, to East St. Louis?

Mr. KAHN: I could not tell you.

Mr. SEVERANCE: At the time these four gentlemen bought the securities of the Laclede Construction Company, was it contemplated that the road would be extended to Chicago—was that the purpose of buying it?

Mr. KAHN: Contemplated by the old syndicate, not contemplated by the new purchasers.

Mr. SEVERANCE: It was not?

Mr. KAHN: No.

Mr. SEVERANCE: They bought it for the purpose of turning it over to the Alton and Illinois Central?

Mr. KAHN: Yes.

Mr. SEVERANCE: But as to the relative value of the two ends of that road, you cannot give any opinion?

Mr. KAHN: No.

Mr. SEVERANCE: You don't know.

Mr. KAHN: I don't know.

Mr. SEVERANCE: While I think of it, Mr. Kahn, you have produced four copies of the letter that you wrote Mr. Harriman on the 5th of February, 1901, with reference to the bonds, convertible bonds, asked for this morning. That is it (showing letter to witness)?

Mr. KAHN: Yes.

Mr. SEVERANCE: That is a copy of the letter?

Mr. KAHN: Yes.

1813 Mr. SEVERANCE: It may be marked in evidence as Mr. Kahn's Exhibit 1.

Mr. KAHN: I have not brought the answer to it. It was a simple acceptance of our terms.

Letter marked Exhibit 1 and attached to Mr. Kahn's testimony.

Mr. SEVERANCE: Now, this letter is dated the 5th of February, 1901, and starts out:

"Referring to our letter of even date herewith we beg to say that in financing an issue of this class of bonds and in thus inviting the confidence of our clients in the securities, it is of serious concern to us that we assure ourselves (*a*) that the future financial policy of the Union Pacific"—&c., &c.

Then you say "In the foregoing view we write to say that our undertaking to purchase the $40,000,000 convertible Bonds of a total authorized issue of $100,000,000, is subject to the following further conditions, namely:

1. That so long as any such issue of bonds are unissued the Railroad Company will, until May 1st, 1906 (unless we otherwise consent) raise such additional capital as it shall from time to time require exclusively by the issue of such Convertible Bonds, namely: The bonds of said issue convertible into the common stock of the Company at par at any time within five years after their respective dates of issue.

2. That we are to have the right and privilege with respect to any additional bonds of said issue which the Union Pacific Railroad Company may decide to sell prior to May 1, 1906, purchase them at the same price as the initial issue of $40,000,000 of such bonds will net the Company after the payment of the Syndicate commissions and our own.

Yours truly,

(Signed) KUHN, LOEB & CO."

Why didn't you embody that in your other proposition, if that was a condition?

Mr. KAHN: I know of no particular reason why. Those
1814 letters were framed by counsel, and we simply adopted their form, without giving it any further thought.

Mr. SEVERANCE: Do you know any reason why those conditions were not laid before the Board of Directors of the Union Pacific road?

Mr. KAHN: They were laid before the Board of Directors and embodied in a resolution, of which you have or can have a copy.

Mr. SEVERANCE: Is there any other resolution?

Mr. KAHN: I don't know what resolutions you have?

There is a resolution of the Board of Directors embodying this.

Mr. SEVERANCE: I have the resolution in which the Board of Directors passed on the $40,000,000 proposition.

Mr. KAHN: Yes.

Mr. SEVERANCE: I don't find any reference to the balance of the bonds.

Mr. KAHN: If you have the full text of the resolution, you will find reference to this letter in it.

Mr. SEVERANCE: You think there is a resolution?

Mr. KAHN: I know there is.

Mr. SEVERANCE: That should go in, I think, in fairness to Mr. Kahn. There is no reference to it in the resolution I called to your attention this morning. That is all I want to ask you about; I wanted to get that on the record. Now it appears that there was two amounts of this Alton stock—then I will finish the Alton matter—that was sold to the Union Pacific, one lot of $10,200,000 on the 3rd of October, 1904, and another lot of $143,100 sold the 3d of November, both of them sold by Kuhn, Loeb & Co. Were those blocks both parts of stocks that were deposited with you under this agreement?

Mr. KAHN: Yes.

Mr. SEVERANCE: The November stocks were an additional amount that came in after?

1815 Mr. KAHN: Yes, they were some belated ones which we did not get in in time.

Mr. SEVERANCE: So that they are all, so far as any examination has been had of intervening matter,—were all on the same basis?

Mr. KAHN: Exactly.

Mr. SEVERANCE: It appears, Mr. Kahn, in the resolution heretofore introduced in evidence, relating to the purchase by the Union Pacific of the stock of the Illinois Central—[illegible] if I can turn to the resolution—that Mr. Harriman, Mr. Stillman and Mr. Rogers each own 30,000 shares of the stock, and Kuhn, Loeb & Co., owned and controlled, I think 105,000—I will find the resolution in a minute—, pardon me just a minute; I thought I had it. The resolution reads that Messrs. Kuhn, Loeb & Co. hold or control 105,000 shares of the Illinois Central stock, and Messrs. E. H. Harriman, H. H. Rogers and James Stillman, members of this Board, each hold 30,000 shares. There seems to be some distinction drawn there between your holding and the holdings of these other gentlemen, it being stated that Kuhn, Loeb & Co. "hold or control" that number of shares, and the other gentlemen each "hold that amount of stock"?

Mr. KAHN: Yes.

Mr. SEVERANCE: Was that because of the fact that you held that stock partially in the interest of other people?

Mr. KAHN: Let me state, I will answer every question bearing upon our dealings with the Union Pacific, freely and willingly, but I will not answer any question bearing upon our relations to our clients.

Mr. SEVERANCE: I understand, this is only a preliminary question. Are you willing to state whether that 105,000 shares was owned entirely by Kuhn, Loeb & Co.?

Mr. KAHN: That would be in that category which I do not think I ought to be asked to cover, our relations with our clients.

1816 Mr. SEVERANCE: Then do I understand that you decline to state whether Kuhn, Loeb & Co. were the owners of the total 105,000 shares of Atchison, Topeka & Santa Fe stock that were sold to the Union Pacific?

Mr. KAHN: You mean Illinois Central stock.

Mr. SEVERANCE: Of Illinois Central stock that was sold to the Union Pacific Railroad Company.

Mr. KAHN: I decline to state.

Mr. SEVERANCE: You decline to state. Then I will ask you the direct question, Mr. Kahn: On the 105,000 shares of stock which you sold—of Illinois Central stock which you sold on the 9th of August, 1906, to the Union Pacific Railroad Company, and for which you were paid $175 a share, will you please state how much, if any, of that stock, was held by you in the interest of or for the benefit of any or all of the directors of the Union Pacific Railroad Company?

Mr. KAHN: I do not believe I ought to answer that question also. I would be perfectly willing to answer it if were not that it involved relationship as to which I ought not to be asked.

Mr. CRAVATH: May it please the Commission: I should like the same objections entered on the record as to similar questions. In this connection I want to point out that at that time Kuhn, Loeb & Co.—Mr. Schiff and Mr. Kahn, had both retired from the Union Pacific Board; they had no official connection of any kind with the Union Pacific Board; and we very respectfully submit that they not only had the right to make that transaction, but it is entirely immaterial what clients of their office might or might not have been associated with them in that transaction; and Mr. Kahn pursued his policy of declining to give information regarding the business of their client. The clients will answer that question.

Mr. CHAIRMAN: You observe Mr. Kahn is not now asked who the persons were, but the fact that they did own it all or any part of it.

Mr. SEVERANCE: The question I have asked now, Mr. Chairman, is as to whether any of that stock, or all of that stock, they
1817 offered, was held by them for or for the benefit of any or all of the directors of the Union Pacific Railroad Company, the buyers. That is my business.

Mr. CRAVATH: And my proposition is, first, whether they owned all that stock or not, as their own business concern, and secondly, if they did not own all that stock, that is a fair business secret of those gentlemen as to who did share with them the ownership of that stock; and they ought not to be compelled by this Interstate Commerce investigation to discuss their own purely private affairs and the private business affairs of their clients.

Com'r HARLAN: Does your objection cover the preceding question which the witness declined to answer?

Mr. CRAVATH: It covers that series of questions, Mr. Commissioner.

Com'r HARLAN: The last two questions?

Mr. CRAVATH: Yes.

Mr. SEVERANCE: May I call the attention of the Commission to one fact. This question does not involve the disclosure of any confidential relations between Mr. Kahn and his numerous clients, except as to the question whether or not Kuhn, Loeb & Co. were merely the agents of the directors of the Union Pacific buying stocks for

themselves. I do not care how many other people they represented. That has nothing to do with it. My question is confined solely to the inquiry as to whether in whole or in part in this transaction they represented all or any of the directors of the Union Pacific. I do not want any misunderstanding about it.

The CHAIRMAN: In order that the record may show distinctly, a preliminary question occurs to me to ask Mr. Kahn whether he objects to stating whether all of that stock was owned by his firm or whether part of it was owned by other parties.

Mr. SEVERANCE: He has already declined to answer that.

Mr. CRAVATH: The objection may apply to that question
1818 and all questions of that character. The witness refuses to answer all questions of that character.

Mr. KAHN: We will gladly disclose our transactions, in every detail——

Mr. SEVERANCE: You decline, I understand?

Mr. KAHN: I decline to answer as to the transactions of my clients.

Mr. SEVERANCE: You decline to state in whose interest you held that stock, or who owned the stock which you offered to sell?

Mr. KAHN: I decline to answer any questions bearing on our relations with our clients.

Mr. SEVERANCE: And you decline to state whether that 105,000 shares of stock, or any part of that stock which you sold to the Union Pacific for $175 a share, really, equitably belonged to or was held by you for any persons or any number of persons who were at any time directors of the Union Pacific Railroad Company.

Mr. KAHN: As a matter of principle, I decline to answer.

Mr. SEVERANCE: You call it principle—I call it——

The CHAIRMAN: The record will show that the objections were made as heretofore stated, that they were overruled, that the witness was directed to answer, and that he still refused to answer.

Mr. SEVERANCE: It will be the same record as in the other cases.

Mr. KAHN: Perhaps——

Mr. SEVERANCE: Never mind, Mr. Kahn, don't be so loquacious. You decline to answer; that ends the matter. There is no question pending.

Mr. KAHN: All right.

Mr. SEVERANCE: Now coming down to the purchase of the Baltimore & Ohio railroad stock. Mr. Harriman testified yesterday that that stock was bought from Kuhn, Loeb & Co.

Mr. KAHN: Yes.

Mr. SEVERANCE: That is true, is it not?

1819 Mr. KAHN: Quite true.

Mr. SEVERANCE: From whom did Kuhn, Loeb & Co. buy the stock?

Mr. KAHN: I would like to state to the Commission, before we leave the Illinois Central Transaction that at the time we sold that stock for $175, it was selling in the market for $179, as you can see from the records.

Mr. SEVERANCE: What was it selling at at the time you made the proposition to sell?

Mr. KAHN: At 179 about, at the time we made the proposition.

Mr. SEVERANCE: What date?

Mr. KAHN: I don't know the exact date. You can look it up from the records; I think it was the 26th of June, if my memory serves me right.

Mr. SEVERANCE: That suggestion of yours leads to another question. How did you happen to be inspired with this philanthropic action?

Mr. KAHN: I beg your pardon?

Mr. SEVERANCE: How did you happen to be inspired with this philanthropic action?

Mr. KAHN: By our old love, I might say, for the Union Pacific.

Mr. SEVERANCE: That is, although you had ceased to be married to the Union Pacific, in the sense of being no longer directors, you still loved that company?

Mr. KAHN: Yes.

Mr. SEVERANCE: And were willing to sacrifice four points on 105,000 shares of stock to demonstrate your affection?

Mr. KAHN: That is perfectly correct; and perhaps I might go beyond that and say at the same time we could have sold at a very considerably higher price to others.

Mr. SEVERANCE: And that was an additional proof of your affection.

Mr. KAHN: That was an additional proof of our affection and loyalty to the Union Pacific.

1820 Mr. SEVERANCE: You are still loyal to the Union Pacific.

Mr. KAHN: We are still loyal and always have been.

Mr. SEVERANCE: And I infer from your declarations, you are still loyal to the directors of the Union Pacific?

Mr. KAHN: I am still loyal to my clients, whoever they may be.

The CHAIRMAN: When did you buy that stock?

Mr. KAHN: The Illinois Central stock?

Mr. SEVERANCE: Yes.

Mr. KAHN: It was very difficult to buy Illinois Central stock. There was a very small market for it. I should say it took us fully a year to buy that stock.

Mr. SEVERANCE: You were about a year in accumulating it?

Mr. KAHN: I should think fully that.

Mr. SEVERANCE: In spite of your suggestion that the market value of that stock was something in excess of $175 a share on the 25th of June—I believe you stated that as to date—it did not cost you $175 a share, did it?

Mr. KAHN: It cost us approximately that, yes, although I don't think I ought to be asked what our purchases of stock cost us. I am perfectly willing to say it cost us very near to that.

Mr. SEVERANCE: You had been buying it for a year?

Mr. KAHN: Yes; and in the meantime, the price had been $185, $187, $188. We could have sold at these prices if we had wanted to, but we chose to sell fifteen points lower than we could have sold.

Mr. SEVERANCE: But you were all the time dominated by your affection for the Union Pacific?

Mr. KAHN: Yes.

Mr. SEVERANCE: And thinking that the time would come when the Union Pacific would want it, you did not let it go at 185 or 187, is that right?

Mr. CRAVATH: That is not a fair question.

Mr. SEVERANCE: I want to find out.

1821 Mr. KAHN: That is not the fact at all.

Mr. SEVERANCE: What is the fact?

Mr. KAHN: We had certain well-defined purposes in buying that stock, and when the time came when the Union Pacific came to us and said they were informed we had that stock and wanted to buy it at a fair price, we unwillingly sold it at a price which they thought they ought to have it at.

Mr. SEVERANCE: You unwillingly let them have it?

Mr. KAHN: Yes; unwillingly.

Mr. SEVERANCE: You had kept the stock when it was higher, and you let it go at that price?

Mr. KAHN: Yes.

Mr. SEVERANCE: Do you know of any other consideration that moved you, aside from your affection for the Union Pacific?

Mr. KAHN: I know of none.

Mr. SEVERANCE: Do you remember—I may as well ask you about it now—that your partner, Mr. Schiff, made a speech before the Chamber of Commerce of this City, on the 4th of last January, a year ago, in which he gave warning that a panic would come if the then present session of Congress adjourned without remedial legislation affecting the currency.

Mr. KAHN: Did he say that would come early?

Mr. SEVERANCE: I say do you remember that speech?

Mr. KAHN: I do; yes.

Mr. SEVERANCE: And was he speaking for the firm of Kuhn, Loeb & Co., and voicing their sentiments, when he made that speech?

Mr. KAHN: He was speaking in an individual capacity, and I think if you will read the speech, you will see that he did not predict an early panic.

Mr. SEVERANCE: Did not what?

Mr. KAHN: That he did not predict any early panic. He spoke of the dim and distant future.

Mr. SEVERANCE: In that speech, did he voice the sentiments of yourself?

Mr. KAHN: He spoke for himself individually.

1822 Mr. SEVERANCE: I know. I do not mean did he ostensibly voice your sentiments. I know he did not get up and say I am speaking for Mr. Kahn as well as myself; but did you entertain the same views he did?

Mr. KAHN: Yes; pretty nearly.

Mr. SEVERANCE: You agreed with him?

Mr. KAHN: Yes.

Mr. SEVERANCE: Congress adjourned on the 30th of June, did it not?

Mr. KAHN: Yes.

Mr. SEVERANCE: And no additional currency legislation had been enacted, had it?

Mr. KAHN: No.

Mr. SEVERANCE: Was the fact that Congress adjourned on the 30th of June without enacting this legislation, which Mr. Schiff thought so necessary to avoid a panic, any inducement to you to sell this stock at 175, or was that merely a coincidence?

Mr. KAHN: None whatsoever. If we had wanted to sell it, we could have sold it at a very much higher price in the meantime.

Mr. SEVERANCE: That had nothing to do with it.

Mr. KAHN: Moreover, we sold it before Congress adjourned.

Mr. SEVERANCE: On the 25th of June, did you?

Mr. KAHN: Exactly. Congress did not adjourn until June 30th.

Mr. SEVERANCE: It does not appear in the records, Mr. Kahn, that you sold it before then. To whom did you make the offer to sell it before that date?

Mr. KAHN (after examining a paper): It was July 25th.

Mr. SEVERANCE: That is what I thought, that it was in July, and that proposition was submitted on that day, was it not, to the directors of the Union Pacific?

Mr. KAHN: Yes.

Mr. SEVERANCE: And it was submitted accompanied by an argument by Mr. Harriman, was it not, in favor of making the purchase?

Mr. KAHN: Yes.

1823 Mr. SEVERANCE: Of your stock and his stock and Mr. Roger's stock and Mr. Stillman's stock?

Mr. KAHN: Yes.

Mr. SEVERANCE: Let me ask you this: in the acquisition of the stock from time to time, had you been influenced by the idea that it would be a good stock for the Union Pacific to acquire at some time?

Mr. KAHN: No; I stated before we had well defined purposes in acquiring it, and reluctantly gave up those purposes when the Union Pacific wanted to acquire the stock.

Mr. SEVERANCE: That is, you did not buy that stock for the purpost of turning it over to the Union Pacific?

Mr. KAHN: No.

Mr. SEVERANCE: When did you first consider turning it over to the Union Pacific?

Mr. KAHN: When the Union Pacific asked us.

Mr. SEVERANCE: When did they ask you for it?

Mr. KAHN: Some time in July.

Mr. SEVERANCE: Who asked you? Who represented them?

Mr. KAHN: I don't remember exactly. I remember that the matter was referred to a committee, consisting of Mr. Frick, Mr. Hughitt, and Mr. Valentine.

Mr. SEVERANCE: That was after Mr. Harriman had made his argument in the meeting in favor of buying it?

Mr. KAHN: Yes; but that committee conferred with us.

Mr. CRAVATH: You mean Mr. Wilcox instead of Mr. Hughitt.

Mr. KAHN: Mr. Wilcox; yes.

Mr. SEVERANCE: Who was it first came to you and said they would like to get the stock for the Union Pacific?

Mr. KAHN: That committee negotiated with us.

Mr. SEVERANCE: When it was stated in the meeting at which Mr. Harriman made his argument in favor of buying Union Pa-
1824 cific stock that Kuhn, Koeb & Co. were willing to sell 105,000 shares, that statement was made without authority, was it?

Mr. KAHN: That statement was doubtless made to that committee, or to the members of the committee.

Mr. SEVERANCE: Let us get the minutes.

Com'r LANE: How did Mr. Harriman, or the directors of the Union Pacific, know you had that stock?

Mr. KAHN: That committee knew.

Com'r LANE: How did they know?

Mr. KAHN: How did the committee know?

Com'r LANE: Yes; how did they know?

Mr. KAHN: Because we informed them of it.

Com'r LANE: You had informed them of it?

Mr. KAHN: Yes; Mr. Stillman knew it, Mr. Valentine knew it and Mr. Harriman knew it.

Com'r LANE: How did they come to know it?

Mr. KAHN: It was a well known fact that we were large holders of Illinois Central stock. Pretty nearly everybody in Wall street knew it.

Com'r LANE: Did they know what your purpose was in acquiring it?

Mr. KAHN: I don't think so.

Com'r LANE: What was that purpose?

Mr. KAHN: I don't think I ought to state. It had nothing to do with Union Pacific.

Com'r LANE: Did you begin purchasing it when you were a director of the Union Pacific?

Mr. KAHN: I think so; yes. I think the early purchases dated back to the time when I was a director of the Union Pacific.

Com'r LANE: Who took your place on the directorate?

Mr. KAHN: I think Mr. Wilcox; I am not sure. The records, of course, will show. I am not sure who it was.

Com'r LANE: Did you still retain your stockholding after you went out as a director?

Mr. KAHN: In the Union Pacific?

Com'r LANE: Yes.

Mr. KAHN: Very largely; yes.

1825 Com'r LANE: Very largely?

Mr. KAHN: In fact, undiminished.

Com'r LANE: For whom did you vote that stock?

Mr. KAHN: We sent the proxy for that stock to the usual proxy committee which is appointed every year by the Union Pacific, and we sent our circulars to every stockholder and asked for proxies. We transmitted them in the usual course in the same way in which we send proxies for all the stocks we hold to the administration that asks for them unless we have special reasons to the contrary.

Com'r LANE: Did you ask that certain directors be named?

Mr. KAHN: No.

Com'r LANE: Did you voluntarily go out of the directorate?

Mr. KAHN: Yes; and at the same time we went out of all other railroad directorates we were in.

Com'r LANE: How long was it before you began these dealings that you went out of the directorate?

Mr. KAHN: May I ask you what is meant by "these dealings?"

Com'r LANE: I mean before you began these large purchases of outside stocks, did you leave the directorate of the Union Pacific?

Mr. KAHN: Yes, sir. We have only referred to the Illinois Central stock, haven't we?

Com'r LANE: I believe so. You are familiar with the testimony?

Mr. KAHN: Does your question refer to all the stock deals of 1906?

Com'r LANE: Yes. At what time did you go out of the directorate of the Union Pacific?

Mr. KAHN: We went out in February, 1906.

Com'r LANE: Up to that time had you been dealing largely in stocks for the Union Pacific directorate or the Union Pacific Company?

Mr. KAHN: We had bought, as was brought out this morn-
1826 ing, the Southern Pacific stock and Union Pacific stock; and our next transaction was the Illinois Central transaction.

Com'r LANE: Was it in contemplation of the fact that you expected to purchase Illinois Central or any other stocks that you left the directorate of the Union Pacific?

Mr. KAHN: We had to consider the Illinois Central stock at that time.

Com'r LANE: If I understand it, gladly.

Com'r LANE: Was it in contemplation of the fact that you were going to purchase or intended to purchase large quantities of stock for the Union Pacific that you left the directorate of the Union Pacific?

Mr. KAHN: I don't think I quite grasp your question.

Com'r LANE: Did you go out of the Union Pacific, did you leave it as a director in order to become its broker?

Mr. KAHN: No; certainly not. Our relations with the Union Pacific, financially speaking, were in no way changed after we left it from what they were before. We were their fiscal agent before, and we continued to be their fiscal agent afterwards.

Com'r LANE: Your relations were in no way changed?

Mr. KAHN: Were in no way changed.

Com'r LANE: You do not decline to answer any questions here upon the ground that you are a broker. You decline to answer the question upon the ground that you are the broker for the Union Pacific, do you?

Mr. KAHN: Oh, no.

Com'r LANE: And not upon the ground that you are a director?

Mr. KAHN: No; I would gladly answer every question regarding

our dealings with the Union Pacific; and if your question leads up to the other purchases in 1906, I will be very glad to state them.

Com'r LANE: Those matters will be taken up by the counsel later.

1827 Mr. SEVERANCE: As I understand you then, you commenced buying this block of Illinois Central stock about a year before?

Mr. KAHN: Approximately.

Mr. SEVERANCE: Did you also buy, at the same time, for Messrs. Harriman, Rogers and Stillman, the stocks they sold at the same time you sold yours?

Mr. KAHN: That would involve disclosing our relations with our clients, as to which I cannot testify.

Mr. SEVERANCE: You decline to testify upon that, do you?

Mr. KAHN: I decline to testify; yes.

Mr. SEVERANCE: I will ask you this, then——

Mr. CRAVATH: There will be the same record as to that question.

The CHAIRMAN: Yes.

Mr. SEVERANCE: Was this 105,000 shares of Illinois Central stock, and the 90,000 shares turned in by Stillman, Rogers and Harriman, all of it bought through your instrumentality for a pool of which these gentlemen and yourself were members, that were operating in Illinois Central Stocks during the period of several months, at least, prior to July, 1906?

Mr. KAHN: The same answer.

Mr. CRAVATH: The same objection and the same record.

The CHAIRMAN: Yes.

Mr. SEVERANCE: You say the price of Illinois Central stock had gone up at one time to what figure?

Mr. KAHN: I think at least 185, it may have been higher.

Mr. SEVERANCE: When was that?

Mr. KAHN: I think it was as high as 190.

Mr. SEVERANCE: When was that?

Mr. KAHN: It was some time during that year.

Mr. SEVERANCE: During that year?

Mr. KAHN: Yes.

Mr. SEVERANCE: I have here a statement of the high and low prices of that stock during the whole of the years 1905 and 1906, and 1907, for each month, taken from the Financial Cron-

1828 cle, and it shows that your memory is at fault about the stock going to 190. In June, 1906, the range of the stock was from 174½ to 184½ which was the high point for the entire period; in July, it ranged from 171¾ to 180; in August, 173½ to 178½. In September 171½ to 177; and now it is down, on the 25th of February, to 158.

Mr. CRAVATH: 184 was the maximum.

Mr. SEVERANCE: 184½. That was in June.

Mr. KAHN: I thought it was in July.

Mr. SEVERANCE: Would it have been possible to have marketed 200,000 shares or about that, of Illinois Central stock at any of those dates without breaking the market?

Mr. KAHN: I am confident, and I know that we could have sold that block of Illinois Central stock at 200, and I am confident we can sell it at nearly that price today.

Mr. SEVERANCE: You could?

Mr. KAHN: Yes.

Mr. SEVERANCE: You could have sold it at 200?

Mr. KAHN: I know that to get the price of Illinois Central from 158 to 175 today, would require the purchase of perhaps 5000 shares of stock, because there is none in the market. The price is purely nominal.

Mr. SEVERANCE: How would you have gone to work to sell that at 200? By working the market?

Mr. KAHN: Not at all. I simply would have accepted a proposition which was pretty nearly before us from entirely different quarters.

Mr. SEVERANCE: Then I understand your benevolence toward the Union Pacific did not consist in selling at three, or four or five points below the market price but I am to understand you let the Union Pacific have this stock at twenty-five points below what you could have obtained for it from other sources, is that right?

Mr. KAHN: Twenty-five points below what we felt confident we could obtain from other sources.

Mr. SEVERANCE: Who from?

Mr. KAHN: I won't say.

Mr. SEVERANCE: Is that a trade secret too?

1829 Mr. KAHN: Most certainly.

Mr. SEVERANCE: But you desire the record to show that you sold this stock to the Union Pacific, an aggregate of 105,000 shares, which would be something over ten million dollars par, at a loss to yourselves, of between two and a half to three million dollars, which you could have obtained by selling it to somebody else, and that you did this solely out of your affection for the Union Pacific Railroad Company? Is that the fact, and that you declined to state the name of the persons who would have paid you this high price for the stock?

Mr. CRAVATH: Do you mean that to be a summary of what the witness has said?

Mr. SEVERANCE: Yes. I want to know if that is a fair statement?

Mr. CRAVATH: It is not.

Mr. SEVERANCE: Will you correct my question, Mr. Kahn, to agree with the facts?

Mr. KAHN: I think my previous answers cover the point.

Mr. SEVERANCE: I will ask the question again. Then you desire the record to show that you sold this stock at a loss to yourselves of above two million and a half dollars, below what you could have obtained from some other person whose name you have declined to disclose, and you let the Union Pacific have it because of your loyalty and affection for that road?

Mr. KAHN: I mean to say that the control of what practically

amounts to a dominating interest in Illinois Central was worth and could have been made worth to others, 200.

Mr. SEVERANCE: What others?

Mr. KAHN: That I don't think it is my business to state.

The CHAIRMAN: Mr. Severance, independent of his motive, I have understood him to say that the stock was sold at 175 when he believed he could have obtained about 200 for it.

Mr. SEVERANCE: Yes; that is what he says.

1830 The CHAIRMAN: He says he had no definite proposition.

Mr. KAHN: I did not say such a proposition was before us.

The CHAIRMAN: But he believes he could have sold it.

Mr. SEVERANCE: Yes; and you believe you know the name of the party to whom you could have sold it.

Mr. KAHN: Yes.

Mr. SEVERANCE: And you had good grounds for that belief?

Mr. KAHN: I have good grounds for that belief.

Mr. SEVERANCE: Caused by any interviews with this party?

Mr. KAHN: I don't think I will pursue that subject any further, because it is going into affairs which are in no way relevant to this.

Com'r LANE: And you were under no legal obligation or moral obligation to sell this stock to the Union Pacific?

Mr. KAHN: None whatever; and I don't think this is the first instance where we have sold stock to the Union Pacific for less than we could have obtained elsewhere.

Mr. SEVERANCE: I did not hear that.

Mr. KAHN: I say this is not the only instance where we have sold stock to the Union Pacific for less than we could have obtained elsewhere.

Mr. SEVERANCE. Take your dealings with the Union Pacific, by and large, and you have not done very much, have you, if through your loyalty to them, you have sold stocks so far below what you could have obtained from others.

Mr. KAHN: I think the dealings have been fair to both sides.

Mr. SEVERANCE: I want to ask you one other question about the Illinois Central. You considered, did you, when you sold this 105,000 shares, and these other gentlemen sold the 90,000 shares, to the Union Pacific, that that gave the Union Pacific, a dominating interest in the Illinois Central?

1831 Mr. KAHN: I thought it gave them an interest, which, if it wanted to, would practically amount to a dominating interest; yes.

Mr. SEVERANCE: What you mean by that is this: considering the fact that at stockholders' meetings of a corporation like the Illinois Central, it is never possible to get a full vote.

Mr. KAHN: Yes.

Mr. SEVERANCE: And in consideration of the fact that the management can get any proxies, through brokers and others, anyone owning thirty per cent. of the stock as the Union Pacific now does, is in a position to control the elections?

Mr. KAHN: Unless——

Mr. SEVERANCE: Under ordinary, normal conditions?

Mr. KAHN: Well, yes; if he can count upon the entire support or neutral attitude of the remaining seventy per cent., if there is nothing to put that remaining seventy per cent. into an attitude where they will combine against them.

Mr. SEVERANCE: I understand.

Mr. KAHN: Naturally, I think you are right.

Mr. SEVERANCE: Taking things as they ordinarily go, anyone who has thirty per cent. of the stock of a large railroad corporation, has control for all practical purposes, in the absence of a fight, or an organized effort to discharge him.

Mr. KAHN: In the absence of any reason which would cause the remaining seventy per cent. to organize to actively oppose him. Under normal conditions I think you are fairly correct.

Mr. SEVERANCE: So that you figure that the Union Pacific, by the acquisition of this thirty per cent. was placed in substantially dominating control of the Illinois Central?

Mr. KAHN: I wouldn't say control, but I say it would, under ordinary circumstances, give a dominating influence.

Mr. SEVERANCE: What is the difference between them?

1832 You mean, dominating influence in the sense that they elect their Board of Directors under ordinary conditions.

Mr. KAHN: Under ordinary conditions. That interest would have very substantial influence with the management, and those responsible for the property. Now, dominating influence is not controlled, in my opinion.

Mr. SEVERANCE: But you mean by that, do you not, that having that much stock as a nucleus, in the absence of a very strong organization of the other stockholders, it would always be possible to procure a majority at a stockholders' meeting? Is that what you mean?

Mr. MILBURN: Now, your Honor, is that a fact, that is being asked from the witness? Is it evidence as to a fact? Is not that argument? It refers to the position of a railroad with a certain percentage of the stock. It seems to me to be an argument, a legal question.

Mr. SEVERANCE: Not at all. It is a matter of experience.

The CHAIRMAN: He is asked whether he and those associated with him did not understand that that amount of stock would practically control the Illinois Central?

Mr. MILBURN: I did not understand it that way.

The CHAIRMAN: I think that is the question.

Mr. MILBURN: I did not know what the understanding of it was, but the inquiry, as I understood the questions, was as to a matter of fact. I say that is not a matter of fact, but a matter of argument.

Mr. SEVERANCE: I want to make myself right with Mr. Milburn I think in the case of a gentleman who is as familiar with corporate transaction, with railroad meetings, as Mr. Kahn is, it is quite proper to ask him, whether in view of his experience, the holder of thirty per cent. of the stock of a railroad corporation of large di-

1833 mensions, like this company, is not in a position to control it, as a rule. Under ordinary conditions, I refer to. That is a fact.

The CHAIRMAN: We have understood Mr. Kahn to say that under ordinary circumstances, in the absence of somebody leading the other stockholders, to organize and combine, those who held thirty per cent. of the stock would ordinarily control an election?

Mr. SEVERANCE: That is right.

The CHAIRMAN: I suppose that would be particularly true, Mr. Kahn, where the stock was a good deal scattered, where there was a large number of stockholders.

Mr. KAHN: I don't think I would like to say "control an election," but I would say "exercise a dominating influence"; and it would certainly be more so in the case where the stock is very much scattered.

Mr. SEVERANCE: The Illinois Central was scattered?

Mr. KAHN: Yes.

Mr. SEVERANCE: They have a great number of stockholders through the West, have they not?

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: People with small holdings?

Mr. KAHN: Yes.

Mr. SEVERANCE: I started to ask you about the Baltimore & Ohio stock, and you interrupted with a suggestion about the Illinois Central, which delayed it some little time. From whom did you buy that Baltimore & Ohio stock?

Mr. KAHN: From the Pennsylvania Railroad or the Pennsylvania Company, I am not sure which.

Mr. SEVERANCE: When?

Mr. KAHN: I don't remember the exact date. Some time last summer, I think. I think in June or July of last year.

Mr. SEVERANCE: Prior to the purchase of that stock from the Pennsylvania Company, had you had some talk with Mr. Harriman about the Union Pacific taking the stock.

Mr. KAHN: No.

1834 Mr. SEVERANCE: You had not?

Mr. KAHN: No.

Mr. SEVERANCE: At the time you bought it, did you have the intention of selling it to the Union Pacific?

Mr. KAHN: We had no idea.

Mr. SEVERANCE: That was merely an afterthought, was it?

Mr. KAHN: It was not an afterthought. We offered it to whom we considered a likely purchaser.

Mr. SEVERANCE: And this likely purchaser was the——

Mr. KAHN: Was, in the first instance, the Union Pacific.

Mr. SEVERANCE: You first offered it to the Union Pacific?

Mr. KAHN: Yes; we had had bids for it from other sources.

Mr. SEVERANCE: Now, Mr. Kahn, what made you think the Union Pacific was a likely purchaser of the Baltimore & Ohio stock?

Mr. KAHN: Well, to begin with, we thought that the Baltimore & Ohio—we knew Mr. Harriman was seeking for investments. We knew he was selling his Northern Pacific and Great Northern stocks, and was seeking to reinvest that money in the securities bringing him a higher rate of interest.

Mr. SEVERANCE: Let me interrupt you right there. The Union

Pacific did not have any money on hand at the time you sold them that stock, did they, as the proceeds of the sale of Great Northern and Northern Pacific? They had to run into debt with you?

Mr. KAHN: They were continually getting money because they were continually making purchases.

Mr. SEVERANCE: Did they not have to run into debt with you for that stock?

Mr. KAHN: That I don't remember.

Mr. SEVERANCE: Don't you know you did and you gave them time on the stocks?

Mr. KAHN: You mean as to the terms of payment?

1835 Mr. SEVERANCE: Certainly. You gave them time on it? They did not pay cash?

Mr. KAHN: No, because they preferred it.

Mr. SEVERANCE: When you sold them the Illinois Central stock, they paid you for it right off, did they not?

Mr. KAHN: Yes.

Mr. SEVERANCE: They had money on hand from the sale of the Great Northern and Northern Pacific?

Mr. KAHN: Yes.

Mr. SEVERANCE: But when you sold them the Baltimore & Ohio, you trusted them for it, did you not?

Mr. KAHN: Yes.

Mr. SEVERANCE: Then how could Mr. Harriman have been seeking investments for money he did not have?

Mr. KAHN: Because Mr. Harriman was continuing to sell Great Northern and Northern Pacific, and expected to get,—so he assumed—and expected to have them all sold long before this.

Mr. SEVERANCE: And aside from the fact that Mr. Harriman was seeking investment for money he did not have in his possession at the time, what other reason did you think there was why the Baltimore & Ohio should be purchased by the Union Pacific, or why the Union Pacific would want to purchase the Baltimore & Ohio?

Mr. KAHN: I don't think I am prepared to state any other reason.

Mr. SEVERANCE: That is the only reason you can give?

Mr. KAHN: In the exercise of our judgment as sellers of securities, we offered it to the Union Pacific.

Mr. SEVERANCE: Baltimore & Ohio is worth in the market now considerably less than it was when it was sold to the Union Pacific, is it not?

Mr. KAHN: So are all other stocks?

Mr. SEVERANCE: That is true, is it not?

Mr. KAHN: So are all other stocks.

1836 Mr. SEVERANCE: I am asking you particularly with reference to Baltimore & Ohio. Can you give me a direct answer. Is it worth less now than when you sold it to them?

Mr. KAHN: Yes.

Mr. SEVERANCE: So that Mr. Harriman's investment that he made, as you say, in anticipation of future sales, so far have not turned out well?

Mr. KAHN: Well, instead of three per cent. interest, he has a

stock which brings him five per cent. interest, and I understood he bought it for the interest and not to sell it.

Mr. SEVERANCE: That is bought as a permanent investment as you understood?

Mr. KAHN: So I understood.

Mr. SEVERANCE: Never to be sold?

Mr. KAHN: So I understood.

Mr. SEVERANCE: You understood there were no traffic considerations whatever that entered in the purchase of the Baltimore & Ohio stock?

Mr. KAHN: I know nothing about that.

Mr. SEVERANCE: Was anything of that kind disclosed to you by Mr. Harriman?

Mr. KAHN: No.

Mr. SEVERANCE: You went after Mr. Harriman to offer him this, did you?

Mr. KAHN: Yes, or Mr. Harriman came to us and asked us, I don't remember which.

Mr. SEVERANCE: Which was it?

Mr. KAHN: I don't remember which.

Mr. SEVERANCE: How long after you bought it from the Pennsylvania was it?

Mr. KAHN: The record would show when we sold it, and we bought it in June or July, so the record would show the intervening period. I don't remember that.

Mr. SEVERANCE: Was the transaction immediately concluded, I mean with the Union Pacific, as soon as you gentlemen spoke of it to each other?

Mr. KAHN: No; I think it was a matter of two or three
1837 months that intervened; perhaps more; I am not sure.

Mr. SEVERANCE: I am asking you whether the matter was concluded at once after Mr. Harriman and yourself commenced the discussion for the purchase?

Mr. KAHN: Oh, no.

Mr. SEVERANCE: Or was there two or three months in between?

Mr. KAHN: It was a matter of long negotiation.

Mr. SEVERANCE: Long negotiation between you and Mr. Harriman?

Mr. KAHN: Yes.

The CHAIRMAN: Mr. Kahn, did you hear Mr. Harriman testify to an interview he had with Mr. Cassatt at Bar Harbor?

Mr. KAHN: Yes, sir.

The CHAIRMAN: Had you already purchased the stock at that time?

Mr. KAHN: Mr. Harriman didn't state the date of his interview.

The CHAIRMAN: I understood him to say it was the last of August or first of September.

Mr. KAHN: Yes; we had bought it before that.

The CHAIRMAN: You had purchased it a little before that time?

Mr. KAHN: Yes, sir.

The CHAIRMAN: And it has been transferred by the Pennsylvania Company to your firm?

Mr. KAHN: Yes; to the best of my recollection we purchased it in June or July.

Com'r CLEMENTS: Who was the particular officer with whom you negotiated the purchase?

Mr. KAHN: With Mr. Cassatt.

The CHAIRMAN: What was your purpose in buying that stock at that time?

Mr. KAHN: We thought it was a good purchase.

The CHAIRMAN: You had no special purchaser for it in your mind?

Mr. KAHN: Not then.

Com'r CLEMENTS: Did Mr. Cassatt come to your concern,
1838 or did you go to him about this matter to carry out that deal?

Mr. KAHN: I believe Mr. Cassatt came to us.

Com'r CLEMENTS: Did he indicate to you why the company was disposing of that stock?

Mr. KAHN: I don't think so.

Com'r CLEMENTS: Did he state any policy or any reason why the Pennsylvania Company was disposing of it or wanted to dispose of it?

Mr. KAHN: Not that I know of.

Com'r CLEMENTS: Did he make any suggestions to you for your concern as to who should have it?

Mr. KAHN: None whatever.

Com'r CLEMENTS: As to who it should go to?

Mr. KAHN: No.

Com'r CLEMENTS: Was it an absolute unqualified sale, without any conditions, direct or indirect, oral or otherwise?

Mr. KAHN: An absolute sale.

Com'r CLEMENTS: Or what should be done with it?

Mr. KAHN: An absolute sale.

Mr. SEVERANCE: One thing I forgot to ask you. Just a question about that Illinois Central stock. You reserved the dividend out, which was payable a few days later, did you not?

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: That dividend is three and a half per cent.

Mr. KAHN: Yes, sir.

Mr. SEVERANCE: So that your really got 178½?

Mr. KAHN: 178½, yes.

Mr. SEVERANCE: Which lessened your philanthropy.

Mr. SEVERANCE: When did you first hear about the increased dividend rate of the Union Pacific and Southern Pacific last summer?

Mr. KAHN: I believe we first heard about that at the same time the public heard of it.

Mr. SEVERANCE: What do you mean by "about the same time"?

Com'r LANE: Do you mean within a day or two?

1839 Mr. KAHN: I think when it was published—the morning it was published; I believe it was the 16th of August.

Mr. SEVERANCE: You knew nothing about it until it was published?

Mr. KAHN: We knew nothing about it except the rumors which were running around in the papers and everywhere that the Union Pacific would increase its dividend. We didn't know any more than that.

Mr. SEVERANCE: But as to the action that had been taken by the Board or Executive Committee, you knew nothing until it was published?

Mr. KAHN: Not to the best of my recollection.

Mr. SEVERANCE: Now, Mr. Kahn, I will ask you about the purchases made by the Union Pacific of stocks of the Chicago, Milwaukee & St. Paul Railway, last summer.

Mr. KAHN: Yes.

Mr. SEVERANCE: Were they made from your firm?

Mr. KAHN: No; we bought them in the market on order from the Union Pacific, and turned them over at cost, plus our usual commission.

Mr. SEVERANCE: You turned them over at what?

Mr. KAHN: We turned them over at cost, plus a commission of about a half of one per cent.

Mr. SEVERANCE: You had nothing to do with those. You bought them as brokers?

Mr. KAHN: We bought them in the market, simply as agents.

Mr. SEVERANCE: How about the stocks of the Chicago & Northwestern?

Mr. KAHN: We bought them at the market and turned them over at cost, plus a commission of about half of one per cent. on the value, and had no other interest in them.

Mr. SEVERANCE: You had no interest in that stock?

Mr. KAHN: No, sir.

Mr. SEVERANCE: And the New York Central & Hudson River stock?

1840 Mr. KAHN: In the same way, we bought them on the market on direct order and turned them in at cost.

Mr. SEVERANCE: Cost and commission?

Mr. KAHN: Cost and the usual commission.

Mr. SEVERANCE: A small commission?

Mr. KAHN: Yes.

Mr. SEVERANCE: Mr. Kahn, did you have anything to do with the St. Joseph and Grand Island stocks?

Mr. KAHN: Nothing whatever.

Mr. SEVERANCE: You did not figure in that transaction at all?

Mr. KAHN: No, sir.

Mr. SEVERANCE: There is one other bond issue I want to ask you about, and that is the second mortgage bonds, or it might be called the 3½ per cent. bonds of the Alton Road?

Mr. KAHN: Yes.

Mr. SEVERANCE: Did you buy those bonds; did you take them for the syndicate?

Mr. KAHN: The last syndicate, which bought the Chicago & Alton

stock obtained for its holdings of Chicago & Alton stock, 3½ per cent. Bonds, preferred stock and common stock, and we were managers of that syndicate. Shall I tell the story of the syndicate?

Mr. SEVERANCE: Yes, you may go ahead if you like; anything you were about to say. I do not want to interrupt you.

Mr. KAHN: I don't want to volunteer anything you don't wish to know.

Mr. SEVERANCE: I do not want to know. That is what I am asking you for.

Mr. KAHN: But you haven't asked me yet. That same syndicate handled $32,000,000 of 3 per cent. bonds. We sold——

Mr. SEVERANCE: I am not asking you now about the three per cent. at all.

Mr. KAHN: I must tell you——

Mr. SEVERANCE: No, I am not going into that now. I am just asking you about the $22,000,000 of 3½ per cent. bonds.

1841 Were they handled through you? That is what I am asking.

Mr. KAHN: They were handled through us, through the syndicate.

Mr. SEVERANCE: There is a resolution that appears on the records of the Alton, which was produced here yesterday, reciting that those $22,000,000 of 3½ per cent. bonds were sold for $13,000,000?

Mr. KAHN: Yes.

Mr. SEVERANCE: Is that right?

Mr. KAHN: That is technically right. It is actually——

Mr. SEVERANCE: Technically right?

Mr. KAHN: Technically right.

Mr. SEVERANCE: They were sold for that sum to the syndicate, technically, as you say?

Mr. KAHN: Technically so; yes.

Mr. SEVERANCE: Or rather, to Kuhn, Loeb & Co. as the managers of the syndicate?

Mr. KAHN: Technically, that is correct.

Mr. SEVERANCE: And they belonged to the syndicate?

Mr. KAHN: They belonged to the syndicate.

Mr. SEVERANCE: I asked you this morning, Mr. Kahn, as to who S. Siegman and E. S. Steinman were. You said they were both employed in your office?

Mr. KAHN: Yes.

Mr. SEVERANCE: They have appeared for several years on the books of the Southern Pacific Railroad Company, quite large holdings of stock in the name of E. S. Steinman and S. Seigman?

Mr. KAHN: Yes.

Mr. SEVERANCE: Is that your stock?

Mr. KAHN: The fact that that stock is in the name of those gentlemen does not necessarily mean so, and I won't say whether it is or is not; but a great deal of stock is left in the name of bankers, as a matter of convenience,—bankers of their nominees.

Mr. SEVERANCE: You do not know whether that stock belonged to you or not?

1842 Mr. KAHN: I am sure that not all of it belongs to us.

Mr. SEVERANCE: There is a good deal of stock standing in your name?

Mr. KAHN: It is the same way. A great deal of stock is left standing in our name, just as a great deal of stock is left in the name of other bankers, as a matter of convenience.

Mr. SEVERANCE: Mr. Harriman testified yesterday there was a considerable amount of Southern Pacific stock that was held by himself and his immediate friends. You are among them, are you not? I am not asking as to the amount of your holdings, but you have at all times been interested in Southern Pacific stock?

Mr. KAHN: We have at times been holders of Southern Pacific stock, and at times we have not.

Mr. SEVERANCE: At the time of the annual meetings you have been, as a rule, holders of Southern Pacific stock?

Mr. KAHN: Sometimes we have and sometimes we have not. It varies.

Mr. SEVERANCE: Mr. Kahn, during the time you were on the executive committee of the Union Pacific, were there any branch lines constructed?

Mr. KAHN: I have no doubt there were. I don't remember.

Mr. SEVERANCE: Did you have anything to do with constructing any of them?

Mr. KAHN: Nothing.

Mr. SEVERANCE: Do you know how they were constructed, whether directly by the road, or through the organization of auxiliary companies?

Mr. KAHN: To the best of my knowledge, they were always built directly by the road.

Mr. SEVERANCE: That is the best of your recollection?

Mr. KAHN: Yes; I feel quite certain of it.

Mr. SEVERANCE: And the money paid directly out of the treasury of the road?

Mr. KAHN: Yes.

1843 Mr. SEVERANCE: And built by the road itself?

Mr. KAHN: Built by the road itself.

Mr. SEVERANCE: That is all.

Mr. KAHN: If the Commissioners will permit me, I would like to say——

The CHAIRMAN: One moment.

Mr. SEVERANCE: I want to have identified, subject to correction by Mr. Kuhn, and put in evidence, this range of prices of the Illinois Central stock.

Mr. CRAVATH: That is from the Chronicle.

Mr. SEVERANCE: Yes.

The paper was received in evidence and marked Exhibit 2, to Mr. Kahn's testimony.

Prices of Illinois Central R. R. Co. Shares at New York Stock Exchange, as Reported in N. Y. Commercial & Financial Chronicle—Years 1905–6–7.

	1905.		1906		1907.	
	Low.	High.	Low.	High	Low.	High.
Jan.	152¾	160¾	174	182	158	172
					Feb. 25	
Feb.	155	163¼	168	179¾	158	158
Mch.	158	164	165	172¾		
Apl.	157	170	165¾	176¼		
May	155	162¼	164	182		
June	157¾	167⅞	174½	184½		
July.	165¾	175½	171¾	180		
Aug.	170¼	180¾	173½	178½		
Sept.	174¾	183	171½	177		
Oct.	177	183	171½	177		
Nov.	173¼	180	172¼	180		
Dec.	173	178¾	165	176		

Mr. SEVERANCE: This table is put in subject to correction by Judge Lovett or ourselves if it is wrong. It is made up from the Chronicle, and we agreed yesterday that the Chronicle might be considered in evidence to the extent that either of us could refer to it, if we desired it. 1844

Mr. CRAVATH: Mr. Kahn has just suggested that he would like to have an opportunity of correcting a few misapprehensions regarding the Chicago & Alton figures, and it can be done either by a few questions from me, or he can state it. Perhaps he can state it in his own way.

The CHAIRMAN: You can proceed.

Mr. KAHN: Perhaps Mr. Cravath could ask me a few questions.

Mr. CRAVATH: You have just suggested to me that before leaving the stand you would like to correct certain misapprehensions that you think have crept into the testimony regarding the Chicago & Alton transaction.

Mr. KAHN: I think it is fair that I should be allowed to state in a general way, and in a very few words, the general reasons which actuated us, as far as Kuhn, Loeb & Co.'s part in the Chicago & Alton Railroad reorganization was concerned, in proceeding in the way we did. I think it is no more than fair that we should state our position.

At the time the Chicago & Alton proposition was brought to us and we were asked to get up a syndicate, to put $42,000,000 in that property, the railroads of the country had just emerged from a period of bankruptcy and of widespread depression; their credit was very bad; and to get at that time a syndicate, or any body of men to put $42,000,000 of cash into a property was a proposition which necessitated holding out certain inducements to them in the way of profits. That was eight years ago, and that was a method then which was generally followed in all the reorganizations and read-

justments, the offering of some paper which it was hoped the future might make valuable, and towards the making valuable of which the stockholders co-operated by foregoing dividends for a
1845 great length of time and putting all their earnings into the property for a great length of time. What was then the proper and necessary method of procedure, adopted in all forms of reorganization, would be now no longer a proper method of procedure, because the railroads' credit has become firmly established, and it is possible now to make large financial transactions without offering such inducements as were absolutely necessary at that time. The Burlington at that time offered its 3½ per cent. bonds, which was in April, 1899, at 75 to its stockholders. Ten years previous to that the times were still different, and the railroad with which Mr. Kellogg now has some affiliations, offered its 6 per cent. bonds to its stockholders at 70 cents on the dollar. What was possible then, twenty years ago, and what was possible eight or nine years ago is no longer necessary now, and we do not think it is quite just that what was done at that time and under those very different circumstances should be compared to the situation as it is before us now. The 3 per cent. bonds which were issued at 65 were a new departure. Three per cent. bonds were at that time an untried, or very nearly untried, security. The bonds were not savings bank bonds at the time of their issue, and $32,000,000 of bonds was a very large amount of bonds indeed, and it is a question whether it would be possible to sell $32,000,000 of bonds at very much better than 4¾ or 4⅞. Sixty-five is 4¾. But as I remember, at the same time, the Northern Pacific 3 per cent. bonds were selling at about 70.

Mr. SEVERANCE: Those were second mortgage bonds.

Mr. KAHN: Yes, but with a far greater value behind them than these. We consented to the capitalization of the Alton. We expected to have put $6,000,000, about, into the property, to bring it up in addition to the $42,000,000 which were put up to bring it up to the proper level of a first class railroad. Well, if that had been necessary, if that had been all, and if the rates could have been maintained as they were then, the Chicago & Alton common stock
1846 would be now a very choice investment As a matter of fact, we had to put $22,500,000 into the Alton and the rates were largely reduced, and that accounts for the fact that the common stock did not turn out the way we had every reason to think it would. But within the last six weeks we have had a distinguished railroad man give us his opinion on the Alton, and are assured by him that with reasonably good management the Alton would earn and show easily from 5 to 6 per cent. on its common stock, even with its present rates. The facts put in concise form are that the total cash outlay on the Alton amounts to $67,000,000, after deducting the cash dividends, the securities issued against that amount to $108,000,000 in round figures, or about $41,000,000 above the actual cash outlay. But if we bring the 3 per cent. bonds down to a 4 per cent. basis, which was the basis which it was reasonably expected to sell—it was a lucky chance that they sold higher—and if we bring the 3 per cent. bonds down to a 5 per cent. basis, which was

the reasonable basis on which we could count at that time, the capitalization as compared to the actual cash value or outlay is $95,000,000, as compared with $67,000,000, leaving an excess above the cash outlay of $28,000,000. Of this excess about $20,000,000 was common stock on which no dividend has been paid. And I would also like to bring out, in reference to a statement that has frequently been made, that the stockholders—those four men, dealt with themselves—I want to bring out that those four men dealt with the stockholders, and every stockholder had exactly the same opportunity, and what was done was done openly, in the light of day, without any concealment, according to the then existing laws and under advice of counsel in every particular.

Mr. SEVERANCE: No questions.

Com'r CLEMENTS: I want to understand a little more definitely about the extent to which your house has favored the Union Pacific Railroad Company in selling these securities for less than
1847 you have sold them to others. You have mentioned that that was so in regard to the Northern Pacific stock.

Mr. KAHN: Well, it appears that evidence was produced in the case which Mr. Clements refers to, that we sold, according to the statement produced here, Northern Pacific to the Union Pacific at 131, when it sold in the market on the same day at 143.

Com'r CLEMENT-: Now, what did that amount to on the amount of stock? What is the gross sum?

Mr. KAHN: A great deal. There was a sale—perhaps you have the papers with you. It would amount to a great deal.

Com'r CLEMENTS: I know it would, and I thought perhaps you had the figures readily to hand.

Mr. SEVERANCE: What is it you want to know, Mr. Kahn?

Mr. KAHN: What number of shares we sold of Northern Pacific to the Union Pacific?

Mr. SEVERANCE: About $79,000,000.

Com'r LANE: The difference would be about $1,600,000, wouldn't it?

Mr. KAHN: I think so.

Com'r CLEMENTS: The difference between what you actually turned it over to the Union Pacific for and what you could have sold it on the same day for was $1,500,000?

Mr. KAHN: Yes.

Com'r CLEMENTS: Was that true in regard to the Great Northern, or did you handle some of that?

Mr. KAHN: We did not buy any Great Northern for the Union Pacific.

Com'r CLEMENTS: Only Northern Pacific?

Mr. KAHN: Only Northern Pacific.

Com'r CLEMENTS: You say you did the same sort of transaction in regard to the Illinois Central stock?

Mr. KAHN: As regards the Illinois Central stock, I believe my case has been rather overstated, by my examiner.

Com'r CLEMENTS: I would like to have by you how much
1848 in gross you favored the Union Pacific in that transaction above what you could have sold the stock to other parties for.

Mr. KAHN: What I meant to convey was, that a compact or large holding in a railroad like the Illinois Central, where the stock is very much scattered and hard to get, and can only be accumulated very slowly and cautiously, that such a compact holding has a value of its own over and above the market value, and that from what I knew at the time and know now as to the intentions of theirs in regard to Illinois Central, I have no doubt we could have disposed of our stock if we had attempted it, and if we had entered negotiations and played our hand at a higher price than we gave it to the Union Pacific for.

Com'r CLEMENTS: Well, how much?

Mr. KAHN: That is hard to say. It is a matter of negotiation.

Mr. SEVERANCE: You said 200, didn't you?

Mr. KAHN: I said I thought it was worth 200.

Com'r CLEMENTS: And you let it go at 175?

Mr. KAHN: We didn't try any other negotiations.

Com'r CLEMENTS: I am trying to get the amount of difference between what you sold it at and what you could have sold it for.

Mr. KAHN: I didn't say we could have sold it for that. I say it is my belief that a compact holding, such as this, is worth more than the market price.

Com'r LANE: The market price was 179?

Mr. KAHN: The market price was 179.

Com'r LANE: And it was worth more than 179?

Mr. KAHN: I am certain, if we had negotiated for it, and played one against the other, we could have gotten substantially more than 179 for it.

Com'r CLEMENTS: You said in respect to that that there were other occasions when you did substantially the same thing on behalf of the Union Pacific.

Mr. KAHN: Yes.

Com'r CLEMENTS: Or other occasions beside these two.

1849 Mr. KAHN: I have referred to the Northern Pacific.

Com'r CLEMENTS: Well, that you have mentioned.

Mr. KAHN: The instance I have just mentioned, and I might mention as an instance, although we did not feel free in that case, I might mention as an instance the Southern Pacific acquisition, which of course, immediately upon getting together a compact block like $75,000,000, acquired very much higher value than it has as it was held formerly, as market stock. Compact holdings are always worth more than scattered holdings.

Com'r CLEMENTS: Why are they?

Mr. KAHN: Because they are very difficult to accumulate. It takes a long time, and takes——

Com'r CLEMENTS: Well, for what purposes are they made more valuable and more desirable than small holdings?

Mr. KAHN: It takes a long time, and takes more still, and large experience, and a great deal of money and effort to accumulate a compact holding of stock of any property, and if a railroad wishes to invest in a compact holding in a property, that would naturally put a higher value on it.

Com'r CLEMENTS: That would commend itself to one railroad that wanted to obtain control of another railroad. That is the principal reason, is it not, why a large block like that, that approaches control, would be of more value than stock in smaller quantities?

Mr. KAHN: To other railroads or to groups of individuals acting together.

Com'r CLEMENTS: You say you were not quite so free in regard to the Southern Pacific. That is, I understand by that, that you were under some sort of obligation to let the Union Pacific have it at the price at which you did.

Mr. KAHN: Yes, we felt morally committed to turn it over to them at cost, less a commission to ourselves.

1850 Com'r CLEMENTS: In regard to the Northern Pacific and Illinois Central, do we understand you to say, and still adhere to it, that you were absolutely free from any contract or obligation, moral or otherwise, and that you could sell it to one person, as well as to another?

Mr. KAHN: In the case of the Northern Pacific, we felt equally morally compelled to give the Union Pacific every opportunity, the first opportunity and an opportunity to buy it at practically what it cost us.

Com'r CLEMENTS: Why did you have that feeling?

Mr. KAHN: Because at that time we were directors of the Union Pacific, and we naturally had to maintain due allegience to them, and we felt that every opportunity we could consistently give to any railroad must first be given to the Union Pacific. Secondly, because in starting on our Northern Pacific purchases, we had it in mind that we would and should offer it to the Union Pacific. Mr. Harriman had to a certain extent encouraged us in the start of those purchases and thought it should be a good thing to do it, and we felt morally bound to offer it to the Union Pacific. But in the Illinois Central we were absolutely free.

Com'r CLEMENTS: In the Northern Pacific case you were to a certain extent on both sides of the question?

Mr. KAHN: To a certain extent, although we did not vote on the matter when it came before the Union Pacific Board.

Com'r CLEMENTS: Well, that was a mere matter of form; there were enough votes without yours, and you approved it. You cooperated with the others, didn't you?

Mr. KAHN: But those Boards might have been unfavorable, and we might have had that stock left on our hands.

Com'r CLEMENTS: But as a matter of fact there was no such difficulty?

Mr. KAHN: No, and in fact the Union Pacific made over $60,000,000 out of it.

1851 Com'r CLEMENTS: You say in that way you were under no obligation to let the Union Pacific have it for what you paid for it.

Mr. KAHN: Yes.

Com'r CLEMENTS: And to that extent you modify what you said before about it.

Mr. KAHN: Yes.

Com'r CLEMENTS: And in the case of the Southern Pacific you were under certain obligations?

Mr. KAHN: In both cases, a moral obligation.

Com'r CLEMENTS: And you now say it was only in the case of the Illinois Central that you were absolutely free from any obligation, and were free to obtain the highest price you could from anybody?

Mr. KAHN: If you put it absolute obligation, yes.

Com'r CLEMENTS: Well, take out the word "absolute". What inducement was there in that case?

Mr. KAHN: In the case of the Illinois Central none whatever. Mr. Harriman came to me and wished to obtain our stock, and thought that the Union Pacific ought to have first choice, and we simply thought that we should be fair and liberal when we sold it to him.

Com'r CLEMENTS: So in all these matters that is the only one in which your foregoing this greater profit that you could have made—and which is rather an unusual thing for banks to do, where they are simply banks, pure and simple and are not railroading, as you say your house is not doing now——

Mr. KAHN: I don't believe that—I think that any bank which has been for years connected with a railroad and practically stood by it at its birth and helped it, and has great pride in its development, and has all along done all he could in an official capacity to help it, I think every such banker would give any such railroad in all cases the first choice, and would restrict his profits to what he considers a fair basis.

Com'r CLEMENTS: Ordinarily, he would give it first choice, and I can see there might be good reasons why that you should sell
1852 for less to one man than to another, and we are trying to find what those reasons were.

Mr. KAHN: I think he would go beyond that; I think a banker bearing such relations to a company as we had to the Union Pacific, and having had such transactions with it, I think he would go further and would decline to make large profits out of it. I know he would.

Com'r CLEMENTS: In all these three matters, the last one you spoke of, the Illinois Central is the only one in which you were influenced by pure love and affection to foregoing your own profits?

Mr. KAHN: In all of them, I don't think love and affection are the proper words, but I think loyalty and proper allegiance and pride and a proper feeling of delicacy, not to make money out of a corporation where we had the relations we had to Union Pacific—I think those are the motives.

The CHAIRMAN: Do I understand that all the stock of the Southern Pacific which has been acquired by the Union Pacific was procured from and through your firm?

Mr. KAHN: All of it.

The CHAIRMAN: And amounting in the aggregate to how many shares?

Mr. KAHN: Amounting in the aggregate to $90,000,000 except-

ing the preferred stock, which was directly subscribed by the Union Pacific as a stockholder.

The CHAIRMAN: I do not recall the detail which has already appeared, but how many shares of common stock had been acquired?

Mr. KAHN: $90,000,000 par value.

The CHAIRMAN: And the par value was $50?

Mr. KAHN: $100 a share.

The CHAIRMAN: The Southern Pacific?

Mr. KAHN: Yes.

The CHAIRMAN: And on some of that, if I understand you, you had a commission of——

Mr. KAHN: Of 2½ per cent.

The CHAIRMAN: That is $2.50 a share?

1853 Mr. KAHN: $2.50 a share.

The CHAIRMAN: Par value $100?

Mr. KAHN: Yes.

The CHAIRMAN: And did you have that commission on all of the $90,000,000?

Mr. KAHN: No, we had that commission on the first block of $75,000,000 which we sold to the Union Pacific, and as to which I would like to point out again, we took the risk of the transaction not going through.

The CHAIRMAN: I am not questioning the reasonableness of the charge, but simply want to know the fact. So that on the $75,000,000 of that stock, you had a commission of 2½ per cent?

Mr. KAHN: Yes——

Mr. SEVERANCE: $2.50 a share.

The CHAIRMAN: $2.50 a share?

Mr. KAHN: Yes. Out of that $75,000,000, there should be deducted the 75,000 shares which we simply guaranteed to turn over at the same price, but as to which we should not have been said to have received a commission because we did not have it. So we received in round figures $68,000,000 of stock.

The CHAIRMAN: That stock was purchased around about 50.

Mr. KAHN: At 50½ in round figures.

The CHAIRMAN: So you got in fact, then, about 5 per cent. on what the stock cost.

Mr. KAHN: On the cash value, yes.

The CHAIRMAN: On what it actually cost?

Mr. KAHN: Yes.

The CHAIRMAN: On about $68,000,000——

Mr. SEVERANCE: Just a moment; you got that $2.50 a share on the 70,000 shares also?

Mr. KAHN: Yes, but you cannot call it a commission. We simply fixed the price on that. We did not have it. You cannot call it a commission.

Mr. SEVERANCE: But in your letter it is called a commission on the whole 750,000 shares?

1854 Mr. KAHN: But we did not have it. We could not collect a commission on something we hadn't got. We have to take

our chance in the market, and the price did go above that, plus the commission. We simply took our chances on that.

The CHAIRMAN: At some time the Union Pacific issued $100,000,000 of bonds?

Mr. KAHN: Yes.

The CHAIRMAN: In order to pay for this Southern Pacific stock and for other purposes?

Mr. KAHN: Yes.

The CHAIRMAN: If I recollect, you first arranged to float $40,000,000 of those bonds?

Mr. KAHN: Yes.

The CHAIRMAN: That $40,000,000 was offered to all the stockholders of the Union Pacific at par?

Mr. KAHN: Yes.

The CHAIRMAN: And about $25,000,000, as you recollect was in fact taken by stockholders other than yourself?

Mr. KAHN: It may have been more or may have been less.

The CHAIRMAN: What commission did you get for selling that $40,000,000?

Mr. KAHN: We undertook to underwrite that $40,000,000——

The CHAIRMAN: And you did underwrite it?

Mr. KAHN: Yes—and no, the stockholders underwrote it, of course, and sixty days intervened before the issue could be issued to the stockholders——

The CHAIRMAN: Never mind about that. How much did you get, in fact, for underwriting the $40,000,000?

Mr. KAHN: We did in fact get a commission of 5 per cent. for underwriting the $40,000,000 of bonds.

The CHAIRMAN: So you had 5 per cent.——

Mr. KAHN: Yes.

The CHAIRMAN: On the $25,000,000 which was taken by the other stockholders?

Mr. KAHN: We had 5 per cent. on the whole $40,000,000,
1855 which was only fair. We guaranteed the company that it would get its $40,000,000 for which we received this commission.

The CHAIRMAN: What was there about 5 per cent. allowed to the syndicate that bought the bonds?

Mr. KAHN: I say out of the 5 per cent. which we received, we gave the syndicate one-half, and one-half we kept for ourselves.

The CHAIRMAN: So when you speak of a 5 per cent., that includes the 2½ per cent. paid directly to your firm?

Mr. KAHN: Yes.

The CHAIRMAN: And 2½ per cent. paid to the purchaser of the bonds, or the syndicate which purchased the bonds, of which your firm was a member?

Mr. KAHN: Yes, that is right.

The CHAIRMAN: And what had you to do, and what was your compensation, in floating the other $60,000,000.

Mr. KAHN: The other $60,000,000 we had to take practically alone and unaided at that time——

The CHAIRMAN: I was simply asking you——

Mr. KAHN: I am getting to the circumstances of the case. The Northern Pacific transactions at that time necessarily had to be handled with great secrecy. It could not be allowed to come out until it was ready to come out, and the company needed this money, $60,000,000, to pay for it. We could not even have formed a syndicate, because that would attract attention. We had to take the whole responsibility alone and unaided, of guaranteeing to the company $60,000,000 at once——

The CHAIRMAN: I am not asking you about your reasons or questioning the reasonableness of your compensation. I just wanted to know how much in fact you got.

Mr. KAHN: The company paid us the same commission as we got before, that is, paid 5 per cent. on the $60,000,000 which we guaranteed to furnish.

The CHAIRMAN: And which you had a perfect right to divide with those to whom you sold the bonds?

1856 Mr. KAHN: Yes.

The CHAIRMAN: So then, the 5 per cent., or $5,000,000 in round numbers, was received by you and those associated with you?

Mr. KAHN: Yes.

The CHAIRMAN: For selling $100,000,000 of bonds?

Mr. KAHN: Yes, the $100,000,000 of a new and untried issue of bonds.

The CHAIRMAN: Yes, I understand: Is there any further question to be asked of Mr. Kahn?

Mr. SEVERANCE: No other question.

The CHAIRMAN: If not, he is excused. Whom will we call next?

Mr. SEVERANCE: Mr. Moore.

WILLIAM H. MOORE, called as a witness and duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Mr. KELLOGG: Your name is W. H. Moore?

Mr. MOORE: Yes.

Mr. KELLOGG: Are you an officer of the Rock Island Company?

Mr. MOORE: I am a director of the Rock Island Company and a member of the Executive Committee.

Mr. KELLOGG: Do you remember two certain contracts, one dated the 4th day of October, 1904, between Mr. Harriman, Mr. Schiff, Mr. Stillman and Mr. Lovett, on one part, Mr. Leeds, Mr. Moore, Mr. Reid and Mr. J. H. Moore, on the other part?

Mr. MOORE: I do.

Mr. KELLOGG: And a supplemental contract dated the 30th day of January, 1906, in which Mr. Leed's name was omitted from the contract, or he assigned his interest to you gentlemen?

Mr. MOORE: I do.

1857 Mr. KELLOGG: Have you those contracts with you?

Mr. MOORE: I have.

Mr. KELLOGG: Have you the originals?
Mr. MOORE: I have.
Mr. KELLOGG: Will you let me take them both?
Mr. MOORE (handing papers): Here is a copy.
Mr. KELLOGG: This is the original?
Mr. MOORE: Yes, sir.
Mr. KELLOGG: And these are copies of the originals?
Mr. MOORE: Yes, and here is the supplemental contract.
Mr. KELLOGG: Have you got a copy of the supplemental contract?
Mr. MOORE: I have a copy of the supplemental contract.
Mr. KELLOGG: The copies I have filed are not filled out. May I introduce these originals in evidence, and leave the copies instead of the originals?
Mr. LOVETT: Yes.
Mr. KELLOGG: I offer in evidence the original contract between Mr. Harriman, Mr. Schiff, Mr. Stillman and Mr. Lovett, of the State of New York, parties of the first part, Mr. W. B. Leeds, W. H. Moore, D. G. Reid and J. H. Moore, of the State of Illinois, parties of the second part, and the Central Trust Company, a corporation of the State of New York, party of the third part, together with supplemental contract, the original of the supplemental contract, between Mr. Harriman, Mr. Schiff, Mr. Stillman and Mr. D. C. Reid and Mr. J. H. Moore, parties of the second part, and the Trust Company of New York, party of the third part. These are the contracts in reference to the control of the Alton, referred to on the last hearing, and I wish to leave copies in lieu of the originals.

The papers were received in evidence and marked Exhibits Nos. 1 and 2 to Mr. Moore's testimony.

Mr. KELLOGG: Mr. Moore, these contracts recite that the parties of the first part have transferred and set over and assigned to the trustees, 103,431 shares of the preferred stock of the Chi-
1858 cago & Alton Railroad Company, and the parties of the second part, that is, Mr. Leeds, Mr. Reid, and Mr. J. H. Moore, have assigned and set over 40,000 shares of the preferred stock and 63,431 shares of the common stock of the Chicago & Alton Company to the trustee, which is the Central Trust Company. Do you gentlemen own those shares?
Mr. MOORE: We do not.
Mr. KELLOGG: Who does own them?
Mr. MOORE: The Chicago, Rock Island and Pacific Railway Company.
Mr. KELLOGG: Have you any interest in it?
Mr. MOORE: I have not.
Mr. KELLOGG: Has Mr. J. H. Moore any interest in it?
Mr. MOORE: He has not.
Mr KELLOGG: Has Mr. D. G. Reid any interest in it?
Mr. MOORE: He has not.
Mr. KELLOGG: And the supplemental contract refers to the same certificates of stock?
Mr. MOORE: I assume it does, yes, sir.
Mr KELLOGG: So far as you know?

Mr. MOORE: Yes.

Mr. KELLOGG: Has any one except the Rock Island road, that you mentioned, any interest in that stock of the Chicago & Alton Railroad?

Mr. MOORE: They have not.

Mr. KELLOGG: Now, have you any agreements or contracts of any kind, or resolutions, showing the interest of the Chicago, Rock Island and Pacific Railway Company in these stocks?

Mr. MOORE: No, sir. We have a resolution.

Mr. KELLOGG: A resolution of the Board of Directors or stockholders?

Mr. MOORE: Either a resolution of the Board of Directors or of the Executive Committee; they show upon their face what they are. (Handing papers.) First a resolution as to the original agreement, I think, and second as to the supplemental.

1859 Mr. KELLOGG: These resolutions are resolutions of the Board of Directors approving the original and supplemental contract, are they?

Mr. MOORE: Yes.

Mr. KELLOGG: I offer them in evidence.

The papers were received in evidence and marked Exhibits Nos. 3 and 4 to Mr. Moore's testimony.

Mr. KELLOGG: We may accept those in lieu of the books?

Mr. LOVETT: Yes. I should like to look at them.

Mr. KELLOGG: I will not stop to read them. Those are the only contracts showing the ownership of the Rock Island road in those stocks?

Mr. MOORE: Those are the only ones, yes, sir.

Mr. KELLOGG: Those resolutions approving the agreements?

Mr. MOORE: Yes, sir.

Mr. KELLOGG: But the Rock Island Road actually owned those certificates?

Mr. MOORE: Yes.

Mr. KELLOGG: And owned that stock?

Mr. MOORE: Yes.

Mr. KELLOGG: And turned it over to the trustee?

Mr. MOORE: Yes.

Mr. KELLOGG: Those contracts are in existence now?

Mr. MOORE: Yes.

Mr. KELLOGG: Is there any other contract or agreement between yourself, Mr. Leeds, Mr. Reid, or Mr. J. H. Moore, and Mr. Harriman, Mr. Schiff and Mr. Stillman and Mr. Lovett, in relation to the management or control of the Alton road, except these?

Mr. MOORE: There is not. All the agreements we ever had were reduced to writing, as stated in those contracts.

Mr. KELLOGG: Is there any other contract between the Rock Island road and the Union Pacific road for the management or operation or control of the Alton road except these?

Mr. MOORE: There is not.

Mr. KELLOGG: The stock owned by the two parties, by Mr
1860 Harriman and his associates, and by you and your associates, or rather by the Union Pacific Railroad Company and the Rock Island Railway Company, constitutes a majority of all of the stock of the Chicago & Alton Railroad?

Mr MOORE: Yes, the two together.

Mr. KELLOGG: Now, Mr. Harriman, I understood you to testify that there was some arrangement that you made, or some of you gentlemen made, about the operation of the Alton road, which you had not carried out, in relation to operating it by the Rock Island or operating your trains over it.

Mr. LOVETT: He did not say there was an agreement. He said there was an understanding.

Mr. KELLOGG: Well, some understanding. Was there any such understanding?

Mr. MOORE: There is no other understanding that I know of outside of those contracts.

Mr. KELLOGG: You had no understanding for any different operation of the road than those?

Mr. MOORE: I did not.

Mr. KELLOGG: Those contracts constitute the sole understanding and agreement for the control of the Alton road?

Mr. MOORE: They do.

Mr. KELLOGG: The Rock Island road has a line from Chicago to Kansas City?

Mr. MOORE: It has.

Mr. KELLOGG: And from Kansas City to St. Louis?

Mr. MOORE: No, it has not.

Mr. KELLOGG: It is from Chicago to Kansas City?

Mr. MOORE: Chicago to Kansas City.

Mr. KELLOGG: And the Alton has a line from Chicago to Kansas City?

Mr. MOORE: It has.

Mr. KELLOGG: That is all.

Mr. LOVETT: Just a question, Mr. Moore. Was it not the purpose of the Rock Island in acquiring this stock to use the Alton between Kansas City and Chicago for its other traffic very largely?

1861 Mr. MOORE: It was thought of at one time.

Mr. LOVETT: Was not that purpose discussed with Mr. Harriman in connection with a suggestion of his that the Union Pacific expected to use the Alton line for its traffic between Kansas City and St. Louis?

Mr. MOORE: My recollection is that I did not enter into the original discussions leading up to the draft of this contract.

Mr. LOVETT: There was no agreement about it, but was not that mentioned in a discussion between you?

Mr. MOORE: Not so far as I know of; that is the—I was not present, as I recollect it, at any of the conversations leading up to this agreement that was finally signed, except once, and that was the last one, when Mr. Harriman made the proposition, as I recollect it, as contained in this agreement.

Mr. LOVETT: You say, however, that it was thought of at one time, the use of the Chicago & Alton by the Rock Island for its other traffic between Kansas City and Chicago?

Mr. MOORE: We thought at one time that we could use the Alton to Kansas City and thereby shorten our line. We talked of that somewhat among ourselves.

Mr. LOVETT: Do you know whether the Union Pacific or the Union Pacific people had in contemplation the use of the Alton line between Kansas City and St. Louis?

Mr. MOORE: No, that I don't know.

Mr. LOVETT: You never heard of that?

Mr. MOORE: No, not that I recollect of. I think I was not present, as I recollect it, at any of the conversations except the last one where Mr. Harriman made the proposition, as reduced to writing.

Com'r LANE: Why did you make that contract, Judge?

Mr. MOORE: Why did we make the contract?

Com'r LANE: Yes.

Mr. MOORE: Mr. Harriman I think had purchased a large
1862 block of this stock, something like 100,000 shares, and it is my recollection that he suggested the making of the contract.

Com'r LANE: What were the reasons that induced you to accept his suggestion?

Mr. MOORE: He was in control of the road, and we had a very large interest, and wished to protect our own interest.

Com'r LANE: And did it protect your own interests to make the combination with him?

Mr. MOORE: Well, the road has been run independently ever since. I don't think it protected anybody's interests.

Com'r LANE: The road has been run independently.

Mr. MOORE: Yes.

Com'r LANE: It is run one year under the control of the Union Pacific and another year under the control of the Rock Island?

Mr. MOORE: Yes, different directors are elected each year, but so far as the management of the road is concerned, I know of no change; I don't think there has been any change. It is run as an independent road.

Com'r LANE: What is the object in your road holding an interest, then, in that road?

Mr. MOORE: There is not any object. We thought there would be an object at one time to shorten our line to Kansas City. We figured that it would cost something like nine or ten million dollars to reduce the grades and cut out the curves, and we thought that we could use this Kansas City portion of the road and save us spending something like nine or ten million dollars.

Com'r HARLAN: But you have not made that use of it?

Mr. MOORE: We have not, with this exception, we ran a passenger train, for one season over the road, a through passenger train to California.

Com'r LANE: You are in the position to control the rates which that road makes?

Mr. MOORE: I don't think we are.

1863 Com'r LANE: The year in which you have a majority of the directors you are, are you not?

Mr. MOORE: No, sir; we are not in a position to control rates at all. I think the rates are controlled, if there is any control at all, by competing roads, the competition is very severe.

Com'r LANE: The competition is severe?

Mr. MOORE: Yes.

Com'r LANE: Between the Rock Island and the Alton?

Mr. MOORE: Between the Rock Island and Alton there has been no change since the agreement was made.

Com'r LANE: There has been no discrimination between the rates?

Mr. MOORE. No. That is, I am not a traffic man, and don't know about the details, but so far as I know about the management of the road.

Com'r LANE: Yes. I am getting at the policy of the thing, as you can very readily see.

Mr. MOORE: Yes.

Com'r LANE: What is the reason that roads such as yours should own an interest in a competing road, and why should it be permitted?

Mr. MOORE: As I recollect it, the former management of the road, Mr. Cable, had plans drawn for the spending of something like nine or ten millions of dollars to shorten our road to Kansas City, and we figured that by the purchase of a block of the Alton stock, we could run our trains over and save the spending of this large amount of money, and also the time required in construction?

Com'r HARLAN: Then did you mean to abandon your line to that extent?

Mr. MOORE: The portion of the line, the western end of the line; but it was not found to be practicable.

The CHAIRMAN: Then the contract is only nominal, in effect, at the present time?

Mr. MOORE: Only nominal, that is all.

1864 Mr. KELLOGG: It is actually in effect.

Mr. MOORE: The contract is as agreed, but so far as the practical operation of it, it has not been any benefit to the Rock Island road.

The CHAIRMAN: Is anything actually done now under or in pursuance of the contract?

Mr. MOORE: Not that I know of.

The CHAIRMAN: Then what present purpose does it accomplish?

Mr. MOORE: It does not accomplish any.

Mr. KELLOGG: The contract is actually in force, is it not?

Mr. MOORE: Yes, the contract is in force.

Mr. KELLOGG: Have not you gentlemen designated the majority of the Board for this year?

Mr. MOORE: We have. I think there has only been one election.

Mr. KELLOGG: You now have the majority of the Board?

Mr. MOORE: I think we have a majority of the Board.

Mr. KELLOGG: That is, that majority will last from last October to next October.

Mr. MOORE: Yes.

Mr. KELLOGG: And then you lose the majority?

Mr. MOORE: According to the contract, yes.

Mr. KELLOGG: And Mr. Harriman gets a majority?

Mr. MOORE: Yes, according to the contract.

Mr. KELLOGG: And when he gets a majority, he can turn out your management and put in some other?

Mr. MOORE: Well, the contract speaks for itself.

Mr. KELLOGG: And so on each year?

Mr. MOORE: Yes.

Mr. KELLOGG: Then the contract is actually in force?

Mr. MOORE: Oh, yes, the contract is in force.

Mr. MILBURN: That will give a good example of rotating energy.

The CHAIRMAN: So that while now you have the power of displacing the management which operated the road last year, you see no reason for exercising it?

1865 Mr. MOORE: No, the same president is in charge and runs the road practically without reference to any orders from this end of the line.

The CHAIRMAN: Then while the contract lodges certain powers according to its terms, in point of fact there is no exercise of that power at the present time?

Mr. MOORE: Well, so far as electing the Board of Directors is concerned, and the same Board of Directors elected the president.

The CHAIRMAN: The change in the control of the Board of Directors has not resulted in any change in the actual management of the property?

Mr. MOORE: No, it has not.

The CHAIRMAN: That is all. Is there anything further of this witness?

Mr. KELLOGG: No, I will call Mr. Reid.

The CHAIRMAN: Then Mr. Moore is excused.

DANIEL G. REID, sworn.

Mr. KELLOGG: Mr. Reid, are you a director of the Rock Island?

Mr. REID: I am.

Mr. KELLOGG: You saw those papers produced by Mr. Moore?

Mr. REID: I did.

Mr. KELLOGG: Have you any other contracts or other agreements in relation to the management of this road?

Mr. REID: None whatever.

Mr. KELLOGG: Do you know of any other?

Mr. REID: None whatever.

Mr. KELLOGG: Had J. H. Moore any interest in this stock?

Mr. REID: None.

Mr. KELLOGG: Mr. Leeds, I think, of this supplemental contract, says what interest he has.

Mr. REID: He did.

Mr. KELLOGG: He has no interest whatever?

Mr. REID: No interest—none whatever.

1863 Mr. KELLOGG: Who had these negotiations with Mr. Harriman about the making of this agreement?

Mr. REID: Who had them?

Mr. KELLOGG: Yes; in the first instance; you or Mr. Moore?

Mr. REID: I think perhaps the original talk started from Mr. Leeds. I think I was present at most of them however—and Judge Moore perhaps and Mr. Mather and so on.

Mr. KELLOGG: Well, outside of any general understanding was there any agreement for the operation of that road other than the agreement shown here?

Mr. REID: None whatever.

Mr. KELLOGG: Verbal or otherwise?

Mr. REID: None.

The CHAIRMAN: What are the holding of the Chicago & Alton stock by the Rock Island at the present time?

Mr. REID: I think in round numbers 2,000 shares.

Mr. LOVETT: I did not hear that question.

The CHAIRMAN: I asked what are the present holdings of Chicago & Alton stock by the Rock Island?

Mr. REID: My answer was in round numbers 190,000.

The CHAIRMAN: Are you familiar with the circumstances under which that stock was purchased?

Mr. REID: Yes.

The CHAIRMAN: When was the purchase made?

Mr. REID: It covered quite a period of time, in open market.

The CHAIRMAN: Not from any syndicate.

Mr. REID: Oh, no.

The CHAIRMAN: It was accumulated by purchase from time to time in the open market?

Mr. REID: Over a period of a year or more.

Mr. KELLOGG: I would like to ask a question there. Then this agreement does not cover all the stock the Rock Island has?

Mr. REID: No; he has stock in the box not in this agreement.

1867 Mr. KELLOGG: Now 190,000 shares?

Mr. REID: In round numbers.

Mr. KELLOGG: Can you furnish us an exact statement of the amount the Rock Island company owns?

Mr. REID: Mr. Hillard can give it.

Mr. KELLOGG: I will ask him then. Do you or Mr. Leeds or Mr. Moore individually own shares of Rock Island?

Mr. REID: The entire 190,000 belongs to the Rock Island.

Com'r HARLAN: Is the Chicago & Alton Railway Company an Illinois corporation?

Mr. REID: Yes, sir.

Com'r HARLAN: And is the Chicago & Alton Railroad Company, or was it an Illinois Corporation?

Mr. REID: Yes.

Mr. MATHER: You were present at most of the conversations that resulted in making this agreement, weren't you?

Mr. REID: Yes.

Mr. MATHER: There was some talk between Mr. Harriman and Mr. Leeds and yourself about making the Alton the avenue between Chicago and Kansas City for the traffic of the Union Pacific on the west, and of the Chicago, Rock Island and Pacific on the east?

Mr. REID: We had several talks of that kind, but nothing came out of it.

Mr. MATHER: There was a good deal of talk by Mr. Leeds about it?

Mr. REID: Yes.

Mr. MATHER: About the advantages that might accrue to both the Union Pacific and to the Rock Island through the use of the Alton, and to the Alton through the traffic that might come to the Alton by both of the other companies?

Mr. REID: That is right.

Mr. MATHER: That is probably the understanding Mr. Harriman referred to yesterday.

Mr. REID: I suppose so.

1868 Mr. MATHER: That never resulted in anything?

Mr. REID: Nothing.

Mr. MATHER: You have spoken about the Chicago & Alton being an Illinois corporation. That is also an Iowa corporation.

Mr. REID: No, I am talking about Chicago & Alton.

The CHAIRMAN: There are no further questions; Mr. Reid is excused.

CHARLES W. HILLARD, sworn.

Mr. SEVERANCE: I have agreed with Judge Lovett that this correspondence between Mr. Harriman and Kuhn, Loeb & Company during April and May, 1901, concerning the purchase of Northern Pacific stock, which was used in interrogating Mr. Kahn, may be offered in evidence in its entirety. I quoted from it but the whole correspondence was not put in.

The CHAIRMAN: Very well.

Mr. SEVERANCE: It may be introduced as an Exhibit in connection with the testimony of Mr. Kahn.

(Papers marked Exhibit No. 3 attached to the testimony of Mr. Kahn.)

Mr. KELLOGG: Mr. Hillard, are you the comptroller of the Chicago & Alton Railway Company?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: That is the Consolidated Railway Company?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: How long have you been?

Mr. HILLARD: About I think the 10th of October I was elected such.

Mr. KELLOGG: Did you get possession of the books and papers of the Chicago & Alton Railway?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: I wish the reporter to mark that (referring to papers) Hillard Exhibit 1.

(Four sheets marked Exhibit 1 and attached to Mr. Hillard's testimony; and the attached tables marked Exhibits A to L and attached to Mr. Hillard's testimony.)

1869 Mr. KELLOGG: Mr. Hillard, I show you Hillard Exhibit 1, which is a statement in four sheets, answering certain inquiries propounded to you in relation to the financial condition of the Chicago & Alton Railway Company and the Chicago & Alton Railroad Company, and the Consolidated, Chicago & Alton Railway Company, with tables attached marked Exhibits A to L inclusive; did you prepare that?

Mr. HILLARD: Yes, those are the papers I prepared.

Mr. KELLOGG: I offer those in evidence. Now, Mr. Hillard, when did the Rock Island people first come into control and operation of this line of road under this joint alternate agreement?

Mr. HILLARD: I do not understand that the Rock Island Railway ever came into control.

Mr. KELLOGG: Well, the men named in this agreement then.

Mr. HILLARD: I don't know exactly what kind of an answer I ought to make to that. The directors control but under the contract which Judge Moore has just explained to you, the Rock Island Railway on October 10th, were enabled to select a majority of the Board of the Alton Railway.

Mr. KELLOGG: October 10, 1906?

Mr. HILLARD: Last year—yes.

Mr. KELLOGG: 1906?

Mr. HILLARD: Yes.

Mr. KELLOGG: Well, at that time you became the Comptroller?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: In what condition did you find—in what financial condition did you find the Chicago & Alton Railway Company, the Consolidated Company?

Mr. HILLARD: Well, about the first thing that came to me was the preparation of a plan to obtain additional money that was absolutely necessary.

Mr. KELLOGG: Did it have any money?

Mr. HILLARD: Yes, of course it had current funds all the time, but they had contemplated the construction or completion of a line of railroad; they were actually at work in large improve-
1870 ments, elevation of tracks, in cities, and so on, and they had pretty nearly exhausted their funds to large amounts. There were current cash assets on hand, of course.

Mr. KELLOGG: What line of railroad was being constructed?

Mr. HILLARD: Well, there was a line about 34½ miles long between a point on the main line just south of Springfield called Iles, to Murrayville, about 34½ miles, which was really a cut-off between the two lines of the Alton system.

Mr. KELLOGG: Was that road in actual construction when you took hold of the management?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Well, was the company funds to build it?

Mr. HILLARD: There were not sufficient funds.

Mr. KELLOGG: Well, how much funds did the company have?

Mr. HILLARD: I cannot tell you that right now. Do you mean on October 10th? I can't tell that without going to the books.

Mr. KELLOGG: Well, what did you do to make an investigation to find out how to pay for the line of road, and what did you find. State generally.

Mr. HILLARD: Well, in looking over this statement of the requirements of the railroad company financially, I found that a large sum was required for the completion of this road, and in looking for ways and means, I began to examine their mortgages, and found that there was an allotment of so much a mile that might possibly have been available under the railroad refunding 3% mortgage. As that seemed the easiest way to provide the funds, I took it up with the president, who referred me to the General Solicitor, and after considerable hunting around, I discovered that that road, which was not completed and was not constructed at all had been already mortgaged, and that therefore there was no possibility of getting
1871 any bonds on it, unless we could float a second mortgage, which was very poor security.

Mr. KELLOGG: Now, I show you the mortgage, Exhibit A, made by the Chicago & Alton Railway Company for $22,000,000, securing its 3½% bonds, which was a collateral trust mortgage, mortgaging the stock of the old Chicago & Alton Railroad Company.

Mr. HILLARD: Yes.

Mr. KELLOGG: And ask you if that was the mortgage that covered that line of road?

Mr. HILLARD: Yes, sir, that is the mortgage that covers the line of road.

Com'r LANE: Do I understand they had already placed a mortgage upon a railroad which had not been built?

Mr. HILLARD: Yes they had. The Alton Railway Company conveyed to a trustee a line of railroad which they had not constructed and which they had provided no funds to construct. It was however, commenced later—the construction was later commenced, and it just happened to devolve upon us through this agreement that you heard of, to tackle the proposition of finding the funds to finish it.

Com'r LANE: At what time was that mortgage made?

Mr. HILLARD: In the year 1900.

Mr. KELLOGG: This was the 3½% collateral trust mortgage on the stock, of April 1, 1900. The mortgage included—I will read that part of it for the information of the Commission: "(Page 11) Including its right to be a corporation and including all the railway premises and property of the railway company, situated, lying and being in the State of Illinois, extending from a point on the railroad of the Chicago & Alton Railroad Company between Murrayville and Woodsen in the County of Morgan and State of Illinois, to a point in or near Springfield in the County of Sangamon in said

State." Is that the line that the Chicago & Alton Railway Company was constructing when you took over the management?

Mr. HILLARD: Well, it has been so described to me. I am
1872 not able to verify it, not being an engineer, but the general solicitor of the Railroad Company informed me that that was the line.

Mr. KELLOGG: Now, when the Chicago & Alton Railroad Company, and the Chicago & Alton Railway Company were consolidated, this mortgage became a lien on all of the property second lien of the Chicago & Alton Railroad Company, didn't it?

Mr. HILLARD: I don't know; that is a hard legal proposition.

Mr. KELLOGG: Well, the papers in evidence show that the Chicago & Alton Railroad Company was organized under the laws of Illinois, and made this $40,000,000 mortgage we have been talking about, sold the bonds under that, $40,000,000; there is now $45,000,000 outstanding.

Mr. HILLARD: $45,350,000.

Mr. KELLOGG: That was known as the $40,000,000 mortgage, that could be increased beyond that. Then there was organized the Chicago & Alton Railway Company under the laws of Illinois, which took the stock of that road which made that mortgage, and this collateral trust mortgage included this description of line of railway between a point on the Chicago & Alton Railroad between Murrayville & Woodson, running from there to Springfield in the County of Sangamon, a distance of how far?

Mr. HILLARD: 34½ about.

Mr. KELLOGG: When the two companies became consolidated, under the agreement which is in evidence, under the law of Illinois, this $22,000,000 mortgage became a second lien on all the property of the Chicago & Alton Railroad Company, subject to the $45,350,000 bonds under the 3% mortgage, and it was a lien on this proposed road which the Chicago & Alton Railway Company had started to construct.

The CHAIRMAN: Is that your understanding of it?

Mr. HILLARD: Barring the fact, I am unable to decide what the effect of articles of consolidation were, making that mort-
1873 gage a lien on all the property of the railroad. The rest of it is my understanding of it.

Mr. KELLOGG: The articles of consolidation show for themselves. Now, then, all the bonds under this mortgage have been issued?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: They were the $22,000,000 of bonds that were issued in 1899.

Mr. HILLARD: 1900.

Mr. KELLOGG: 1900 I mean, under the reorganization, by Mr. Harriman, that has been testified to here?

Mr. HILLARD: They are the $22,000,000. I do not quite know what you mean in referring to previous testimony. That does not identify it to me.

Mr. KELLOGG: Mr. Harriman and his associates then?

Mr. HILLARD: Yes.

Mr. KELLOGG: All those bonds were out.

Mr. HILLARD: Yes, sir; they were out.

Mr. KELLOGG: Then you had no bonds out of which you could build that line, and you had a mortgage on it?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: They had mortgaged the road and issued and sold the bonds, but had not built it.

Mr. HILLARD: That is right.

Com'r LANE: What became of the money?

Mr. HILLARD: The bonds were sold. They were authorized to be sold for $13,000,000; then the proceeds—there is a resolution in that book there which will give you all the information—the proceeds of those bonds, $13,000,000 were authorized to be paid to one Lewis L. Stanton, $10,000,000 for thirty-four thousand odd shares of the preferred stock of the railroad company, and $3,000,000 for the line between Springfield and Grove. As a matter of fact the books show that the $13,000,000 was never paid for the bonds; the $10,000,000 was never paid to Mr. Stanton for the stock; the $3,000,000 was never paid to Mr. Stanton for the railroad; but the $22,-
1874 000,000 of bonds were turned over to the syndicate who delivered the stock and the road, through the intermediary of Mr. Stanton.

Mr. KELLOGG: And all the bonds were out and on the market?

Mr. HILLARD: I don't know about the market; I don't know where they have gone; they are all out.

Com'r LANE: There are $22,000,000 out that do not represent one single dollar?

Mr. HILLARD: No, sir; they represent the purchase price of this preferred stock, and also the purchase price of a line of railroad between Springfield and Grove, about 58 miles long.

Com'r LANE: How much do they represent actual expenditure?

Mr. HILLARD: I don't know that. I know how many shares of the preferred stock were delivered to the railway company for the $10,000,000. I can give you that in a minute if you will let me look at my statements here—maybe I have got it here.

The CHAIRMAN: It is quite apparent this examination cannot be concluded to-night.

Mr. KELLOGG: Yes, we might as well adjourn until tomorrow morning.

Adjourned to February 28, 1907, at 10 o'clock a. m.

1875 NEW YORK, *February* 28, 1907—10 a. m.

The Commission met pursuant to adjournment.

Present:

Commissioners Knapp, Lane and Harlan.

Messrs. Kellogg and Severance, for the Commission.

Messrs. Lovett, Milburn and Evarts, for the Union Pacific Railroad Company.

Mr. Cravath, for Otto H. Kahn and others.

SAMUEL L. FELTON, called as a witness and duly sworn, testified as follows:

Direct examination by Mr. SEVERANCE:

Mr. SEVERANCE: We will suspend the examination of Mr. Hillard and ask Mr. Felton two or three questions, as he wants to get away.

Where do you live, Mr. Felton?

Mr. FELTON: I live in Chicago, sir.

Mr. SEVERANCE: And what is your business?

Mr. FELTON: I am president of the Chicago & Alton Railroad.

Mr. SEVERANCE: For how many years?

Mr. FELTON: Since September, 1899.

Mr. SEVERANCE: What was the nature of the duties of your office—do you have anything to do with financing the road, or simply the operation?

Mr. FELTON: I have charge of the operation and traffic department, the business in the west.

Mr. SEVERANCE: And during that time that you have been in charge of the operation and traffic, who has been the chief financial man—who has had charge of the finances?

Mr. FELTON: Mr. Harriman, as chairman of the Executive Committee ever since I have become connected with the property, and he has had charge of the finances of the company during his service.

Mr. SEVERANCE: Mr. Felton, Mr. Harriman in the course of his testimony stated that a sum in excess of $22,000,000 had been
1876 expended in additions and betterments to the road since the reorganization of the property, so called, and produced a table aggregating that amount. Who made up that table?

Mr. FELTON: I prepared that table for him, sir.

Mr. SEVERANCE: And you have it in your hand, sir?

Mr. FELTON: I have a copy of it.

Mr. SEVERANCE: What is the aggregate shown by that?

Mr. FELTON: $22,327,219.04.

Mr. SEVERANCE: Now I will ask you, Mr. Felton, whether any portion of those expenditures were paid out of the current income of the road, as distinguished from the capitalization of the road?

Mr. FELTON: This statement—I will have to explain it a little——

Mr. SEVERANCE: Yes, sir.

Mr. FELTON: Covers all the expenditures from January 1st, 1899, to January 1st, 1907, including equipment purchased direct and that purchased by car trust, the statement, including as it does, the expenditures, include some that was taken from income, probably $1,000,000, and the balance from proceeds of bonds and notes and from the proceeds of the car trust certificates.

Mr. SEVERANCE: So that at least $1,000,000 of that $22,000,000 was paid not out of proceeds of bonds or notes, or other obligations of that character, but out of the current income from traffic?

Mr. FELTON: Yes, sir; from year to year, in small amounts.

Mr. SEVERANCE: From year to year, yes. Now, we have already

put in evidence here a statement showing an aggregate capitalization, stocks, bonds and notes of various kinds, amounting to $122,000,000, a little in excess of that shown by your last annual report. Are any of those expenditures included in the $22,000,000, expenditures made since the date of that annual report.

Mr. FELTON: Yes, sir, since the annual report, which was
1877 made up to June 30, last, there has been $2,780,000 odd dollars of additional equipment purchased under car trust. Remember, this statement is of January 1st, so it includes all equipment bought during the last six months and the expenditures on construction.

Mr. SEVERANCE: That is what I want to get at. Then this item in the statement, the equipment paid for by car trust, $5,807,502.87, includes $2,780,584, that the road has gone in debt since the 1st of July?

Mr. FELTON: Yes, sir, that helps make up the aggregate.

Mr. SEVERANCE: Helps make up the aggregate?

Mr. FELTON: Yes.

Mr. SEVERANCE: So that deducting the $1,000,000 in round figures paid out of income, and the $2,780,000, making nearly $4,000,000, the total of that $22,327,719 would be reduced to about $18,000,000, wouldn't it,—between eighteen and nineteen million?

Mr. FELTON: About $19,000,000, that is, as compared with the last annual report.

Mr. SEVERANCE: That is right. That is all, Mr. Felton.

Mr. LOVETT: Do you mean to say that there was $2,800,000 paid for equipments since last June, included in that statement?

Mr. FELTON: Yes, sir, the difference between the charge for car trust in the annual report as of date June 30, and the amount in this statement that I made here for Mr. Harriman, is about $2,780,000, which would represent additions since?

Mr. LOVETT: Does that mean that you have paid for it since or that it is contracted for since?

Mr. FELTON: The equipments have all been delivered.

Mr. LOVETT: Been delivered and paid for, sir?

Mr. FELTON: Yes, sir; practically all paid for.

Mr. LOVETT: And paid for before June 30th?

Mr. FELTON: No, this has accrued since the annual report of June 30—it includes all the obligations up to that date. This equipment was contracted for in June, but not delivered until this last fall.

1878 Mr. LOVETT: That statement contains all the betterments and additions since?

Mr. FELTON: Yes. I want to say that this statement was simply a statement of the total amount expended on the property and on its equipment, from the time Mr. Harriman took charge, down to the present. It had no relation to the annual report, and there is where the misunderstanding arose, I think, in an attempt to compare it with the annual report made, of June 30.

Mr. LOVETT: Who constituted the executive committee during the time that you mentioned?

Mr. FELTON: What time, Judge?

Mr. LOVETT: During the time you have been president?

Mr. FELTON: Well, the executive committee has changed—the executive committee of the railway, and the executive committee of the present consolidated company I think changed last fall, when the Rock Island interests came in.

Mr. LOVETT: Who constituted the executive committee prior to the time that the Rock Island Company acquired an interest?

Mr. FELTON: You have a copy of the annual report there.

Mr. LOVETT: Never mind, if you don't remember.

Mr. FELTON: Mr. Stillman, Mr. Harriman, Mr. Ream—there were five.

Mr. KELLOGG: Shall I give him the report?

Mr. LOVETT: Yes.

Mr. FELTON: Mr. Harriman, Mr. Reid, Mr. Stillman, Mr. Moore, and myself, up to June 30—up to last fall, when the committee changed.

Mr. LOVETT: How long prior to that time?

Mr. FELTON: Well, about a year prior to that time the committee was changed and the Rock Island interests came in. Before that it was Mr. Stillman, Mr. Harriman, Mr. Ream, Mr. Schiff and myself.

Mr. SEVERANCE: Mr. Jacob H. Schiff?

Mr. FELTON: No, sir, Mr. Mortimer Schiff.

1879 Mr. LOVETT: How long had the committee continued that way prior to October, 1904?

Mr. FELTON: I don't think there was any change from the organization of the company down to the time the Rock Island interests came in.

Mr. LOVETT: In 1904, the committee was made to consist of Mr. Harriman, Mr. Stillman, Mr. Moore, Mr. Reid and yourself?

Mr. FELTON: No, sir; that is 1906. In 1906 the Rock Island interests were on the committee.

Mr. LOVETT: Were not the Rock Island interests represented on the committee in 1904?

Mr. FELTON: I think they were, in the summer of 1905 and 1906. I do not recollect exactly when they came into the Board, but I think a year ago last fall.

Mr. LOVETT: You don't remember it was in October, 1904?

Mr. FELTON: Well, I can tell you in a minute. Yes, it was the fall of 1904, because the first term was two years.

Mr. LOVETT: In October, 1904 to 1906, the committee was composed of Mr. Harriman, Mr. Stillman, Mr. Reid, Mr. Moore and yourself?

Mr. FELTON: Yes, sir.

Mr. LOVETT: And Mr. Harriman chairman?

Mr. FELTON: Yes, sir.

Mr. LOVETT: In October, 1906, the committee was constituted and now is composed of whom?

Mr. FELTON: Now it is composed of Mr. Yoakum——

Mr. LOVETT: As chairman?

Mr. FELTON: As chairman;—Mr. Reid, Mr. Harriman, Mr. Moore and Mr. Stillman.

The CHAIRMAN: Any further questions to be asked of Mr. Felton? If not, he is excused.

CHARLES W. HILLARD (resumed):

Mr. KELLOGG: Mr. Hillard, we were speaking about the 34 miles of railway which was mortgaged by the Chicago & Alton
1880 Railway Company under the $22,000,000 of collateral trust bonds—under the mortgage covering the $22,000,000 of collateral trust bonds; also including the Chicago & Alton Railroad stock. That was a railroad that the corporation had a right to build, wasn't it, under its charter, or under its articles of consolidation?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: It was not a railroad entirely outside that it had nothing to do with?

Mr. HILLARD: Certainly not.

Mr. KELLOGG: It simply mortgaged a road which it proposed to build, and issued all the bonds, leaving no bonds to build the road; isn't that true?

Mr. HILLARD: That is right.

Mr. KELLOGG: Have you a copy of the statement which I put in evidence so that you can follow me?

Mr. HILLARD: Yes.

Mr. KELLOGG: Tell me what the value of the Chicago & Alton Railroad was, and its property, as appeared from the books of the Alton Company at the time Mr. Harriman and his associates purchased the stock, and the funded debt and obligations standing against that upon the books of the Alton Company?

Mr. HILLARD: Do you mean the total of the assets and liabilities as shown on the balance sheet, or just the amount that was considered as the cost of the road and the equipment?

Mr. KELLOGG: I want both. Is it correctly set forth?

Mr. HILLARD: $39,935,887.

Mr. KELLOGG: It had $1,491,462 cash and other assets on hand.

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Now, its total liabilities were an equal amount, were they not, on the other side of the ledger?

Mr. HILLARD: Yes.

Mr. KELLOGG: And included in that was bonds redeemed and cancelled, $2,978,903, wasn't there?

Mr. HILLARD: Yes, sir.

1881 Mr. KELLOGG: And profit and loss account of $3,000,000 and a little over?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Now, on June 30 last, 1906, the last report made by the management of the property under Mr. Harriman's control, what were its total liabilities as shown from their report?

Mr. HILLARD: Do you want the details between stock and funded debt and other liabilities, or just the grand total?

Mr. KELLOGG: Grand total.

Mr. HILLARD: $122,872,328.

Mr. KELLOGG: Now, then, there has been some statement—is that according to their own report?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Made up by Mr. Mahl?

Mr. HILLARD: Published by the Chicago & Alton Railroad Company in print, to every stockholder, and approved by the stockholders themselves.

Mr. KELLOGG: Now, they say that it exceeds the actual liabilities of the company by $7,000,000. Please explain that so that we will have that clear?

Mr. HILLARD: Well, the item of funded debt as shown on that balance sheet, $79,060,118—that includes all of the bonds that have been issued and are outstanding or were outstanding as of that date, of which, however, $8,000,000 of them—the equitable title to $8,000,000 still belongs to the railroad company. $7,000,000 of them had been deposited as collateral to a series of collateral trust notes amounting to $5,000,000. The $5,000,000 are also included in the $79,000,000. The other $1,000,000 was in the treasury of the company, unpledged, and appears also as an asset. It is an asset—$1,000,000 of bonds in the treasury; it is a liability as $1,000,000 of bonds outstanding; so that the real surplus of the thing is $7,000,000.

Mr. KELLOGG: Now, then, that $7,000,000 is pledged for $5,000,000 of collateral trust notes?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: So that if the bonds would be sold for the
1882 amount of the collateral trust notes, its actual liabilities outstanding would not be seven less, but five less, wouldn't it?

Mr. HILLARD: That is right, of course.

Mr. KELLOGG: It depends upon whether that debt is paid in cash, or whether the bonds are sold to pay it?

Mr. HILLARD: Yes.

Mr. KELLOGG: If the bonds should be sold, I mean, for just $5,000,000.

Mr. HILLARD: Yes.

Mr. KELLOGG: But the contingent liabilities of the company, according to their books, were taken from their report, $122,872,328.

Mr. HILLARD: Yes.

Mr. KELLOGG: Now Mr. Harriman yesterday testified that there had been spent upon the property $22,327,219.04, and was that all spent out of the bonds and other obligations of the company included in this $122,000,000?

Mr. HILLARD: Mr. Felton, I think, has stated that on the stand. I conferred with Mr. Felton about it last night. The statement you asked me to make was the statement showing how much money had been expended in the construction and improvements on the railroad company arising from the proceeds of this increase in capitalization, and I gave you that item.

Mr. KELLOGG: That is it exactly.

Now you stated in your statement about $18,000,000.

Mr. HILLARD: I did, and that is what it was.

Mr. KELLOGG: That is about what Mr. Felton said this morning.

Mr. HILLARD: I would like to make one little addition. I heard him testify, and we talked it over last night. Mr. Felton was asked by Mr. Harriman to prepare a statement of all money which had been spent in construction and improvements commencing with the date of January 1st, 1898. Now, none of the bonds were sold, and none of this increased capitalization—no money came from that increased capitalization until October 10, 1898.

1883 Mr. KELLOGG: 1899, you mean?

Mr. HILLARD: No.

Mr. KELLOGG: October 10, 1899?

Mr. HILLARD: 1899, I should say, yes. Therefore the amount of money which was expended upon the road between January 1st and October 10th cannot possibly have been due to the increase in this capitalization, so you have got to deduct that, in addition to the amounts Mr. Felton has reported to you.

Mr. LOVETT: I think the witness made a mistake there. He said Mr. Felton's statement covers the period from January 1st, 1898.

Mr. KELLOGG: Yes. He corrected it. January 1st, 1899.

Mr. HILLARD: January 1st, 1899, yes. The statements really agree, if you put them on the same plane.

Mr. KELLOGG: So that there was, as stated in your statement here, about $18,000,000 spent out of this increased capitalization shown, of $122,000,000?

Mr. HILLARD: Yes, sir. During the period covered by that statement.

Mr. KELLOGG: Yes. Now then, if you include the whole $122,000,000 that was spent on the property, a part of that, about two million and seven hundred or eight hundred thousand dollars, or three millions, somewhere along there—$2,780,000. I think Mr. Felton says, has been added to its capital since the last statement.

Mr. HILLARD: I have not examined that. I got my figures myself from Mr. Felton; but I do know of one issue of $2,260,000 par value of car trust notes which are outstanding and have been issued since the date of that statement; the expenditures are included in Mr. Harriman's $22,500,000, but the car trust notes are not included in the increased capital.

Mr. KELLOGG: That would make the increased capital then a little over $125,000,000 less the seven millions of contingent liability.

Mr. HILLARD: Yes.

Mr. KELLOGG: Now, then, it is true according to this
1884 statement that the capitalization of the Alton road was increased from $39,000,000 in round numbers to $125,000,000, less $7,000,000, $118,000,000 in round numbers, out of which only $18,000,000 was spent upon the property.

Mr. HILLARD: No, no. You have added on the increased capital and you have kept the $18,000,000 the same as it was. Now, if you are going to increase this outsanding capital——

Mr. KELLOGG: Oh, yes; that is right. Out of which only $22,000,000 has been spent in round numbers.

Mr. HILLARD: That is right.

Mr. KELLOGG: I beg your pardon, that is right. Now, Mr. Hillard, shortly after the acquisition of this stock by this syndicate, after this syndicate took possession in April, 1899, and on June 27th, 1899, it appears in evidence that the Board of Directors proceeded to call a meeting of the stockholders and proposes to issue $40,000,000 of first mortgage bonds. Do the records show what became of those bonds and what the company got out of them.

M. HILLARD: Yes, sir.

Mr. KELLOGG: Please state.

Mr. HILLARD: On June 27, 1899, the directors authoried the sale of the entire issue of $40,000,000 of bonds *pro rata* to all the stockholders at the rate $650 per thousand dollar bond. On October 10, 1899, twenty-five per cent. of those subscriptions were called, and under that call, $9,996,120 of the bonds were delivered.

Mr. KELLOGG: And those fractional amounts came by issuing scrip.

Mr. HILLARD: Scrip, which were afterwards converted into full bonds. On May 7th, 1900, $21,991,464 were called and sold at the same price, being 55 per cent. of the subscription, making all told 80 per cent. of the subscriptions, and the other 20 per cent. was rescinded. These small fractions left about $12,416 of the $32,000,000 which had not been delivered and paid for, and those in April and May, 1902, were sold to Kuhn, Loeb & Co. at 85. That completes the entire $32,000,000 of bonds.

1885

Mr. KELLOGG: Now what became of the proceeds?

Mr. HILLARD: The proceeds of the $32,000,000 bonds, amounted to $20,802,483.20. Out of that amount there was deposited with the United States Trust Co. to refund prior liens, $8,607,085. Out of the remainder a cash dividend of thirty per cent. was paid.

Mr. KELLOGG: To whom?

Mr. HILLARD: The stockholders.

Mr. KELLOGG: Well, now, who got that dividend principally? Does the Exhibit D of your record show?

Mr. HILLARD: No, Exhibit D is the statement of the subscriptions to the bond.

Mr. KELLOGG: I beg pardon, I meant Exhibit E.

Mr. HILLARD: Exhibit E is a statement of the amounts of dividend paid and to whose order, under that thirty per cent. special distribution.

Mr. KELLOGG: I notice the dividend was paid to Kuhn, Loeb & Co. syndicate managers, in two sets which were put in evidence yesterday or the day before; is that correct?

Mr. HILLARD: Yes, that is—you say the dividends were paid; their proportion was paid.

Mr KELLOGG: I am going on to explain. The syndicate, the four men, Mr. Harriman, Mr. Schiff, Mr. Gould and Mr. Stillman, and the directors, or at least some of the directors of the Alton road. Is that correct?

Mr. HILLARD: The records of the company show that no direct payment was made on the stock held by any of the directors. They did, however, file a waiver or an order directing that the dividend on their shares be paid to Kuhn, Loeb & Co., syndicate managers, and therefore one check appears to have been made to cover the dividend on all the stock under the syndicate and also on that owned by the directors.

1886 Mr. KELLOGG: Well, that was substantially all of the stock; there was a small amount outstanding?

Mr. HILLARD: The statement shows just what it was. There were quite a number of stockholders outside of them.

Mr. KELLOGG: Small stockholders, though, it is only a few thousand shares.

Mr. HILLARD: Well, I have not really added it up, but there must have been two or three thousand shares anyhow.

Com'r HARLAN: Was that technically a cash dividend or a stock dividend?

Mr. HILLARD: I don't know what you mean by technical.

Mr. HARLAN: I don't know that I know, either, but it was paid in cash, was it not?

Mr. HILLARD: Yes, paid in cash.

Com'r HARLAN: How was the money raised?

Mr. HILLARD: The money was taken from the proceeds of these bonds.

Com'r HARLAN: There was no increase of stock on account of that cash dividend?

Mr. HILLARD: No, sir.

Mr. KELLOGG: It was taken from the mortgage bonds?

Mr. HILLARD: It was taken from these bonds, from the proceeds of these bonds.

Com'r CLEMENTS: Do your books show, or do you know the fact, how much of that dividend paid to Kuhn, Loeb & Co. as syndicate managers, was in fact, Mr. Harriman's part and Mr. Gould's part, and so on?

Mr. HILLARD: I don't know whether I can answer that or not. I know the holdings of each of those members of the syndicate, upon which the dividend was paid, yes; that is, the holdings of record. Now, we have had abundant testimony here to show that the holdings of record, does not necessarily mean that a man had it, or held it or was the real owner of it.

Mr. KELLOGG: May I ask him right there a question?

1887 Com'r CLEMENTS: Yes, you may conclude your examination?

Mr. KELLOGG: What was the holding of record on which that dividend was paid, of Mr. Harriman, Mr. Schiff, Mr. Gould and Mr. Stillman.

Mr. HILLARD: The preferred stock dividend was paid on 8680 shares each to Mortimer L. Schiff and George J. Gould; on 8681 shares each to James Stillman and E. H. Harriman; the common stock dividend was paid on 45,806 shares each, to each of the gentlemen, Mortimer Schiff, George J. Gould, and E. H. Harriman.

Mr. KELLOGG: Now shortly after this syndicate acquired this stock, state what was done about that $12,444,177.66 which was charged to construction expenditures uncapitalized?

Mr. HILLARD: You mean credited to that account?

Mr. KELLOGG: Credited, I beg your pardon.

Mr. HILLARD: Well, I find this question you asked me to be prepared to answer. I have examined the records and I find that the origin of that entry was duly recorded in the record book of the company; a communication from the president of the railroad company to the board of directors, advising that a careful examination had been made by him of the system of the bookkeeping and so forth, and stating that a large amount of money had been appropriated from income and operating expenses, and applied to improvements, and generally stating the amount, and recommending that that amount be capitalized and added to the cost of the road. Following that report was a resolution by the Board that the report of the president as to the actual cost of the property of the company be approved and ordered to be filed among the records of the company, and that the auditor of the company be instructed to make such proper entries as may be necessary to conform the books of account of this company to the statements contained in such report, and so that the balance sheet of the company shall truly show the cost and condition of the company?

1888 Mr. KELLOGG: Now, Mr. Hilliard, does Exhibit "L" show the details of that charge on the books of the Chicago & Alton Railway Company, that credit——

Mr. HILLARD: Exhibit "L"?

Mr. KELLOGG: To your exhibit 1.

Mr. HILLARD: Yes, is a copy of the entry placed upon the journal of the company in pursuance of that resolution.

Mr. KELLOGG: Where did the $10,899,878.15 which is there credited as having been taken from the report of the president, Mr. Blackstone, in December, 1888, ten years before—where does that come from?

Mr. HILLARD: That is evidently taken from a statement made by Mr. Blackstone in his report to the stockholders for the year ending December 31st, 1888.

Mr. KELLOGG: Now, then, is that a mere estimate of the excess value of the property over its capitalization by Mr. Blackstone, or do the books of the Alton Road actually show that amount of money paid out?

Mr. HILLARD: I have not examined into that question at all. They did not seem to have examined into that. They started with this as a basis.

Mr. KELLOGG: Very well. Now that states that, taking into account the loss sustained by the original corporation which constructed that part of your lines between Joliet and Alton and operated it until it passed from its hands to yours by foreclosure and sale under the original mortgages, and the amount which your company has expended for additional property not represented by stock or bonds, we find not only that your company has never issued a share of stock

or any obligation of any kind that did not represent at its par value an equal amount of cash or its full equivalent in property at the time actually received, but also that the original cash cost of your property, as nearly as it can be ascertained is $10,989,878.15, or in round numbers $11,000,000 more than the par value of the total amount of the stock and bonds which your company has issued or assumed. Do you know where the original construction of the Alton road was?

1889 Mr. HILLARD: Are you speaking now of the Alton or are you taking into account the Joliet & Chicago, which was bought by the Alton under foreclosure.

Mr. KELLOGG: I mean the old Joliet & Chicago line which they said the old stockholders lost money in.

Mr. HILLARD: I don't know when that was built. The Chicago & Alton made its first report in 1863.

Mr. KELLOGG: In 1863?

Mr. HILLARD: Yes.

Mr. KELLOGG: Then that foreclosure and loss which Mr. Harriman capitalized must have occurred prior to 1863?

Mr. LOVETT: Is there anything to show that was included?

Mr. KELLOGG: It says the original loss, that report shows it. The losses then, of the original investors in the line from Joliet to Chicago must have occurred prior to $1863?

Mr. HILLARD: I absolutely cannot answer that.

Mr. KELLOGG: Has the Alton road ever been foreclosed, that you know of?

Mr. HILLARD: Not that I know of.

Mr. KELLOGG: Do the records show any such thing?

Mr. HILLARD: I have not examined, but I don't know. I do not know of it. I simply have not looked at that. Most of this information I am getting is in direct answer to questions that you have written me in writing, and told me to be prepared to answer. I was not comptroller of this road until October 10th, and all the information I have given you has been dug out of the record and from the books, with hard labor. I do not know it personally.

Com'r CLEMENTS: You said the first report of the Alton road was in 1863. Do you mean the Alton proper, or did that include this Joliet and Chicago road?

Mr. HILLARD: Well, it was the Chicago & Alton Railroad Company, of which the stock was purchased by this syndicate. The Chicago and Alton Railway was organized really in the in-

1890 terests of this syndicate, and it is still the Chicago & Alton Railroad, by consolidation between the old railroad and the newly organized railway.

Mr. CLEMENTS: When did this Joliet Railroad become a part of the Alton?

Mr. HILLARD: I have not looked that up, I cannot answer that question now.

Mr. KELLOGG: The first report of the Chicago & Alton Railroad Company, you said was made in 1863?

Mr. HILLARD: Yes.

Mr. KELLOGG: From that time on the reports were made by the Chicago & Alton Railroad Company until this railway company took charge, were they not?

Mr. HILLARD: Yes.

Mr. KELLOGG: Do you know what this road was that preceded the Alton?

Mr. HILLARD: No, I cannot say I do. The Joliet and Chicago was the name of it. I have not examined into the history at all.

Mr. KELLOGG: Well, you never heard and you saw nothing in the reports to indicate that the Chicago & Alton Railroad Company was ever foreclosed, did you?

Mr. HILLARD: I did not examine to find out. My knowledge really is——

Mr. KELLOGG: All right. Do you gentlemen know whether it was ever foreclosed?

Mr. CRAVATH: Not so far as I know.

Mr. LOVETT: I never heard of it.

Mr. KELLOG: Well, I guess it was not. After capitalizing the ten million dollars, etc., how did they make up the balance of $12,444,177.66?

Mr. LOVETT: Does it show that the stockholders had a loss of $10,000,000?

Mr. KELLOGG: Yes, that report shows it including the losses of stockholders, the property was worth so much more, and it is credited to construction expenditures uncapitalized.

1891 Mr. LOVETT: But there is nothing to show what the stockholders lost.

Mr. KELLOGG: Nothing but that report.

Mr. LOVETT: Well, that does not show that. You assume that?

Mr. KELLOGG: Well, perhaps I should not assume that. Including the $10,000,000 which was neither money expended on the property or losses by stockholders, as stated, or both, as stated by Mr. Blackstone, what were the other items making up the $12,444,000? It was either one or both.

Mr. LOVETT: Yes, but it is not quite fair to assume that it was a loss of $10,000,000. It might have been $10,000,000, and it might have been only $10.

Mr. KELLOGG: No, that is true. There is no item to show that they expended any of the $10,000,000 for capital account. It is simply an estimate. State how the balance was made up.

Mr. HILLARD: The balance was made up by a recasting of the annual statements, taking out certain items which had been charged to operating expenses during each year, and certain other items which had been paid and appropriated out of income account for each year. The amounts taken out of operating expenses and credited to this account of construction expenditures uncapitalized, amounted to $407,165.94.

Mr. KELLOGG: One moment. Let me ask you about that. That was taken out of operating expenses and charged to the operating account.

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Did you ever hear of a road charging in its operating expenses to capital account before in your experience as a railroad accountant?

Mr. HILLARD: I don't think I did. I can't answer that question. I can't remember everything that has happened.

The CHAIRMAN: What I understood Mr. Hillard to say is that certain items which, in previous reports, had been charged up as expenses, or paid out of it, were restated, and assigned as
1892 permanent improvements or betterments, with the view of capitalizing them?

Mr. KELLOGG: Yes, that is the substance of it.

Com'r CLEMENTS: Had you made these previous annual reports in which the prior assignment had been made from year to year, for several years in your reports to the Interstate Commerce Commission?

Mr. HILLARD: I never was connected with this company until October 10th of last year.

Mr. KELLOGG: He has examined them, Mr. Commissioner.

Com'r CLEMENTS: Have you found out by whose specific direction that was done?

Mr. HILLARD: There was this communication from the president to the Board, and the Board passed a resolution authorizing the recasting of the accounts and a restating of the capital cost, and it was done in December, 1899.

Com'r CLEMENTS: Are you familiar with the correspondence between your office and the Interstate Commerce Commission or its statistician, in regard to it?

Mr. HILLARD: No, sir; I never heard anything about it, until the Commission informed me of it themselves.

Mr. KELLOGG: The details of how it was done by the railroad are in this exhibit.

Com'r CLEMENTS: But there was some correspondence between our statistician and that office, when the thing was done?

Mr. KELLOGG: I was not aware of that.

Com'r CLEMENTS: And I did not know how far he might be familiar with it.

Mr. KELLOGG: From 1889 until 1898 there was included in that statement $1,047,155.57 of additions to property which had been yearly charged to income; is that true?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Have you examined the annual reports of the Chicago & Alton Railroad Company, to see whether those items from year to year were all charged against income, or charged
1893 to operating expenses, and approved by the Board of Directors?

Mr. HILLARD: The items which have been picked out of operating expenses and practically capitalized, I have not examined, because there is no way in the annual report of locating them. The items that were paid and appropriated out of income account during the several years I have verified, and the income account as appears in these several annual reports showed those items as having been

paid and appropriated for certain construction purposes, namely, the purchase of new equipment, the building of new structures, the purchase of new rails, and so on.

Mr. KELLOGG: All of this $12,444,177.66, had, as a matter of fact, except that part, if any, which had been lost by the previous stockholders, been paid out of the income of the road and charged off, and the dividends paid in addition to that?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: And had not, during any of these years, been credited to capital account or charged to assets of property?

Mr. HILLARD: No.

Mr. KELLOGG: The accounts had been closed every year?

Mr. HILLARD: Yes.

Mr. KELLOGG: So that in December, 1899, this $12,000,000 was simply taken out of an account, the items taken, which had already been paid for out of the earnings of the road, and was charged to cost of property, and credited to capital account. Is that correct?

Mr. HILLARD: Credited to this account which they used really as a capital account, construction expenditures uncapitalized.

Mr. KELLOGG: And then after paying these dividends out of the mortgage, the money borrowed, was that 30 per cent. dividend charged against this item?

Mr. HILLARD: Yes; that 30 per cent. dividend was charged against this item.

1894 Mr. KELLOGG: What other item was charged against it?

Mr. HILLARD: A considerable proportion of the discount of the $40,000,000 of 3 per cent. bonds.

Mr. KELLOGG: How much? Over $8,000,000?

Mr. HILLARD: No; that statement was presented here before.

Mr. KELLOGG: $8,155,751.40, is it not (handing the witness paper)?

Mr. HILLARD: No; you see, there was also charged to discount on bonds. You see the special dividend there on both of those. The discount on bonds together made up more than that credit by $2,380,000, which was charged to income.

Mr. KELLOGG: Please explain what was charged against that $12,444,000?

Mr. HILLARD: This is a composite entry, and you cannot identify any dollar, any more than you can identify your own dollar when you put it in the bank; but the entry here covers total credits of $14,824,931.40, of which $12,444,177.66 is construction expenditures uncapitalized, and $2,380,753.74 is income account. The construction expenditures uncapitalized, and this account standing at the credit of income were applied, $6,669,180, to the payment of the dividend, and $8,155,751.40 to discount on bonds. It is a composite entry. You cannot tell which of those dollars is charged against which.

Mr. KELLOGG: What reason do you know of for charging discount on bonds against that item?

Mr. HILLARD: Why, that is a matter of judgment. Now, this construction expenditures uncapitalized—left it that way, and they

closed it out in the manner I have told you; but having done what they did do, they had a perfect right to have credited this $12,444,000 to profit and loss, and then discount on bonds was a proper charge against profit and loss. It amounted to the same thing.

Mr. KELLOGG: But charging the discount on bonds against
1895 this would cover it up on the books, would it not?

Mr. HILLARD: Yes.

Mr. KELLOGG: It would tend to obscure it, would it not?

Mr. HILLARD: Yes, so far as the public were concerned.

Mr. KELLOGG: It would cover it up, so far as any man looking over the books was concerned.

Mr. HILLARD: No; any man looking over the books would see it, but any man looking over the annual report would not.

Mr. KELLOGG: Would not see it?

Mr. HILLARD: No, he would not.

Mr. KELLOGG: That is what I thought. Then, so far as the annual reports made to the stockholders or to the public is concerned, they would not see that?

Mr. HILLARD: No, they would not see that.

Mr. KELLOGG: Out of this $40,000,000 mortgage that was placed on the property, you stated that $8,607,085 was deposited with the United States Trust Company to refund the prior lien bonds?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: Now, tell me if all those prior lien bonds, with the coupons, were refunded by that?

Mr. HILLARD: You mean with that exact amount of money?

Mr. KELLOGG: Yes.

Mr. HILLARD: With that amount of money plus the accumulated interest of 3 per cent. which was allowed by the trust company while it was there, they were.

Mr. KELLOGG: Did they not take some of the coupons on the prior lien bonds and capitalize them also?

Mr. HILLARD: There was an item there——

Mr. KELLOGG: Look at your Exhibit A to your Exhibit 1.

Mr. HILLARD: Exhibit A is the general condensed balance
1896 sheet from year to year, commencing with December 31, 1898.

Mr. KELLOGG: Yes. I notice on June 30, 1901, an item of $593,912, funded interest account. The next year it amounts to $973,477, and seems to have been carried in the funded interest account until June 30, 1905, when it was charged off, added to the assets of the company, and capitalized in its statement of the Chicago & Alton Railroad Company. Will you please explain that?

Mr. HILLARD: I have tried to get an explanation of that from my predecessor. He explains it that the 3 per cent. refunding mortgage set aside $15,000,000 of bonds, the proceeds of which were to be applied to refunding all the prior lien bonds, including the matured interest upon them; that if any surplus remained from the proceeds of those $15,000,000 of bonds, they went into the next section, allowing the expenditure of money for additions and improvements. They claimed, or they considered that under that mortgage, they had

capitalized interest on bonds. So when these coupons became due, they set up an account as an asset upon the books of the company, representing the amount of those interest coupons they paid, and they carried that on the books of the company, paying the amount out of the proceeds of these bonds, until some time in the year ending June 30, 1906, they charged the amount to cost of road.

Mr. KELLOGG: And capitalized it?

Mr. HILLARD: Well, charging it to the cost of road is capitalizing it.

Mr. KELLOGG: Is it proper for a railroad company to capitalize its debts or charge its debts to assets?

Mr. HILLARD: Who is going to settle whether it is proper or not?

Mr. KELLOGG: I am asking you as an expert accountant whether that is a proper entry?

Mr. HILLARD: I am not expert anything.

Mr. KELLOGG: You do not want to give any opinion on it?

1897 Don't shake your head; answer so the stenographer can take it.

Mr. HILLARD: No, I would rather you formed your own conclusions.

Mr. KELLOGG: On June 30, 1905, that seems to have been charged off. In the report of June 30, 1906, I notice that the surplus to profit and loss account was only $261,391.

Mr. HILLARD: Please say that again?

Mr. KELLOGG: I notice in the report of June 30, 1906, the credit to profit and loss account of the Chicago & Alton Railroad Company was only $261,391.

Mr. HILLARD: Yes, sir; that is right.

Mr. KELLOGG: So that if these coupons had been charged to profit and loss and wiped out, the company would not have had money to pay its dividends, would it?

Mr. HILLARD: Well, the profit and loss account would of course have shown a deficit of over $700,000, or a debit of about $712,000, instead of a credit of $261,000.

Com'r LANE: Is there any essential difference between this transaction of $12,000,000, cost of road, and the capitalization of that and the capitalization of dividends that might have been paid previously?

Mr. HILLARD: I don't think I quite grasp your meaning.

Mr. KELLOGG: My point is just this. The new owners of the road discovered, as they claimed as I understand your testimony, upon taking possesion that certain items had been charged to cost of operation, which should have been charged to capital account, that were really cost of road. Therefore these were accumulated during a series of years, $12,000,000 charged up to profit and loss?

Mr. HILLARD: Credited.

Com'r LANE: Is that right?

Mr. HILLARD: Yes, sir.

Com'r LANE: Now, supposing that they had said, when

1898 they came in, "the dividends that had been paid during the preceding years have been 5 per cent. too little," and had

accumulated those; could they have charged them up in the same way?

Mr. HILLARD: I don't know just how I want to answer that question; but I know something about railroad accounts, although I stated I was not an expert. I don't like the word. But with a road like the Alton, that makes a large surplus over its obligations, that is, the interest on its bonds, it is the universal practice, I believe, that the statements should be presented to the Board, that the Board decide what shall be done with that surplus, that it is absolutely within their power and their option. Now, what you say is correct, that if at the time they had shown a certain surplus, they had decided to do so, it would have been within their power to declare every dollar as a dividend on the stock; but the Board of Directors are charged with the management of the property in every way, and after consideration of the amount of money at their disposal they have from year to year, in this particular case, appropriated and paid so much as a dividend, they have appropriated and paid so much, and absolutely expended it, for improvement, or replacements of the property, and any remainder has been credited to profit and loss account, perhaps to make the dividend regular, good years and bad years alike. It seems to me I have never known a case like this, where they have gone back from 1863 to 1898 and capitalized moneys which have been appropriated, because each Board of Directors has a perfect right to appropriate that. They have the option to pay it in dividends or set it aside, and when they have exercised that option it is final. No subsequent Board of Directors can revoke it. If they did, the principle would be just the same in regard to the appropriation for dividends. Why could not a subsequent Board revoke an appropriation for dividends, and why could we not revoke that 30 per cent. special dividend now?

Com'r LANE: That is just my point, exactly. They could
1899 have said "Instead of a 5 per cent. dividend, that dividend was unreasonably low, and we should have declared a 10 per cent. dividend. We should have declared a 10 per cent. dividend for ten years preceding, and had a 50 per cent. dividend for the accumulation of those ten years of dividend that were not paid."

Mr. HILLARD: I think there is another factor that would enter into that. I don't think a railroad company, having appropriated its money and absolutely disposed of it, would have a right again to pay a dividend without any money and sell bonds to get the money for the dividend.

Com'r LANE: Of course the same principle applies as to operating expenses, does it not?

Mr. HILLARD: I think the same principle, but to a larger degree, if anything.

Com'r LANE: To a larger degree?

Mr. HILLARD: A larger degree, because the charges which railroad auditors and accountants make to operating expenses are generally closely watched by the management, for their own credit, the management don't allow any doubtful charges to be made to operating expenses because of the increases, the percentage they operate on.

When they get through operating, the surplus belongs to the directors, and the management don't care how they appropriate it. So that it is more important that operating expenses should be carefully watched than it is that surplus income should be carefully watched.

Com'r LANE: If those things could be done and revoked from time to time, as the directorate changes, would not a practice of that sort destroy the integrity and uniformity of railroad accounts generally?

Mr. HILLARD: It would upset the whole system.

Com'r CLEMENTS: What is your objection to the word "expert." You stated a moment ago you did not like the word, and did not claim to be one. What is the trouble about it?

Mr. HILLARD: Well, I don't like it. I hear so much of it, that is all, and I have generally found when a fellow says he is an
1900 expert he gets cross-examined on the stand, and before he gets through he finds he doesn't know anything, so I would rather not use that word.

Com'r CLEMENTS: You think there ought to be some uniformity by which an expert, if there is one, may know whether or not the accounts of railroads mean what they say, and can be understood as well by the public as by the owners of the railroad?

Mr. HILLARD: Yes, sir, I certainly do.

Mr. KELLOGG: Mr. Hillard, the new company as then organized in April, 1899, and the stock acquired by these four gentlemen placed in the treasury of the new company, and against that was issued $22,000,000 of bonds, and this railroad that had been built——

Mr. HILLARD: No; no.

Mr. KELLOGG: I mean on that stock was placed a mortgage securing the $22,000,000 of bonds, the mortgage including this road that had been built?

Mr. HILLARD: Yes.

Mr. KELLOGG: And including 58 miles of road which the books show to have been acquired from Mr. Stanton. There was issued then against that road, the road that had been built, and the stock, the following securities: $22,000,000 of bonds and thirty-nine million and some hundred thousand dollars of stock; is that correct?

Mr. HILLARD: The records, as I have got them from the books, show two transactions there. They show that the $22,000,000 of bonds were delivered for 34,722 shares of preferred stock and a deed to that road of 58 miles. That is what it showed. Then it showed——

Mr. KELLOGG: Now, wait a minute. Mr. Stanton made a proposition to this Chicago & Alton Railway Company to sell it the preferred stock, 34,722 shares, for $10,000,000 cash?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: And the 58 miles of railroad for $3,000,000 cash?

1901 Mr. HILLARD: Yes.

Mr. KELLOGG: Making $13,000,000, and it shows the bonds were sold for that price, does it not?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: How much more was it than they paid for the stock? $3,055,600, was it not?

Mr. HILLARD: I don't think I am competent to answer that question. I have heard the testimony given here.

Mr. KELLOGG: They paid $200 a share.

Mr. HILLARD: $200—so I have heard in the testimony of previous witnesses.

Mr. KELLOGG: If that was true, it was $3,000,000 more than they paid for it—$3,055,600.

Mr. HILLARD: Yes.

Mr. KELLOGG: And in addition to that, they got a 30 per cent. dividend on that preferred stock?

Mr. HILLARD: Yes.

Mr. KELLOGG: Do you know what that railroad cost, from Peoria to Springfield?

Mr. HILLARD: I do not. I have got a history of it. Of course I know what the consideration was when it was sold to Mr. Stanton. I know the consideration. I don't know whether that is the real consideration or not.

Mr. KELLOGG: What was the consideration? Do you understand Mr. Stanton ever owned it?

Mr. HILLARD: They have admitted on the stand here already that Mr. Stanton was an intermediary, that he had no interest in it, but he paid $1,460,000 in bonds.

Mr. KELLOGG: What bonds?

Mr. HILLARD: Bonds of the St. Louis, Peoria & Northern Railroad.

Mr. KELLOGG: In default?

Mr. MILBURN: Who has testified to this? Did I understand the witness to say somebody had testified to this?

Mr. KELLOGG: No; nobody testified to it.

Mr. MILBURN: I understood the witness to say somebody had testified to it.

1902 Mr. HILLARD: No; it was testified that Mr. Stanton was an intermediary.

Mr. KELLOGG: In addition to these $22,000,000 of bonds, do the books show that the bonds were actually sold for $13,000,000 cash, or do they show they were transferred to the syndicate? What do the books show?

Mr. HILLARD: There is no entry upon the cash book or other books of the company showing the receipt of the $13,000,000. Neither is there any entry showing the payment of the $10,000,000, or any voucher covering the payment of the $10,000,000, and the same in regard to the $3,000,000. So that the books would indicate that, following out this resolution of the Board of Directors, the $22,000,000 of bonds had been delivered, as they were delivered, to Kuhn, Loeb & Co., for the syndicate, in exchange or in consideration for the 34,722 shares of preferred stock of the railroad company, and this line of road, between Springfield and Peoria.

Mr. KELLOGG: Then in addition to that, for the common stock of the Chicago & Alton Railroad Company, amounting to 183,224

shares, which was owned by this syndicate, there were issued how many shares of preferred and common stock of the Chicago & Alton Railway Company?

Mr. HILLARD: 194,890 shares of preferred, and 195,428 shares of common.

Mr. KELLOGG: All that $22,000,000 of bonds are outstanding?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: And the company has been compelled to issue, in addition to the $22,000,000, and in addition to the $40,000,000 of 3 per cent. first mortgage bonds, and the $5,350,000 of first mortgage bonds subsequently issued, over $5,000,000 car trust certificates, has it not?

Mr. HILLARD: Yes, right up to date, $2,000,000 have been issued since, and there were over $3,000,000 on the books on June
1903 30. Up to the present date they have issued over $5,000,000 of car trust certificates.

Mr. KELLOGG: And with the $40,000,000 first mortgage 3 per cent. bonds, it has been compelled to borrow money, has it?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: In addition to all of its mortgage obligations?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: And now has no money available for the completion of the road which was covered by this second mortgage of $22,000,000?

Mr. HILLARD: Yes, it has money now.

Mr. KELLOGG: I mean it did not have it out of the securities I have mentioned?

Mr. HILLARD: No, sir.

Mr. KELLOGG: It has had to provide money in addition to all these securities?

Mr. HILLARD: Yes, sir.

Mr. KELLOGG: I guess that is all.

Com'r LANE: Can you, Mr. Hillard, from the figures, tell me just how much the Chicago & Alton Railroad cost in cash the Harriman syndicate, what the net cost was to them?

Mr. HILLARD: I don't know how to get at it. It would take me some time. You see, the syndicate first purchased the preferred stock at $200 a share, and the common stock at $175 a share. That, from the books, appears to have been their only investment in the property, excepting the cost of the 58 miles of railroad.

Com'r LANE: Now, how much did the stock cost them?

Mr. HILLARD: I could figure it out. It is about $39,000,000, I believe, or a little over $39,000,000.

Com'r LANE: The railroad cost them approximately $3,000,000?

Mr. HILLARD: I don't know anything about the cost of the railroad.

1904 Mr. KELLOGG: Nobody knows what it cost.

Com'r LANE: Do they not figure it in at $3,000,000?

Mr. KELLOGG: They added $3,000,000.

Mr. MILBURN: The testimony of Mr. Kahn is that they paid $6,000,000 for the line. That is his testimony.

Mr. KELLOGG: Not at all.

Mr. MILBURN: Yes, it is; in certificates.

Mr. KELLOGG: They paid that for this line and another one.

Mr. MILBURN: Those certificates were car trust certificates, which the evidence shows were a little over par, and they sold half of them to the Illinois Central.

Com'r LANE: As I understood Mr. Kahn, the only cash transaction was $500,000.

Mr. KELLOGG: That is right.

Mr. MILBURN: Just a moment, Mr. Commissioner. When this stock was acquired by the four men, there was a larger syndicate, and to those holders participation certificates were issued, which were sold at the market, so that anybody could buy them. They sold somewhat over par. So these men, when they bought this other road, paid for it in cash $500,000, and $5,500,000 in certificates, which were current certificates selling in the market at that time at a little over par. Now, that is the testimony.

Com'r LANE: What was the basis for those certificates?

Mr. MILBURN: This stock, sir.

Com'r LANE: This stock in the Alton road.

Mr. MILBURN: The interest of a party in that stock, just as if I or any other man had had $500,000 of those certificates, for which I had paid $500,000, and used those certificates with which to buy a house.

Com'r LANE: I don't think that interferes at all with my line of questions. What I want to get at is the question I have asked, as to just what, in the end, this syndicate paid for the Chicago & Alton, how much cash it took?

1905 Mr. HILLARD: I would like to explain, because I think Mr. Milburn thinks we are now talking of the entire road of the St. Louis, Peoria & Northern. Mr. Kahn's testimony was that they paid $6,000,000 for the entire road between East St. Louis & Peoria. The piece of the road between East St. Louis and Springfield, about 97 miles, was not conveyed to the Alton Railroad. The piece between Springfield and Peoria, about 58 miles, was the piece of road that we have now under discussion.

Com'r LANE: That was charged in at $3,000,000 was it?

Mr. HILLARD: Yes, sir, $3,000,000 in cash.

Com'r LANE: Now, then, figuring up the amount that they paid for the stock, and the amount that they paid for the railroad, it comes to approximately $42,000,000?

Mr. HILLARD: A little over $42,000,000, I believe.

Mr. LANE: What did they get? They issued to themselves a total of what stocks, which sold for how much, making their return what?

Mr. HILLARD: I don't know that I can go beyond the facts in that case, Mr. Commissioner, because I don't know what they sold those stocks for. I haven't the remotest idea.

Mr. KELLOGG: Or the bonds?

Mr. HILLARD: They didn't get any of the bonds on account of their investment, excepting they got $10,000,000 back for the preferred stock. They got $3,000,000 in cash for the road. They got stocks for their other stock.

Mr. KELLOGG: They got $22,000,000 of these collateral trust bonds?

Mr. HILLARD: That is right. I don't know what they sold them for?

Mr. KELLOGG: You do not know how much profit they made out of the first mortgage bonds?

Mr. HILLARD: No, I do not.

Mr. KELLOGG: But you know they got a dividend of over $6,000,000.

Mr. HILLARD: I do.

1906 Com'r LANE: Is there evidence here, Mr. Kellogg, under which these figures can be gotten up and shown actually?

Mr. KELLOGG: How much they made? No.

Mr. LANE: Can we approximate how much in excess of the $42,000,000 they got, and still retained their holdings of stock?

Mr. SEVERANCE: You can make a pretty close approximation of that, taking the table which was put in evidence, showing the range of prices of the bonds, and the testimony that was offered as to prices at which bonds were sold and the prices the Northern Pacific paid for the preferred stock. That is a pretty fair estimate to show that these gentlemen did not lose any money on the transaction.

Mr. KELLOGG: That is all I have to ask.

The CHAIRMAN: Mr. Cravath, do you desire to interrogate Mr. Hillard?

Mr. CRAVATH: Just one question to straighten out a subject in regard to which there seems to have been some misapprehension, although the questions put by Mr. Kellogg, and answers were entirely fair. The witness testified substantially this, that the Chicago & Alton Railway Company's mortgage securing an issue of $22,000,000 of bonds covering thirty-three miles of road, which, while authorized to be constructed by the charter of the company, had not actually been constructed at the time the mortgage was created; and the impression seems to have been conveyed that there was some impropriety in that fact. I take it that it is recognized that there is no legal or moral impropriety in a mortgage extending to a route which the corporation is authorized to build, but which has not actually been built, and that there are hundreds of railroad mortgages in this country today which do cover unconstructed routes; and that the only point sought to be brought out by counsel and the witness, was this: that inasmuch as the mortgage covered that unconstructed route, and the entire $20,000,000 of bonds had been issued at the outset, that no provision had been made for

1907 the construction of that route; and not that any impropriety mortgaging that route, as directors of the company——

Com'r LANE: I asked that question yesterday afternoon. I wanted to bring out whether there was money in the treasury to build the road after the bonds had been issued.

Mr. CRAVATH: I understood Mr. Hillard's criticism that it was incorrect financially to mortgage an unconstructed route, to issue all the bonds, and make no provision for the raising of the money to build that route; so that when the time came to build the route, the money had to be raised by some other securities.

Com'r LANE: They mortgaged a road not in existence.

Mr. CRAVATH: But which they had a right to mortgage.

Com'r LANE: When he came in, he did not find the money, the proceeds of the bonds in the treasury. Now, what became of that money?

Mr. CRAVATH: The record shows what became of the money. I simply wished to bring out this common practice, to mortgage unconstructed routes is perfectly proper.

Mr. SEVERANCE: It is usual to use the proceeds of a mortgage to build a road.

Mr. CRAVATH: Sometimes one way or sometimes another. I have no quarrel with Mr. Hillard's view that he thinks it would have been better financed if bonds had been reserved under that mortgage, to provide for the construction of the road when it is built. I simply want to meet the suggestion and inference which seems to have been drawn that there was some moral or legal impropriety in mortgaging a road authorized to be built.

Mr. LANE: You would go one step further that the impropriety was in not using the money for that purpose?

1908 Mr. CRAVATH: I should not say there was any impropriety in the sense of any moral wrong, but if there is a criticism of the financial management which provides for the issue of another issue of bonds, without providing for the construction of its line——

Mr. HILLARD: I would like to make a little explanation. I fear the language I used in answering the question propounded yesterday was not as it should have been. It did not intend—as I say, it has been taken as a criticism of making a mortgage upon a road before it was constructed. That I know to be a very common thing. The question that was asked me was, to explain the position of the treasury of the company when I found it; and I found it wanting money to build a railroad which it had already mortgaged, the funds gone, and therefore, we could not get anything except by something new. It was the condition of the treasury, not the statement as you make it, I know it to have been true for many years. I have done it myself.

Mr. LOVETT: I should like to ask Mr. Hillard two or three questions: is there any well defined classification of betterments and maintenance expenses in railroad accounting?

Mr. HILLARD: Yes, sir, very well developed.

Mr. LOVETT: It is well understood in railroad accounting that improvements—all expenses of a certain character should be charged to maintenance, and others to betterments, is there not?

Mr. HILLARD: Yes.

Mr. LOVETT: Those items that were stated in the accounts under the resolutions introduced in evidence, were they such as might have properly been charged to betterments in the first instance?

Mr. HILLARD: I have not examined one single item, Mr. Lovett—not one single item. I copied that journal entry only, and explained that a number of the items charged to operating expenses in each year, had been retransferred to cost of road.

1909 Mr. LOVETT: You don't pretend to say, however, that those items might not have been charged and should not have been charged in the first instance to capital?

Mr. HILLARD: Not at all. I have not any doubt that they might have been fairly so charged at the time.

Mr. LOVETT: The point of your criticism is, that having been charged at one time against maintenance by the Board of directors, presumably by their instructions or authority, that it was not proper for a subsequent board to have the account restated and have those items carried to the capital account.

Mr. HILLARD: Yes; that is my view. I don't know whether I so expressed it, but that is my view.

Mr. LOVETT: That an item once disposed of in that way is beyond the control of subsequent Boards.

Mr. HILLARD: Barring a palpable error or a fraud; both of those can be reviewed, to absolute knowledge, within the legal powers of the Board, making these appropriations; but having been made, and the money gone, it must include delivery as well as appropriation; it is final.

Mr. LOVETT: So that a branch line, for example, constructed and paid for by one Board, and charged against income, could not afterwards, by a subsequent Board, be added to the capital amount?

Mr. HILLARD: That is a little different proposition.

Mr. LOVETT: Different in what respect?

Mr. HILLARD: Because a railroad company that is covered by one mortgage, and perhaps two mortgages, in constantly making additions and improvements, hardly keeps ahead of the depreciation that goes on in the structures, buildings, ballasting and so on; that constant additions to what technically are called net operating expenses, are really necessary to keep abreast of the times. I am talking now of the continual expenditures upon a road which is covered by one or more mortgages. Now, I think that a branch line of railroad, entirely independent, no mortgage upon it, which is constructed out of the net earnings of a property mort-
1910 gaged, as I told you, might be a matter of opinion whether that could be renewed or not.

Mr. LOVETT: You don't wish to be understood as defining that the classification of maintenance and maintenance expenses and betterments and railroad accounts should have anything to do with the question of the mortgages, do you?

Mr. HILLARD: Yes. The question you asked me as to whether it would be proper to capitalize additions and improvements, expenditures upon a line already mortgaged and fully capitalized, is entirely different to capitalizing a branch road out of the earnings of the old main stem which has no debt upon it. Thus, therefore, you have got mileage which represents no capital except your investment. You could capitalize that, although it is a question whether having passed it ten, fifteen or twenty years, the Board of Directors could come in and suddenly capitalize it.

Mr. LOVETT: I am asking you about classification of maintenance expenses and betterments or additions. That was my question.

Mr. HILLARD: You better state it again. I don't understand it.

Mr. LOVETT: Then there is a well defined distinction in railroad accounting between maintenance expenditures and betterments and additions, is there not?

Mr. HILLARD: Yes, sir.

Mr. LOVETT: A branch line ordinarily would not be charged to maintenance, would it?

Mr. HILLARD: No, sir. You mean the original construction of a branch line?

Mr. LOVETT: Yes.

Mr. HILLARD: Certainly not.

Mr. LOVETT: There are a great many other expenditures upon an existing line, a constructied line, that are not charged to maintenance ordinarily?

Mr. HILLARD: Yes, sir.

Mr. LOVETT: And yet it is the custom of some accountants
1911 to charge some of those items against income, is it not, that others treat as betterments and additions?

Mr. HILLARD: I don't think it. The accountants have nothing to do with it. There is a principle adopted by the Board of Directors as to these charged ordinarily, and these appropriations were not made by the accountants; they were made by the Board of Directors.

Mr. LOVETT: Isn't there a principle adopted by the Interstate Commerce Commission?

Mr. HILLARD: Yes, sir. That is the governing law nowadays.

Mr. LOVETT: Now, you don't know whether any of those items that were included or went to make up that $12,000,000, were betterments or additions within the classification of the Interstate Commerce Commission or not?

Mr. HILLARD: I have already stated that I believe that those were proper additions and improvements, and at the time could have been justifiably capitalized. I am willing to state that.

Mr. LOVETT: But having once been charged against the income, they are beyond the reach of subsequent Boards?

Mr. HILLARD: That is my point; that is only a doubt I have; I did not make any statement.

Mr. LOVETT: You have never known of similar instances where they have gone back and restated accounts in that way?

Mr. HILLARD: No, not except in cases of palpable errors, and I don't know that I can recall a case of that right now.

Mr. LOVETT: Would not you call a charging of betterments to income a palpable error?

Mr. HILLARD: No, sir; not when deliberately done with the best interest of the stockholders at heart, which the directors are supposed to have as trustees of the stockholders.

Mr. LOVETT: Have you ever known a stock dividend to be declared?

Mr. HILLARD: Yes, sir.

1912 Mr. LOVETT: Out of what are they declared ordinarily?

Mr. HILLARD: Ordinarily they are declared out of the sur-

plus earnings of the railroad company which the Board determines shall be used in the extension or additions and improvements of the property; and in place of the cash they are given *pro rata* of stock.

Mr. LOVETT: The surplus, the accumulated surplus, may consist of various kinds of assets, may it not?

Mr. HILLARD: Yes, sir; generally does.

Mr. LOVETT: Well, are they not often taken into account by railroad accountants in making up statements as to stock dividends, and some excluded and some included, although both properly part of the surplus?

Mr. HILLARD: I don't think they could be. I think any credit to the profit and loss account is available in the discussion of the Board of Directors for the payment of dividends; if that profit and loss account or credit consists of cash, they can pay the dividend in cash; if it does not consist of cash, but consists of securities, they can issue securities against it; but, having issued them, the securities must be charged against the profit and loss account, so as to reduce it to the proper figure, not charged to the cost of road, leaving that profit and loss account as it stood.

Mr. LOVETT: Suppose it consisted of betterments and additions to the existing lines?

Mr. HILLARD: You see then, that I consider that having appropriated, the directors of subsequent years have only the balance that stands to the credit of profit and loss at their disposal, that is, the unappropriated earnings of the company.

Mr. LOVETT: Suppose it consists of betterments and additions, not charged to the income and carried to the capital account.

Mr. HILLARD: Yes, or charged to capital account; then they can declare any dividend out of profit and loss.

Mr. LOVETT: It would be proper to issue stock against that or cash?

1913 Mr. HILLARD: Yes, cost of road or securities, or else do anything—if it stood properly to the credit of profit and loss account, it is at the disposition for a dividend.

Mr. LOVETT: So the question, in your opinion, as to whether the expenditures to which you have referred, should or should not have been included, should depend upon how the books have been kept and not upon the merits of the expenditures?

Mr. HILLARD: No, sir; not at all. The books have been kept, approved by the Boards of Directors and stockholders.

Mr. LOVETT: You have already testified you are willing to assume or suppose that those expenditures which make up the $12,000,000, might with perfect propriety have been charged to capital account at the time they were made?

Mr. HILLARD: At the time—that is right.

Mr. LOVETT: But they were not so charged. Now, does not that come back to the question I have just asked, and that is whether in your opinion, the propriety of including expenditures of that sort in the fund for dividends, depends not upon the character of the expenditures or the merits of the expenditures, but the method in which the books have been kept?

Mr. HILLARD: I don't quite grasp that. Now, you mean to say that if these items at the time had been charged to the cost of road and credited to the profit and loss account, remain there, that the profit and loss account would have been large enough now so that this dividend could have been made? If that is what you mean, you are right. I say to you correctly, the keeping of books is entirely a matter of opinion. I say these books were correctly kept. You want to say they were not correctly kept?

Mr. LOVETT: We are not questioning the correctness of the books. I am just asking whether the result of your testimony is not that whether these expenditures aggregating $12,000,000, properly constituted a fund for dividends, depended upon the way that
1914 the books had been kept, and is not that now the result of your testimony?

Mr. HILLARD: No, sir; it is in accordance with the orders of the Board and the appropriation of the money.

Mr. LOVETT: And yet you do say that if the Boards of directors had ordered these expenditures charged to the capital account or credited to capital account, rather than against income, it would have been perfectly legitimate and proper to take them into account in fixing the dividends?

Mr. HILLARD: Yes, sir; I still think so.

Mr. LOVETT: Whereas, inasmuch as they instructed them to charge against income, it is not properly included?

Mr. HILLARD: It is not properly included.

Mr. LOVETT: Therefore, it depends, as to the propriety of the dividend, as to how the books have been kept, either by the Comptroller or by the direction of the Board of directors,—it depends upon how the books have been kept, and not upon the merits or character of the expenditures?

Mr. HILLARD: You mean, it depends upon the action of the Board. The books only record the actions of the Board. The keeping of the books has nothing to do with it. It depends upon the action of the Board of Directors, not upon the keeping of the books.

Mr. LOVETT: The keeping of the books, I say, pursuant to the orders of the Board of Directors; I don't care who is in charge of the books, the comptroller, or who.

Mr. HILLARD: The books are kept by orders of the Board of Directors, and the proper answer to your question is that the items depend entirely upon orders from the Board of Directors.

Mr. LOVETT: Suppose the Board of Directors did not make any order about it—the comptroller did it himself?

Mr. HILLARD: At the present day he would do it under the well known rulings which have been promulgated by the Inter-
1915 state Commerce Commission; that is, the general orders to all railroads, outside of special orders made by the Board of Directors.

Mr. LOVETT: I presume you are aware that the question as to whether a subsequent Board of Directors might re-state these accounts, is purely a matter of law, aren't you?

Mr. HILLARD: It is purely a matter of law?

Mr. LOVETT: Yes.

Mr. HILLARD: Well, it is, I presume.

Mr. LOVETT: So the opinion that you have just expressed upon that point, is a legal opinion and not a matter of fact.

Mr. HILLARD: No, sir, I have told you I do not profess to be an expert lawyer or accountant or financier. I was asked these questions and I answered them, and I am going to, and I will answer yours too, if you will ask them.

Mr. LOVETT: I believe you also testified that a corporation had no right to sell bonds to get money to pay a dividend? Did I understand you correctly?

Mr. HILLARD: I testified that, in my opinion.

Mr. LOVETT: That that was your opinion. You understand that is also a legal question?

Mr. HILLARD: I suppose it is.

Mr. LOVETT: If the corporation had expended its money, its income and other cash for betterments and additions, charged it to capital account, you don't think they would have the right to borrow money or sell bonds to replenish the charge, for the purpose of paying a dividend.

Mr. HILLARD: I do not think you quite see the point of that, which is, if they had charged these expenditures to capital account, there would have been the same amount in addition to the credit of profit and loss, wouldn't there? Suppose my profit and loss account were $2,000,000, supposing I had spent $2,000,000, for improvements on the road and the directors say, charge it to profit and loss; it wipes out my profit and loss. If they say charge it to the cost of the road, my $2,000,000 to profit and loss remains. Under those circumstances, when you have got that credit, you can pay it out by selling stock.

1916

Mr. LOVETT: You can't pay it out in bridges?

Mr. HILLARD: No. Then you can issue stock.

Mr. LOVETT: You can sell bonds?

Mr. HILLARD: You have said that is a law point, so you answer it.

Mr. LOVETT: I understood you to have answered it.

Mr. HILLARD: I have been advised by counsel that the purposes for which bonds can be issued and obligations incurred and money borrowed, do not cover the payment of dividends. Now, that is all I want to tell you—I have been advised by counsel.

Com'r HARLAN: Judge Lovett, the point you make of course is clear enough, but I doubt whether stock dividends may be declared where the corporation is an Illinois corporation, as this is. In the 11th Article of the Constitution of Illinois, and 13th Section, there is this provision: "No railroad corporation shall issue any stocks or bonds except for money, labor or property actually received and applied to the purposes for which such corporation was created; and all stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void." There is also a provision in the statutes of Illinois, to the same effect; and while the point you have made with this witness as a legal point

is perfectly clear, I doubt whether the application you made of it would be proper under the statutes of Illinois. In other words, I doubt whether you could issue a stock dividend to take up this accumulated surplus to capital account or issue bonds for the same purpose.

Mr. LOVETT: I am not familiar with the laws of Illinois, but I presume under those circumstances they may do as the National Banks do;—a national bank in this city a few months ago declared a dividend of three thousand dollars a share—three thousand per cent. something like that; and they increased their capital
1917 and then declared a dividend, and the dividend was used to pay for the increased capital. I suppose that might be done in this case, although I am not familiar with the laws of Illinois.

Com'r HARLAN: This provision is directed especially to railroads; and what you say of industrial or other corporations can be done in Illinois; and it may be possible with a railroad corporation in Illinois.

Mr. CRAVATH: Assuming that when Mr. Felton became president of Chicago & Alton Railroad Company, he had found that five years before the company had built an extension a branch line costing five million dollars, and that the branch line had been paid out of accumulated surplus, and the surplus otherwise available for dividends, had, by direction of the Board of Directors, been reduced by that $5,000,000, upon that discovery, would it have been proper for the Board of Directors to have restored that $5,000,000 to surplus, and charged the cost of that road to capital account?

Mr. HILLARD: I think you better ask Judge Lovett. He says that is a law point.

Mr. CRAVATH: I think you have testified very frankly and very fairly regarding your views as accountant, and I am anxious to know what your views would be in that case.

Mr. HILLARD: I think, if you want to know, I consider the great difference in that proposition to be an entirely new road that has got no obligation upon it and no stock out against it, as against the improvements and additions of an old road that is well capitalized already. There is the consideration; and I think that possibly within a reasonable time,—there is laches in everything—claims for everything—but I think within a reasonable time, it might be a fair thing for the Board of Directors to reconsider that action and place securities against a piece of new line upon which none has been issued before, and no mortgage existing.

Mr. CRAVATH: If the road had been built from surplus, to restore the cost of the road surplus?

Mr. HILLARD: Why, certainly.

Mr. CRAVATH: Take another illustration: assume that
1918 they discover that $5,000,000 had been expended in equipment; there had been a radical increase in equipment, costing $5,000,000; the equipment had been paid for from surplus;—would the Board have been justified within reasonable time, under your view, in restoring that $5,000,000, to surplus, charging the cost of equipment to capital account?

Mr. HILLARD: I think not.

Mr. CRAVATH: You draw a distinction between equipment and a branch line.

Mr. HILLARD: Yes; equipment is covered by mortgage; that vitiates very rapidly and constant renewals are required to keep up.

Mr. KELLOGG: Isn't it true that old roads spend money every year for betterments of their properties?

Mr. HILLARD: Obliged to.

Mr. KELLOGG: And take it out of their income?

Mr. HILLARD: Wherever they have got it.

Com'r CLEMENTS: Have you ever known an old road to have the right to build an additional road or branch and take it out of surplus?

Mr. HILLARD: Well, I can't think of one, sir, just now, but there might be.

Mr. KELLOGG: I show you three papers here, Mr. Hillard, I just want to identify them; that is all, and mark them as exhibits.

(The papers were marked.)

Mr. KELLOGG: Exhibit 2, Mr. Hillard, purports to be a copy of the journal voucher, showing the charges against the $12,444,000 which you have been talking about.

Mr. HILLARD: That is right; yes, sir.

Paper marked Exhibit 2, attached to Mr. Hillard's testimony.

Mr. KELLOGG: Exhibit 3 purports to be the proceedings of the Board of Directors for the Chicago & Alton Railroad Company, April 3, 1900, taken from the books of the company. Is it correct? It is not certified.

1919 Mr. HILLARD: I would have to verify it unless the gentlemen will all admit it?

Mr. KELLOGG: Mr. Hillard says he has not compared that; it is not certified.

Mr. LOVETT: It may go in as correct.

Mr. KELLOGG: Mr. Lovett says it may go in as correct.

Mr. HILLARD: Very well, I will identify it.

The paper was received in evidence and marked Exhibit 3, attached to Mr. Hillard's testimony.

Mr. KELLOGG: Exhibit 4 purports to be the agreement with Mr. Stanton referred to in the evidence. Is that correct? It is found in the minutes?

Mr. HILLARD: Do you want me to compare this or will you take it?

Mr. LOVETT: No. Let them go in as correct, subject to correction.

Mr. HILLARD: All right; then I identify that.

Paper received in evidence and marked Exhibit 4, attached to Mr. Hillard's testimony.

The CHAIRMAN: Are there any further questions to be asked of Mr. Hillard?

Mr. KELLOGG: That is all.

The CHAIRMAN: If not, he is excused.

Mr. KELLOGG: Mr. Mahl, will you take the stand just a moment; I want to identify some papers.

WILLIAM MAHL, (recalled).

(The exhibits were marked 1 to 11 inclusive.)

Mr. KELLOGG: I show you Mahl Exhibit 1, marked W. M. No. 7 in the corner, which is the statement of the purchase and sale of the Northern Securities Company's stock and the substituted stock, Northern Pacific and Great Northern stock; is that correct?

Mr. MAHL: It is.

Mr. KELLOGG: That was made up from your books?

Mr. MAHL: Yes.

1920 Mr. KELLOGG: I offer that in evidence.

Paper received in evidence, and marked Exhibit 1, and attached to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Exhibit 2, Mahl Exhibit 2, marked "W. M. No. 13," which is a statement of the purchase of the Northern Pacific by the Oregon Short Line, headed, "Northern Pacific purchase money certificate" showing the face value of purchase money certificates and the balance furnished in cash by the Oregon Short Line; is that correct?

Mr. MAHL: It is.

Mr. KELLOGG: I offer this in evidence.

Received in evidence and Marked Exhibit 2 to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Exhibit 3, which is a copy of a resolution of the Board of Directors of the Union Pacific Railroad Company, dated January 31, 1901, provision for financial requirements, which is certified by Mr. Aleck Millar; you admit it is correct?

Mr. LOVETT: Yes.

Mr. KELLOGG: I offer it in evidence.

Paper received in evidence and marked "Exhibit 3," and attached to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Mahl Exhibit No. 4, which is the proceedings of the executive committee of March 19, 1903, of the Union Pacific, showing the loans, amounts loaned and amounts borrowed; is that correct?

Mr. MAHL: It is. It dates back so far——

Mr. LOVETT: It may be admitted.

Paper received in evidence and marked Exhibit No. 4 to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Mahl Exhibit No. 5, marked "W. M. No. 2," and "W. D. C. No. 3," which is a statement of the dates and amounts received from sale of the Union Pacific convertible, four per cent. gold bonds; is that correct?

Mr. MAHL: It is.

Mr. KELLOGG: I offer the same in evidence.

1921 Paper received in evidence and marked Exhibit 5, and attached to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Exhibit No. 6, which is a condensed statement of the operations of the Union Pacific for five months ending November 30th, 1901, marked Mahl Exhibit No. 6, is that correct?

Mr. MAHL: It is a long time since I have seen it, but if my name is to it, it is correct.

Paper received in evidence and marked Exhibit No. 6, to Mr. Mahl's testimony.

Mr. KELLOGG: Mahl, Exhibit No. 7, which is a statement of the stocks deposited on March 9, 1905, with the Equitable Trust Company under the collateral trust mortgage of the Oregon Short Line Railway Company, is that correct?

Mr. MAHL: That is correct.

Mr. KELLOGG: I offer the same in evidence.

Paper received in evidence and marked Exhibit No. 7 to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Exhibit No. 8, which is a condensed statement of operations of the Oregon Short Line from July 1st, 1897, to June 30, 1906, marked Mahl Exhibit 8, W. M. No. 12. Is that correct?

Mr. MAHL: Yes.

Mr. KELLOGG: I offer the same in evidence.

Paper received in evidence and marked Exhibit No. 8 to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Exhibit No. 9, W. M., No. 11, which is a statement showing the issuance and sale of the 4 per cent. and participating bonds of the Oregon Short Line Railway Company. That is correct?

Mr. MAHL: Yes.

Mr. KELLOGG: I offer the same in evidence.

Paper received in evidence and marked Exhibit No. 9 to Mr. Mahl's testimony.

Mr. KELLOGG: I show you Exhibit No. 10, which is a statement showing the sale of the 4 per cent. refunding bonds of the Oregon Short Line Railway Company. Is that correct?

1922 Mr. MAHL: Yes.

Mr. KELLOGG: I offer the same in evidence.

Paper received in evidence and marked Exhibit No. 10 to Mr. Mahl's testimony.

Mr. KELLOGG: And Exhibit No. 11, showing operating surplus at the time of the $100,000,000 stock issue which was authorized, showing resources from February 28, 1901 (when stock issue was authorized) to June 30, 1901, and how applied. This is the state-

ment of the Union Pacific Railway Company marked W. B. C. No. 2 in the corner.

Mr. MAHL: Yes.

Mr. KELLOGG: That is correct?

Mr. MAHL: Yes.

Mr. KELLOGG: I offer the same in evidence.

Paper received in evidence and marked Exhibit No. 11 to Mr. Mahl's testimony.

Mr. KELLOGG: That is all.

Mr. LOVETT: On the previous hearing of this matter by the Commission in this city in January last, there was introduced a resolution which seemed to have occasioned considerable surprise, passed by the Board of Directors or the Executive Committee of the Union Pacific, I believe, in July or August last, authorizing Mr. Harriman—or amending, rather, a resolution adopted in 1902, authorizing Mr. Harriman to borrow money needed by the company, the amendment being to authorize him also to pledge collateral. Will you please state at whose instance that resolution was passed, and whether Mr. Harriman had any knowledge of it before it came before the Committee?

Mr. MAHL: He did not. The resolution was passed at my request. It became necessary. Some of the California banks wanted, in addition to the authority to borrow money, they wanted also the authority to show that the Chairman had the right to pledge collateral for the loan. This happened in possibly one or two instances, and I recall now an instance here in the city, and I therefore
1923 thought it best to introduce and adopt a general resolution, as these resolutions were asked for from time to time, and I think I had talked to Judge Lovett about drafting a resolution.

Mr. LOVETT: And a similar resolution was passed then by the Union Pacific, Southern Pacific and Oregon Short Line to meet the situation arising in connection with the ordinary financial transactions of the company.

Mr. MAHL: Yes.

Mr. LOVETT: And did Mr. Harriman have any knowledge of that so far as you know before it came before the Board?

Mr. MAHL: No. There is a resolution, I think, in that connection.

Mr. LOVETT: I would like to introduce in that connection a resolution passed by the Board of Directors of the Southern Pacific Company at the time that Mr. Huntington was president. I will read it:

"The following resolution was submitted to the Board, and, on motion of Mr. Thomas H. Hubbard, seconded by Mr. H. E. Huntington, was unanimously adopted, viz:

"*Resolved*, that the President of this company, or the Vice-President thereof, be, and he is hereby authorized and empowered to borrow from time to time, from such persons or corporations, and for such times and on such terms, as in his judgment may be for the best interests of the company, such sums of money as he may deem necessary to carry on its business, and, to that end, to execute, in the

name and on behalf of the company, promissory notes or other evidences of indebtedness, and, to secure the same, to pledge or hypothecate securities, stocks, bonds, or other personal property, or mortgage any real property of this company; and that the Assistant Treasurer of this Company be, and he is hereby authorized to withdraw any securities now or hereafter held to secure such promissory notes or other indebtedness of this company and replace the same by others whenever such change shall in his judgment be advisable,
1924 and said Assistant Treasurer is hereby authorized to receive and receipt for matured or maturing coupons appertaining to any such hypothecated bonds."

"I, Alex. Millar, Secretary of the Southern Pacific Company, do hereby certify that the above and foregoing is a true copy of a preamble and resolution duly adopted by the Board of Directors of said Company, at a special meeting of said Board, held at the office of Mr. Thos. H. Hubbard, First Vice President of said Company, No. 23 Broad Street, in the City and State of New York on the 26th day of January, 1900, at which a quorum was present.

In witness whereof I have hereunto subscribed my name and affixed the seal of said company this 13th day of February, 1907.

(Signed) ALEX. MILLAR, *Secretary.*"

[Seal Southern Pacific Company, Kentucky.]

The paper was received in evidence and marked Exhibit No. 12, Mr. Mahl's testimony.

Mr. LOVETT: That is a copy of the resolution passed by the Southern Pacific Board on the 26th day of January, 1900. Who was President of the Southern Pacific Company at that date, the 26th of January, 1900?

Mr. MAHL: C. P. Huntington.

Mr. LOVETT: Is there anything unusual in resolutions of this character, are they customary in financial institutions in this city, in borrowing money?

Mr. MAHL: In all companies that I have been connected with the President is always authorized to borrow money as may be needed.

Mr. KELLOGG: Do you remember when that last resolution authorizing the President to borrow money and pledge stocks was passed?

Mr. MAHL: I think some time in July.

Mr. KELLOGG: In July?

1925 Mr. MAHL: Yes.

Mr. KELLOGG: Has any money been borrowed on that other than shown by the statements you have furnished us?

Mr. MAHL: None that I recall.

Mr. KELLOGG: Were notes given for the Baltimore & Ohio purchase?

Mr. MAHL: Yes.

Mr. KELLOGG: And stocks pledged, Baltimore & Ohio stocks?

Mr. MAHL: No.

Mr. KELLOGG: No stocks pledged at all?

Mr. MAHL: Oh yes, collateral was pledged afterwards.

Mr. KELLOGG: Baltimore & Ohio stock pledged?

Mr. MAHL: No.

Mr. KELLOGG: What stocks were pledged?

Mr. MAHL: It was mixed collateral; I don't recall now what they were.

Mr. KELLOGG: Will you furnish a statement of the notes Mr. Harriman has made since the adoption of that resolution, and what stocks he has pledged to secure them? May that be done?

Mr. LOVETT: We will furnish that later.

Mr. KELLOGG: Up to the present time.

Mr. LOVETT: Yes.

Mr. KELLOGG: All obligations made and stocks pledged to secure them up to the present time?

Mr. LOVETT: Yes, we will furnish that, Mr. Kellogg.

Mr. KELLOGG: Has the Union Pacific Railroad borrowed any other money or has Mr. Harriman for the Union Pacific since that resolution has been passed, than the Baltimore & Ohio?

Mr. MAHL: Some, yes.

Mr. KELLOGG: Will you furnish a complete statement of that?

Mr. MAHL: Yes.

Mr. KELLOGG: The last resolution was July 26, 1906, I think you said?

Mr. MAHL: Yes.

1926 Mr. LOVETT: The original resolution was December 31st, 1902, and that was amended.

Mr. KELLOGG: One question I would like to ask you. Mr. Harriman said that monthly statements of the earnings of railroads were sent to the stockholders.

Mr. MAHL: Yes.

Mr. KELLOGG: That is, a condensed statement of the gross earnings every month, is it not?

Mr. MAHL: No, it is the gross earnings less—we state the gross earnings and then the operating expenses and taxes and then the surplus. Now, anyone who is familiar and who can familiarize himself with the fixed charges of the Company from its annual report can make a statement of just what surplus is left for payment of dividends after payment of fixed charges.

Mr. KELLOGG: The net is not arrived at until two or three weeks after the closing of the books for the month, is it?

Mr. MAHL: No, we are generally able to furnish that information to the stockholders about the 3rd or 4th of the month following.

Mr. KELLOGG: About a month later?

Mr. MAHL: Yes.

Mr. KELLOGG: Now, the Southern Pacific, for some months before the making of that dividend, furnished no statements, did it?

Mr. MAHL: It did not, no.

Mr. KELLOGG: It did not?

Mr. MAHL: No.

Mr. KELLOGG: That is what I thought. That is all.

The CHAIRMAN: If there are no further questions to be asked of Mr. Mahl, he is excused.

Mr. SEVERANCE: Now, Mr. Chairman, that is all the testimony we have to offer here at this present hearing. We may desire to put in some more testimony before the hearing is formally closed, but this is all we have at the present time in New York, and therefore we will ask the permission to adjourn the hearing without fixing a day for re-assembling, and will later on notify the Com-
1927 mission as to whether we have additional testimony and then notice may be given to our friends.

The CHAIRMAN: Will the respondents desire now or at any time to offer any testimony?

Mr. LOVETT: We do not desire to offer any testimony now, if the Commission please, at this time.

The CHAIRMAN: Shall we infer from that that you may desire to offer testimony?

Mr. LOVETT: I should not like to announce definitely as to that until the other side had concluded.

The CHAIRMAN: Do counsel desire to be heard by way of argument or discussion of the testimony at any time?

Mr. LOVETT: We would like an oral argument in the matter, if the Commission please, but I presume that can be heard in Washington at some time we can agree upon with the other side, after they notify us that they have concluded their testimony, and we can determine very promptly if we have any testimony and can take up with counsel the question of time and place of the argument.

Mr. SEVERANCE: I understand that unless we put in some more testimony you do not care to offer any evidence?

Mr. LOVETT: I would not like to make that announcement at this time.

Mr. SEVERANCE: Very good.

The CHAIRMAN: Have you some idea about when such an argument as is suggested should take place?

Mr. SEVERANCE: I think the whole matter should be closed and arguments presented some time early in April, which I understand after consultation is satisfactory to my friends.

Mr. LOVETT: If there is no further testimony and we get early notice of that, it is quite likely that arrangement will be satisfactory to us; but as to the particular date I think we had better leave that open.

Mr. SEVERANCE: We can arrange on that.

Mr. LOVETT: It depends with us upon whether there is any more testimony, very largely. If there is no more testimony I
1928 think we can be ready for the argument about the 1st of April or beginning of April.

The CHAIRMAN: Apparently no definite date can be now assigned. The Commission will consider certain questions which have arisen during the course of this investigation, and counsel will naturally wish to review the evidence and determine whether further testimony should be adduced, and counsel for the respondents will desire to be heard in argument. It seems to me all we can do to-day is to say that the further hearing of the case is postponed

to a date to be hereafter fixed, upon the understanding that the place shall be Washington, and unless some new line of testimony is gone into, if it is only to supplement in some minor degree the evidence already adduced, witnesses for that purpose can be brought to Washington, at the time fixed for argument. Upon that understanding we will now adjourn.

At 12:30 P. M. the hearing was adjourned, to a date to be fixed.

1929 Exhibits introduced at hearings before Interstate Commerce Commission into the affairs of the Union Pacific Railroad Company and its allied lines at New York January 4 and 5, at Chicago January 8, 9 and 10, at Seattle January 21, at Portland January 24 and 25, at San Francisco January 29, 30 and 31, at Los Angeles February 7 and 8, and at New York February 25, 26, 27 and 28, 1907.

Millar Exhibit No. 1. Table showing directors Union Pacific Railroad Company and Southern Pacific Company from 1900 to date. Not printed.

Millar Exhibit No. 2. Table showing members of Executive Committees of the Union Pacific Railroad Company and Southern Pacific Company from 1900 to date. Not printed.

Millar Exhibit No. 3. Statement showing stock voted at meetings of stockholders Southern Pacific Company from 1900 to 1906 inclusive. Printed at page 10.

Millar Exhibits Nos. 4 to 10 inclusive. By-laws of the allied companies. Not printed.

Millar Exhibits Nos. 11 to 19 inclusive. Forms of proxies used at meetings stockholders Southern Pacific Company 1900 to 1906 inclusive. Not printed.

Millar Exhibits Nos. 20 to 23 inclusive. Stock lists used at annual meetings Southern Pacific Company 1903 to 1906 inclusive. Not printed.

Millar Exhibit No. 24. Resolution directors Union Pacific Railroad Company August 29, 1899, relative to acquisition of Oregon Short Line and O. R. & N. securities. Printed at page 12.

Millar Exhibit No. 25. Resolutions directors Union Pacific Railroad Company February 20, 1901, relative to purchase Southern Pacific Company stock and issue of Union Pacific Convertible Bonds. Printed at page 19.

1930 Millar Exhibit No. 26. Resolution directors Union Pacific Railroad Company, January 31, 1901, relative to acquisition securities of other companies and financial arrangements therefor. Printed at page 32.

Millar Exhibit No. 27. Resolution Executive Committee Union Pacific Railroad Company, December 13, 1906, relative to organization of Equipment Association. Printed at page 34.

Millar Exhibit No. 28. Resolution Executive Committee Union Pacific Railroad Company, December 13, 1906, relative to organization Pacific Fruit Express Company. Printed at page 35.

Millar Exhibit No. 29. Resolution Executive Committee Oregon Short Line Railroad Company, March 13, 1903, authorizing sale Southern Pacific stock. Printed at page 38.

Millar Exhibit No. 30. Resolution Executive Committee Oregon Short Line Railroad Company, March 11, 1903, relative to purchase of Southern Pacific stock from U. P. R. R. Co. Printed at page 38.

Millar Exhibit No. 31. Resolution directors Oregon Short Line Railroad Company, November 12, 1903, relative to purchase and sale by Wm. Rockefeller of 300,000 shares Southern Pacific stock. Printed at page 40.

Millar Exhibit No. 32. Resolution Executive Committee Union Pacific Railroad Company, March 11, 1903, relative to release Southern Pacific stock from lien of Convertible Mortgage. Printed at page 41.

Millar Exhibit No. 33. Resolution Executive Committee Union Pacific Railroad Company March 11, 1903, relative to release Southern Pacific stock from lien of Convertible Mortgage. Printed at page 43.

Millar Exhibit No. 34. Resolution directors Union Pacific Railroad Company, February 26, 1902, relative to sale of stocks to Oregon Short Line Railroad Company. Printed at page 44.

Millar Exhibit No. 35. Resolution Executive Committee Union Pacific Railroad Company, March 11, 1903, relative to sale Southern Pacific stock to Oregon Short Line. Printed at page 46.

1931 Millar Exhibit No. 36. Resolution Executive Committee Union Pacific Railroad Company, March 11, 1903, relative to release of O. R. & N. stock from lien of Short Line Income B. mortgage. Printed at page 47.

Millar Exhibit No. 37. Correspondence with Kuhn, Loeb & Co. relative to Oregon Short Line Participating Bonds and resolution Executive Committee Union Pacific Railroad Company, July 17, 1902, approving action of Chairman. Printed at page 49.

Millar Exhibit No. 38. Chicago & Alton Voting Trust Agreement dated October 4, 1904, and supplemental agreement of January 30, 1906. Printed at page 52.

Millar Exhibit No. 39. Resolutions stockholders Oregon Short Line Railroad Company, October 14, 1903, approving San Pedro Agreements, Conveyances etc. Printed at page 69.

Millar Exhibits Nos. 40 to 51 inclusive. Printed contracts, deeds, etc., in connection with the San Pedro Co. Not printed.

Millar Exhibits Nos. 52 and 53. Preliminary agreement dated July 9, 1902, between William A. Clark and E. H. Harriman in respect to San Pedro Co. Printed at page 70.

Millar Exhibit No. 54. Resolution Executive Committee Oregon Short Line R. R. Co., August 18, 1904, authorizing E. H. Harriman to subscribe for Preferred Stock of the Southern Pacific Company. Printed at page 102.

Millar Exhibit No. 55. Resolution Executive Committee Oregon Short Line R. R. Co., March 9, 1905, authorizing purchase from Union Pacific R. R. Co. of Oregon Ry. & Navigation Co. stock. Printed at page 103.

Millar Exhibit No. 56. Pension rules Union Pacific R. R. Co. Not printed.

Millar Exhibit No. 57. Letter of J. C. Stubbs to E. H. Harriman

with memorandum of advertising appropriations for years 1905 and 1906. Printed at page 104.

1932 Millar Exhibits Nos. 58 to 65 inclusive. Requests addressed to Farmers Loan & Trust Co. for proxies for stock of San Pedro Co. deposited under the Clark-Harriman agreement. Not printed.

Millar Exhibit No. 66. Resolution Executive Committee Union Pacific R. R. Co., March 19, 1903, approving statement of amounts borrowed and loaned. Printed at page 105.

Millar Exhibit No. 67. Resolution Executive Committee Union Pacific Railroad Co., October 4, 1906, approving purchase of Baltimore & Ohio stock. Printed at page 107.

Millar Exhibit No. 68. Resolution Executive Committee Union Pacific Railroad Co., October 23, 1902, relative to agreement with Chicago and Northwestern Railway Co. Printed at page 109.

Millar Exhibit No. 69. Resolution directors Union Pacific Railroad Co., April 10, 1906, amending pension rules. Printed at page 111.

Millar Exhibit No. 70. Supplemental Chicago & Alton Voting Trust Agreement. Printed as part of Millar Exhibit No. 38.

Millar Exhibit No. 71. Letter dated November 5, 1903, from Wm. Rockefeller to E. H. Harriman in respect to 300,000 shares Southern Pacific stock. Printed at page 112.

Mahl Exhibit No. 1. Statement of outstanding Union Pacific Common Stock and the purposes for which same was issued. Printed at page 113.

Mahl Exhibit No. 2. Statement of outstanding Union Pacific Preferred Stock and the purposes for which it was issued. Printed at page 114.

Mahl Exhibit No. 3. List of stocks of other railroad companies owned by U. P. and O. S. L. acquired since last annual report. Printed at page 115.

Mahl Exhibit No. 4. Statement on annual reports of various railroads showing rates. Not printed.

Mahl Exhibit No. 5. Statement showing holdings of Portland & Asiatic Steamship Co. stock. Printed at page 116.

1933 Mahl Exhibit No. 6. Statements showing holdings Southern Pacific Common and Preferred. Printed at page 116.

Mahl Exhibit No. 7. Quotation from Union Pacific annual report June 30, 1906, relative to Profit and Loss Account. Printed at page 117.

Mahl Exhibit No. 8. Statement submitted to directors Union Pacific R. R. Co. at their meeting August 16, 1906, to be used in considering declaration of dividend. Printed at page 118.

Cornish Exhibit No. 1. Circular to holders Union Pacific stock asking for subscriptions to First Lien Convertible 4% Bonds. Printed at page 119.

Stubbs Exhibit No. 1. List of common agents U. P. R. R. Co. and S. P. Co. Printed at page 121.

Meyer Exhibit No. 1. Car Service Circular dated August 6, 1906. Printed at page 124.

Meyer Exhibit No. 2. Car Service Circular dated August 9, 1906. Printed at page 125.

Meyer Exhibit No. 3. Car Service Circular dated August 15, 1906. Printed at page 126.

Meyer Exhibit No. 4. Car Service Circular dated August 29, 1906. Printed at page 127.

Hahn Portland Exhibit No. 1. Map of O. R. & N. lines. Not printed.

Honeyman Portland Exhibits 2 and 3. Reports of Transportation Committees of Portland Chamber of Commerce for the years 1905 and 1906. Not printed.

Schwerin Exhibit No. 1. Statement showing result of operations of Portland and Asiatic steamship line for years 1902 to 1906 Printed at page 128.

Clark Exhibit No. 1. Contract between the San Pedro Co. and Armour Car Lines. Printed at page 130.

Clark Exhibit No. 2. Rates Los Angeles to Utah points. Printed at page 135.

Clark Exhibit No. 3. Directors San Pedro to July 1, 1903. Printed at page 136.

Wells Exhibit No. 1. Car loads citrus fruit handled season of 1905-6. Printed at page 136.

1934 Harriman Exhibit No. 1. Resolutions Union Pacific R. R. Co. Executive Committee relative to acquisition of stock of St. Joseph & Grand Island R. R. Co. Printed at page 137.

Harriman Exhibit No. 2. Statement showing stocks purchased since last annual report by U. P. R. R. Co. and O. S. L. and amounts paid therefor. Printed at page 143.

Harriman Exhibit No. 3. List of stocks bought and sold from February 1901 to June 30, 1906. Printed at page 148.

Harriman Exhibit No. 4. Letter of Kuhn, Loeb & Co. of Sept. 14, 1905, to E. H. Harriman and his reply confirming sale and purchase of B. & O. R. R. Co. stock. Printed at page 152.

Harriman Exhibit No. 5. Agreement dated Dec 23, 1903, for deposit with Kuhn, Loeb & Co., of Chicago & Alton Ry. Co. Preferred stock. Printed at page 153.

Harriman Exhibit No. 6. Same as Exhibit K. to Hillard Exhibit No. 1. Printed at page 198.

Harriman Exhibit No. 7. Resolution directors Chicago & Alton Railway Co. authorizing issue of $22,000,000. First Lien 3½ per cent. bonds. Printed at page 159.

Harriman Exhibit No. 8. Agreement May 5, 1900, between E. H. Harriman and others and the Chicago & Alton Ry. Co. in respect to lease of St. Louis, Peoria & Northern Ry. Printed at page 160.

Harriman Exhibit No. 9. Common stock dividend check to order of Kuhn, Loeb & Co. Printed at page 163.

Harriman Exhibit No. 10. Preferred stock dividend check to order of Kuhn, Loeb & Co. Printed at page 164.

Harriman Exhibit No. 11. Resolution directors Chicago & Alton Railroad Co. June 27, 1899 providing for issue of $40,000,000. Refunding Bonds. Printed at page 164.

Harriman Exhibit No. 12. Voucher for services as Chair-
1935 man Executive Committee from April 23, 1900 to June 30, 1904. Printed at page 167.

Kahn Exhibit No. 1. Letter of Kuhn, Loeb & Co. to E. H. Harriman dated Februay 5, 1901, *re* Convertible bonds. Printed at page 168.

Kahn Exhibit No. 2. Prices Illinois Central stock for years 1905, 1906 and 1907. Printed at page 169.

Kahn Exhibit No. 3. Correspondence between E. H. Harriman and Kuhn, Loeb & Co. during April and May, 1901, in reference to Northern Pacific stock. Printed at page 170.

Exhibit No. 112. Transactions with Goldman, Sachs & Co. Printed at page 175.

Hillard Exhibit No. 1. Answers to questions set forth in letter of Frank B. Kellogg to Robert Mather, dated January 8, 1907. Printed at page 178.

Exhibit "A" to above is combined balance sheet C. & A. R. R. Co. and C. & A. Ry. Co. 1898 to 1906 inclusive. Printed at page 182.

Exhibit "B" is statement showing details of increase in funded debt (including guaranteed stocks) from 1898 to 1906 inclusive. Printed at page 183.

Exhibit "C" is the Chicago & Alton Railroad Company Refunding Mortgage and is not printed.

Exhibit "D" is extract of minutes of meeting of directors Chicago & Alton Railroad Co. Sept. 7, 1899. Printed at page 188.

Exhibit "E" is statement of dividends paid May 7, 1900, on Chicago & Alton R. R. Co. stock. Printed at page 190.

Exhibit "F" is statement showing proceeds of sale of Chicago & Alton Refunding Bonds. Printed at page 192.

Exhibit "G" is the Articles of Incorporation of the Chicago & Alton Railway Co. and is not printed.

1936 Exhibit "H" is the First Lien 3½ per cent. mortgage of the Chicago & Alton Railway Co. and is not printed.

Exhibit "I" is the Chicago & Alton Railroad Co. (Consolidated) General Balance Sheet March 14, 1906. Printed at page 195.

Exhibit "J" is the Articles of Consolidation of the Chicago & Alton Railroad Co. and Chicago & Alton Ry. Co. and is not printed.

Exhibit "K" is the report to directors of C. & A. R. R. Co. upon capitalization of expenditures upon construction and betterment. Printed at page 198.

Exhibit "L" Statement of construction expenditures capitalized. Printed at page 204.

Hillard Exhibit No. 2. Journal voucher C. & A. R. R. Co. June 30, 1900. Printed at page 206.

Hillard Exhibit No. 3. Approval by stockholders C. & A. Ry. Co. April 3, 1900, purchase of stock of C. & A. R. R. Co. Printed at page 208.

Hillard Exhibit No. 4. Agreement with Louis L. Stanton for purchase of Chicago & Alton Railroad Co. stock. Printed at page 210.

Mahl Feb'y 28 Exhibit No. 1. Statement amounts, cost and pro-

ceeds Northern Pacific, Northern Securities and Great Northern stock. Printed at page 212.

Mahl Feb'y 28 Exhibit No. 2. Memorandum in respect Northern Pacific Purchase Money Certificates. Printed at page 213.

Mahl Feb'y 28 Exhibit No. 3. Action directors Union Pacific R. R. Co. Jan'y 31, 1901, in respect to financial arrangements. Printed at page 214.

Mahl Feb'y 28 Exhibit No. 4. Action Executive Committee Union Pacific R. R. Co. March 19, 1903, relative to amounts loaned and amounts borrowed. Printed at page 216.

Mahl Feb'y 28 Exhibit No. 5. Statement of dates and amounts received from sale of U. P. Convertible Bonds. Printed at page 218.

1937 Mahl Feb'y 28, Exhibit No. 6. Condensed statement of operations Union Pacific System for five months ending November 30, 1901. Printed at page 222.

Mahl Feb'y 28, Exhibit No. 7. Statement of stocks deposited March 9, 1905, with Equitable Trust Co. under Oregon Short Line Refunding Mortgage. Printed at page 223.

Mahl Feb'y 28, Exhibit No. 8. Condensed statement of operations Oregon Short Line from July 1, 1897, to June 30, 1906. Printed at page 223.

Mahl Feb'y 28, Exhibit No. 9. Statement showing issue and sale of Oregon Short Line Participating Bonds. Printed at page 224.

Mahl Feb'y 28, Exhibit No. 10. Statement showing sale of Oregon Short Line Refunding Bonds. Printed at page 225.

Mahl Feb'y 28, Exhibit No. 11. Statement showing operating surplus at the time $100,000,000 stock issue was authorized. Printed at page 226.

Mahl Feb'y 28, Exhibit No. 12. Resolution directors Southern Pacific Co. Jan'y 26, 1900, authorizing President to borrow money, pledge collateral etc. Printed at page 230.

MILLAR EXHIBIT No. 3.

Southern Pacific Company.

Date of meeting.	Date of closing of books.	Shares outstanding. Preferred.	Shares outstanding. Common.	Owned by holding Co. Preferred.	Owned by holding Co. Common.		
Apr. 4, 1900	Mar. 15, 1900	.....	1,884,471	.....	.....	Stock voted in person:	
						C. P. Huntington	398,714
						H. E. Huntington	15,000
						N. T. Smith	5
						Isaac L. Requa	100
						Stock voted by proxy	1,445,974
						Total	1,859,793
Jan. 18, 1901	Jan. 18, 1901	.....	1,978,080	.....	.....	Stock voted in person	154,600
						" " by proxy	1,581,960
						Total	1,736,560
Apr. 3, 1901	Mar. 16, 1901	.....	1,978,090	.....	.....	Stock voted in person:	
						E. H. Harriman	750,000
						Winslow S. Pierce	200
						Charles H. Tweed	100
						Stock voted by proxy	991,729
						Total	1,742,029
1939							
Apr. 9, 1902	Mar. 22, 1902	.....	1,978,492	.....	U. P. 750,000	Stock voted in person	31,686
						" " by proxy	1,542,206
						Total	1,573,892

Apr. 8, 1903	Apr. 3, 1903	.....	1,978,492	.....	OSL	900,000	Meeting Adjourned by Order of the Court. Minutes Do Not Show who Voted in Person. Stock voted by proxy (as per list).....	1,433,554
Apr. 6, 1904	Mar. 18, 1904	.....	1,978,492	.....	OSL	900,000	Stock voted in person (names not given)....	2,406
							" " by proxy (as per list).....	1,640,760
							Total.....	1,643,166
Jul- 20, 1904	Jul- 14, 1904	.....	1,978,492	.....	OSL	900,000	Stock voted in person (names not given)....	200
							" " by proxy (as per list).....	1,520,969
							Total.....	1,520,969
Apr. 5, 1905	Mar. 15, 1905	395,594	1,978,492	OSL 180,080	OSL	900,000	Stock voted in person (names not given)....	200
							" " by proxy (as per list).....	1,973,988
							Total.....	1,974,188
Apr. 4, 1906	Mar. 15, 1906	395,688	1,978,492	OSL 180,000	OSL	900,000	Stock voted in person (names not given)....	5
							" " by proxy (as per list).....	2,027,902
							Total.....	2,027,907

1940 MILLAR EXHIBIT No. 24.

Union Pacific Railroad Co.

(Certified Copy.)

(DIRECTORS, *Aug.* 29, 1899.)

O. S. L. Stock & Inc. Bds. & O. R. & N. Stocks. Acquisition of Short Line and Navigation Securities.

The Chairman of the Executive Committee laid before the Board the action of the Committee at its meeting of August 24, 1899, at which a resolution calling the present meeting was adopted. He briefly reviewed the relations through ownership and control of securities, which this Company bears towards the Oregon Short Line Railroad Company and, through that Company, to the Oregon Railroad and Navigation Company, calling attention to the fact that this Company owns substantially all of the stock of the Oregon Short Line Railroad Co., and that the latter Company owns, subject to the pledge under its Income B. Mortgage ($16,281,400 out of $24,000,000 of the outstanding common stock of the Oregon Railroad and Navigation Company and also $976,900 of the preferred stock of that company.

He referred to the amount of outstanding Income A 5% Bonds and Income B 4% Bonds of the Short Line Company and of the outstanding preferred stock of the Navigation Company as follows:

Shore Line Income A. 5% Bonds	$7,185,000
Short Line Income B. 4% Bonds	14,841,000
Navigation Preferred Stock	11,000,000
Navigation Common Stock (exclusive of Short Line Holdings)	7,718,600

He pointed out the considerations which in his view and that of the other members of the Executive Committee suggested the
1941 expediency of the acquisition by this Company of the Short Line B Bonds and the Navigation preferred stock through the issue of not exceeding a corresponding amount at par of the preferred stock of this Company, the acquisition of the Navigation Common stock (exclusive of holdings of the Short Line Company pledged under its B. Mortgage) through the issue of not exceeding a corresponding amount of the common stock of this Company, and the acquisition of the Short Line A 5% Income Bonds through the use of reserved bonds or cash resource of this Company upon such a basis as to save to this Company (in view of its proprietary interest in the Short Line) 1% per annum upon the outstanding A Bonds.

In this connection he discussed the obligatory and burdensome conditions of the Short Line Income Mortgage as affecting and hampering the financial policy of the Short Line Company, and its power to apply its current revenues to such improvements as ex-

perience indicated to be necessary in order to get the best and most permanent results from the operation of the property.

The Chairman also submitted statements of the financial results of the operations of the Union Pacific, Short Line and Navigation properties for the year ending June 30, 1899, and showing the comparative surplus results in proportion to the securities of each Company upon which interest or dividends were paid. He also compared the relative market prices for the several classes of securities affected by the proposed operation. He stated that the acquisition of the Navigation preferred stock and the Short Line B Bonds on the basis indicated would secure the control of the Navigation property and complete the extension of this Company's system to the Pacific Coast, would strengthen this Company's proprietorship in the Short Line, and substitute stock, upon which dividends would rest in the sound direction of the Company, in the place of bonds upon
1942 which the interest charge is now practically obligatory.

The Chairman concluded by recommending that appropriate action be taken by the Board to secure the following results:

1. An increase of the preferred stock of this Company by the amount of $25,000,000.

2. An increase of the common stock of this Company by the amount of $7,718,600.

3. An application of this increased preferred stock, or such part of it as may be necessary, to the acquisition of the outstanding B Income Bonds of the Short Line Company, and of the preferred stock of the Navigation Company.

4. Application of the increased common stock, or such part of it as may be necessary, for the acquisition of outstanding Navigation common stock exclusive of that owned by the Short Line Company).

5. The acquisition by this Company through the use of reserve bonds, or other cash resources, of the Short Line Income A Bonds on such a basis as will impose a charge not to exceed 4% per annum on the corresponding obligations or investments of this Company.

Upon full consideration of the statements and views submitted by the Chairman of the Executive Committee and of the subject matter of his recommendations, the following preambles and resolutions were, upon motion, duly made and seconded, unanimously adopted.

Whereas this Company is the owner of substantially all of the outstanding capital stock of the Oregon Short Line Railroad Company, whose lines of railroad in the States of Wyoming, Utah, Idaho and Oregon include a main line extending from a point on this Company's main line at Granger, in Wyoming, to Huntington, in Oregon, and said Oregon Short Line Railroad Company is the owner of a large majority of the outstanding common capital stock of the Oregon Railroad and Navigation Company, whose lines of railroad in the States of Oregon, Washington and Idaho include
1943 a main line extending from Huntington to Portland, in the State of Oregon, and,

Whereas the lines of Railroad of said Oregon Short Line Railroad

Company and said The Oregon Railroad and Navigation Company constitute extensions and auxiliary lines of the railroad of this Company, and are not parallel or competitive therewith and,

Whereas in the opinion of the Board of Directors it is desirable that the outstanding preferred stock of the said The Oregon Railroad and Navigation Company, amounting to $11,000,000, should be acquired by this Company, and it is believed that such acquisition can be accomplished, or substantially accomplished, by the issue and use therefor of this Company's preferred stock in an amount not to exceed the amount of preferred stock of said The Oregon Railroad and Navigation Company so acquired, and

Whereas in the opinion of the Board of Directors it is also desirable that the outstanding common stock of The Oregon Railroad and Navigation Company (exclusive of such stock owned by the Oregon Short Line Railroad Company and pledged under its Income B Mortgage) should be acquired by this Company, and it is believed that such acquisition can be accomplished, or substantially accomplished, by the issue and use therefor of this Company's common stock in an amount not to exceed the amount of such common stock of the said The Oregon Railroad and Navigation Company so acquired, namely $7,718,600, and

Whereas in the opinion of the Board of Directors it is desirable that the outstanding Collateral Trust Non-Cumulative Income B Bonds of the said Oregon Short Line Railroad Company should be acquired by this Company, and it is believed that such acquisition can be accomplished, or substantially accomplished, by issue and use of this Company's preferred stock in an amount not exceeding the amount of such Income B Bonds so acquired, and

1944 Whereas, for the purposes aforesaid, an increase of the preferred capital stock of this Company by the amount of $25,000,000 and an increase of its common capital stock by the amount of $7,718,600 are required, and to this end an amendment of the Articles of Association or Charter of this Company, authorizing such increase of its preferred and common capital stock is necessary;

Resolved, that the Board of Directors of Union Pacific Railroad Company hereby recommends to the stockholders of said Company that the following amendment of this Company's Articles of Association be adopted and made as and in the manner provided for by the laws of the State of Utah:

Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its preferred capital stock by the amount of $25,000,000 and its common capital stock by the amount of $7,718,600 amend its articles of association by substituting as Article 4 thereof, and in the place of said Article as amended and heretofore existing, the following:

Article 4. The amount of the capital stock of the said corporation shall be one hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($196,178,700), which shall be divided into and represented by one million nine hundred

and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders.

Of such capital stock one million (1,000,000) shares of one hundred dollars each may be issued as preferred stock and nine hundred and sixty-one thousand seven hundred and eighty-seven (961,787) shares of one hundred dollars ($100) each may be issued as common stock.

Such preferred stock shall be entitled in preference and
1945 priority over the common stock of said corporation to dividends in each and every fiscal year at such rate not exceeding four per cent. per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be noncumulative, and the preferred stock is entitled to no other or further share of profits. The directors may adopt proper by-laws to carry into effect the provisions of this Article.

Further Resolved, that a meeting of the stockholders of Union Pacific Railroad Company be and the same is hereby called to be held at the office of the said Company at Salt Lake City in the State of Utah on the ninth day of October 1899, at twelve o'clock, noon, for the purpose of considering and acting upon a proposed amendment of the Articles of Association of this Company, increasing its preferred capital stock by the amount of $25,000,000, and its common capital stock by the amount of $7,718,600, and of authorizing the issue and use of such additional stock, and of taking all suitable action in this behalf; and that the books for the transfer of stock (both common and preferred) be closed for the purpose of the meeting at the close of business on Saturday, September 9th, 1899, and reopened on the 11th day of October, 1899, or in the event of any adjournments of said meeting or of the annual meeting of stockholders to be held on October 10th, 1899, then on the day following the date of the last of any such adjourned meetings.

Further Resolved, that the Secretary of this Company be and he is hereby authorized and directed to give and publish notice of the special meeting of the stockholders of this Company as required or provided by law and by the by-laws of this Company, and in addition thereto to mail to each registered holder of stock of this Company, at the closing of the books on September 9, 1899, a copy of the foregoing resolution.

Further Resolved, that all matters connected with the various exchanges contemplated in the resolutions this day adopted,
1946 including any adjustment of interest or dividends on securities affected thereby, and the time and manner of carrying out the substantial purposes and plan of the foregoing resolutions, be and they are hereby left to the Executive Committee with full discretion and power.

Further Resolved, that the officers of this Company be and they are hereby authorized to acquire on its behalf the outstanding Collateral Trust Series A 5% Income Bonds of the Oregon Short Line Railroad Company, and to pay therefor an equivalent amount in the

First Mortgage four per cent. Gold Bonds of this Company, and that, to this end, the Secretary of the Company is hereby authorized and directed to issue to the holders of Oregon Short Line Railroad Company 5% Series A Income Bonds a notice and offer in the following form:

Union Pacific Railroad Company, desiring to acquire a majority of the 5% Income Bonds, Series A, of the Oregon Short Line Railroad Company, offers to holders of such bonds to exchange the same for its own First Mortgage four per cent. Gold Bonds, bond for bond, interest to be adjusted as accrued to September 1st.

This is not to constitute a standing offer, but it is intended this offer shall cease without further notification as soon as sufficient bonds have been exchanged for the purposes of Union Pacific Railroad Company.

Holders of the Oregon Short Line 5% Income Bonds, Series A, desiring to avail of this offer will promptly tender their bonds for exchange, either to the Old Colony Trust Company, Boston, or the Union Pacific Railroad Company, 120 Broadway, New York.

Further Resolved, that the foregoing offer shall be subject to termination at any time by action of the Executive Committee, to which committee the subject of the extent to which the Series A Income Bonds of the Oregon Short Line Railroad Company shall be acquired is referred with full power.

1947 MILLAR EXHIBIT No. 25.

Union Pacific R. R. Co.

(Certified Copy.)

(BOARD OF DIRECTORS, *Feb.* 20, 1901.)

Purchase of Southern Pacific Co. Stock and Issue of Union Pacific Convertible 4% Bonds.

The Chairman submitted to the meeting the record and resolutions of the Executive Committee at its meeting held on February 5, 1901, which were read as follows:

"The Chairman submitted to the Committee a letter from Messrs. Kuhn, Loeb & Co., as follows:

'FEBRUARY 4, 1901.

To the Executive Committee of the Board of Directors, Union Pacific Railroad Co.

GENTLEMEN: We have purchased 432,700 shares of the Southern Pacific Company of Kentucky, to be paid for as follows:

144,233 shares on February 11th;

288,467 shares on, or at our option before, July 10th, with interest at 4% per annum from February 11th, all said shares to be deposited with a Trust Company until entire payment is completed.

We have further purchased the following shares:

200,000 shares to be paid for on, or at our option before March 4th.
45,000 shares to be paid for, one-half on February 5th, and one-half on February 8th.

The average price at which we have made the above purchases, exclusive of interest accruing, is $50.6146 per share.

1948 We hereby offer to transfer to you our entire purchases as above specified, upon the terms and conditions as entered into and set forth above, your Company to take over and assume the contracts of purchase.

In order that your holdings of Southern Pacific stock may aggregate 750,000 shares, we agree to sell to you on March 4, 1901, 72,300 additional shares at the same price, viz.: $50.6146 per share, plus interest at the rate of 4% from February 11, 1901.

In addition to the above purchase prices, we are to be paid by your company two and one-half dollars ($2.50) per share upon said 750,000 shares, as profit to us for the risk assumed in making these purchases.

If you conclude to accept this offer, please advise us promptly, and we are,

Yours very truly,

(Signed) KUHN, LOEB & CO.'

Upon consideration of the proposition of Kuhn, Loeb & Co., and upon motion duly made and seconded, it was

Resolved, that this Company will and does hereby accept the proposition of Messrs. Kuhn, Loeb & Co., as contained in their communication to this Company, dated the 4th day of February, 1901, and now submitted to this Committee.

Further Resolved, that for the purposes of meeting present and future financial requirements of the Company, and for such lawful corporate purposes as may hereafter be determined by the Board of Directors or Executive Committee of this Company, this Company will create an issue of gold bonds to run for a term of ten years, to be known as "First Lien Convertible Four Per Cent. Gold Bonds," to be coupon bonds, with provision for registration, all to be dated on the first day of May, 1901, to bear interest at the rate of 4% per annum, payable semi-annually on the first day of May and

1949 November in each year, both principal and interest being payable in the City of New York, in the gold coin of the United States of America, of the present standard of weight and fineness, without deduction for United States, State, County, or Municipal taxes, which the Company may be required to pay or to retain therefrom under any present or future law, and said bonds to be convertible at the option of the holders, on or at any time before May 1st, 1906, into the Common Stock of Union Pacific Railroad Company, at par, that is at the rate of ten shares of stock for each bond, with an adjustment of current or accrued interest and dividends as between the said bonds and the stock into which the same may be converted, and said bonds to be redeemable at the option of the Company at a premium of two and one-half per cent., on any interest day after said first day of May, 1906; that the total issue of

said bonds for all purposes shall be limited to the aggregate principal sum of $100,000,000, and all of said bonds shall be equally secured by an indenture or deed of trust to a responsible Trust Company of the City of New York, as Trustee, which said mortgage or deed of trust shall contain the full, usual and ordinary covenants and provisions for the security of railway bonds of like character, and shall embrace and cover the following, among other, properties and assets, namely: the unmortgaged lines of railway of this Company, and all or such parts of the securities belonging to this Company and within its control as shall be agreed upon between this Company and the purchasers of, or guarantors of the subscriptions for said bonds or the initial issue thereof hereinafter provided for.

Further resolved, that $40,000,000, First Lien Convertible Four Per Cent. Gold Bonds of this Company, of the issue which is authorized by the foregoing resolution, shall be offered to the holders of the Common and Preferred Stock of this Company for subscription, at par, with any necessary adjustment of interest, provided that the offer of the said bonds for subscription by the stock-
1950 holders may be in such proportions to the outstanding shares of stock as will enable an easily practicable apportionment—for example, one bond may be offered for subscription to the holder of 50 shares of stock, and any balance of unsubscribed bonds remaining after such apportionment may be disposed of at par (less reasonable commission) in such way as shall be found most expedient, and that out of the payments made upon said subscriptions and the proceeds of the sale of said $40,000,000 of bonds this Company will pay for the 750,000 shares of the Capital Stock of the Southern Pacific Company, the specific acquisition of which is authorized by the preceding resolution.

Further resolved, that whereas it is important to the Company to insure at once funds for present commitments and future requirements, that the sale of said $40,000,000, of bonds be definitely assured, and that pending the necessary proceedings for the creation of said bonds, such funds as may be necessary to meet such commitments and requirements be available, Messrs. Kuhn, Loeb & Co. be and they are hereby requested and authorized to agree to underwrite the subscription by the stockholders of this Company of said $40,000,000, of the First Lien Convertible Four Per Cent. Gold Bonds of this Company, and this Company hereby undertakes that it will pay to Messrs. Kuhn, Loeb & Co., or such syndicate as they may form, a commission of two and one-half per cent. upon said $40,000,000, of bonds, and to said Kuhn, Loeb & Co. for their individual services a further commission equal to two and one-half per cent. upon said $40,000,000, of bonds; provided, however, that if for any reason the stockholders of this Company should fail to confer the necessary authority for increasing the Capital Stock, and otherwise consummating the plan contemplated in these resolutions, then, at the option of the holders, the bonds above provided for, or such other evidences of debt as the Company may have issued in anticipation as against advances made to it, will become due and pay-
1951 able on July 1, 1901, upon not less than thirty days' notice to this Company, and, in such case, the syndicate is to refund

one-half of the commission, namely one and one-fourth per cent.; the nature and extent of the security for said bonds and other evidences of debt to be subject to the approval of Messrs. Kuhn, Loeb & Co., and the form of the mortgage or other papers to the approval of their counsel, and Messrs. Kuhn, Loeb & Co. to have the option to take, upon like terms, any additional bonds of the same issue which this Company may hereafter issue prior to May 1, 1906.

Further Resolved, that the Chairman of this Committee be and he is hereby authorized to communicate to Messrs. Kuhn, Loeb & Co. the acceptance on the part of this Company of their offer to sell 750,000 shares of stock of the Southern Pacific Company and the terms or substance of all resolutions adopted at this meeting, such communication of the Chairman to serve as this Company's undertaking to Messrs. Kuhn, Loeb & Co. in the premises.

Further Resolved that the proper officers of this Company, under the direction of the Chairman of the Executive Committee be and they are hereby authorized and directed to take any and all action necessary or proper, or by the said Chairman deemed desirable, to carry out each and all of the foregoing resolutions, except in such respects as the execution of such resolutions is specifically entrusted to the Chairman.

"*Further resolved* that, except as to the fundamental conditions of the new issue of bonds heretofore authorized—such as the maximum amount thereof and their rate of interest—discretion and latitude in the variation of the foregoing plan are hereby entrusted to the Chairman of this Committee, with power to carry out the general and substantial purposes of the plan in these resolutions contemplated as in his judgment may be practicable and desirable.

"*Further resolved* that, pending final and complete action in the execution of said plan, temporary provision for any of the
1952 purposes expressed in these resolutions may be made by the Chairman of this Committee in the name and on behalf of this Company, through the issue of any obligations or certificates of indebtedness of this Company, or by the sale or by the pledge or other temporary disposition of such property and assets of this Company as may in his judgment be required for such purpose.

"Thereupon, the following preamble and resolutions were unanimously adopted:

"Whereas, This Company, by action of its Board of Directors and Executive Committee, has authorized an issue of $100,000,000 of Ten-Year Four Per Cent. Gold Bonds, to be known as "First Lien Convertible Four Per Cent. Gold Bonds," convertible at the option of the holders on or at any time before May 1, 1906, into the common capital stock of Union Pacific Railroad Company at par, that is at the rate of ten shares of stock for each bond, said bonds to be redeemable at the option of the Company at a premium of 2½ per cent. on any interest day after said first day of May, 1906, and to be secured by a first mortgage upon unmortgaged railway belonging to the Company, and by the pledge of securities owned by it and held in its treasury; and,

"Whereas, $40,000,000. of said bonds, are to be underwritten and

offered to the stockholders of Union Pacific Railroad Company at par; and,

"Whereas, an increase of the common capital stock of the Company by the amount of $100,000,000 is required, and to this end an amendment of the Articles of Association or charter of this Company authorizing such increase of its common capital stock is necessary;

"Resolved, that recommendation is hereby made to the stockholders of the Union Pacific Railroad Company that the following amendment of this Company's Articles of Association be adopted and made as and in the manner provided for by the laws of the State of Utah, viz.:

1953 *Amendment to Articles of Association of Union Pacific Railroad Company.*

"Know all men by these presents, That Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of one hundred million dollars ($100,000,000) amend its Articles of Association by substituting as Article 4 thereof, and in place of said article as originally and heretofore existing, the following:

"Article 4. The amount of the capital stock of the said corporation shall be Two hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($296,178,700), which shall be divided into and represented by two million nine hundred and sixty-one thousand seven hundred and eighty-seven (2,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders. Of such capital stock, one million (1,000,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and one million nine hundred and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of one hundred dollars ($100) each may be issued as common stock.

"Such preferred stock shall be entitled in preference and priority over the common stock of said corporation to dividends in each and every fiscal year at such rate, not exceeding four per cent. per annum, payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article.

"Further Resolved, that a meeting of the stockholders of Union Pacific Railroad Company be, and the same is hereby, called to be held at the office of the said company at Salt Lake City in the
1954 State of Utah, on the 23d day of March, 1901, at 12 o'clock noon, for the purpose of considering and acting upon the proposed amendment of the Articles of Association of this Company increasing its common capital stock by the amount of $100,000,000, and of authorizing the issue and use of such additional stock, and of taking all suitable action in this behalf and in the premises, and that

the books for the transfer of stock (both common and preferred) be closed for the purpose of the meeting, as well as for the purposes of the dividends already declared, at 12 o'clock noon, on February 23, 1901, and reopened at 10 A. M. on March 25, 1901.

"*Further Resolved*, that the Secretary of this Company be, and he is hereby, authorized and directed to give and publish notice of the special meeting of the stockholders of this Company as required or provided by law or by the by-laws of this Company, and, in addition thereto, mail to each registered holder of stock of this Company at the closing of the books on February 23, 1901, a copy of this action."

Upon motion, duly made and seconded, it was unanimously

Resolved, that this Board hereby approves the action of the Executive Committee as set forth and contained in the resolutions of said Committee now submitted to this Board, and that such action and every part thereof is hereby adopted as the action of this Board in the premises.

Mr. Schiff and Mr. Kahn were excused from voting, and did not vote upon the foregoing resolution.

Upon motion, duly made and seconded, it was unanimously

Resolved, that for the purposes of meeting the present and future financial requirements of the Company, and for such lawful corporate purposes as may hereafter be determined by the Board of Directors or Executive Committee of this Company, this Company will create an issue of Gold Bonds to run for a term of ten 1955 years, to be known as "First Lien Convertible Four Per Cent. Gold Bonds," to be coupon bonds with provision for registration, all to be dated on the first day of May, 1901, to bear interest at the rate of 4% per annum, payable semiannually on the first days of May and November in each year, both principal and interest being payable in the City of New York, in gold coin of the United States of America of the present standard of weight and fineness, without deduction for United States, State, County, or Municipal taxes which the Company may be required to pay or to retain therefrom, under any present or future law, and said bonds to be convertible, at the option of the holders, on or at any time before May 1, 1906, into the common stock of Union Pacific Railroad Company, at par, that is, at the rate of ten shares of stock for each bond, with an adjustment of current or accrued interest and dividends as between the said bonds and the stock into which the same may be converted, the said bonds to be redeemable at the option of the Company at a premium of two and one-half per cent. on any interest day after said first day of May, 1906; that the total issue of said bonds for all purposes shall be limited to the aggregate principal sum of $100,000,000 and all said bonds shall be equally secured by an indenture or deed of trust to The Mercantile Trust Company of the City of New York, as Trustee, or to such other responsible Trust Company of said City as shall be selected by the Executive Committee, which said mortgage or deed of trust shall contain the full, usual and ordinary covenants and provisions for the security of railway bonds of like character, and shall embrace and cover the following lines of railway of this Com-

pany, and the following securities owned by it and held in its Treasury:

The lines of railway to be covered by said mortgage are as follows:

The line of railroad, together with its appurtenances, formerly belonging to the Echo and Park City Railway Company, extending from its Junction with the main line of the Union Pacific Railroad at Echo, in Utah, to the terminus of said line at Park City,
1956 in Summit County, Utah, a distance of about 30.19 miles.

The line of railroad, together with appurtenances, formerly belonging to the Union Pacific, Denver, and Gulf Railway Company, and known as the Julesburg Branch, extending from Julesburg in the State of Colorado to La Salle in said State, a distance of about 151.53 miles.

The line of railroad, together with its appurtenances, formerly belonging to the Junction City and Fort Kearney Railway Company, extending from Junction City in the State af Kansas to Belleville in said State, a distance of about 88 miles.

The line of railroad, together with its appurtenances, formerly belonging to Kearney and Black Hills Railway Company, extending from Kearney in the State of Nebraska to Callaway in said State, a distance of about 65.72 miles.

The lines of railroad, together with their appurtenances, formerly belonging to the Omaha & Republican Valley Railway Company, and consisting of a line of railroad extending from Valley in Douglas County, Nebraska, southerly to Manhattan, with branch to Blue Springs and a branch from Valparaiso to Stromsberg in Nebraska; also a line extending from Columbus, Nebraska, to Norfolk, Nebraska, with a branch line extending from Oconee to Albion, and a branch from Genoa to Cedar Rapids, Nebraska; also a line of railroad extending from Grand Island, Nebraska, to Howard, Nebraska, with a spur from Scotia Junction to Scotia, Nebraska, and a line extending from St. Paul in Howard County, Nebraska, to Loup City, in Sherman County, Nebraska, and also a line extending from Nantasket to Pleasanton in Nebraska, in all consisting of about 482.02 miles of railroad.

The line of railroad formerly belonging to the Salina and Southwestern Railway Company, with its appurtenances, extending from Salina, Kansas, to McPherson, Kansas, a distance of about 35.47 miles.

1957 The line of railroad formerly belonging to the Solomon Railroad Company, together with its appurtenances, extending from Solomon, Kansas, to Beloit, Kansas, a distance of about 57.04 miles.

The line of railroad, together with its appurtenances, formerly belonging to the Union Pacific, Lincoln & Colorado Railway Company, extending from Salina, Kansas, by way of Oakley to Colby, Kansas, a distance of about 225.52 miles.

Total mileage about *1,135.51 miles.*

The securities owned by this Company and to be covered by said mortgage are as follows:

Oregon Short Line Railroad Co. Series A Income Bonds	$6,591,000
Oregon Short Line Railroad Company Series B Income Bonds	14,590,000
Oregon Short Line R. R. Co.'s Capital Stock	27,337,650

Oregon R. R. & Nav. Co.'s Capital Stock:

Common Stock	7,649,800
Preferred Stock	9,855,506

Also such further bonds, stocks, and other securities and property now owned or hereafter acquired by this Company as this Company may, by action of this Board or of the Executive Committee, specifically pledge under said mortgage.

Upon motion, duly made and seconded, the following preamble and resolutions were unanimously adopted:

Whereas, This Company, by action of its Board of Directors and Executive Committee, has authorized an issue of $100,000,000 of Ten-Year Four Per Cent. Gold Bonds, to be known as "First Lien Convertible Four Per Cent. Gold Bonds," convertible at the option of the holders on or at any time before May 1, 1906 into the common capital stock of Union Pacific Railroad Company at par, that is at the rate of ten shares of stock for each bond, said bonds to be redeemable at the option of the Company at a premium of 1958 2½ per cent. on any interest day after said first day of May, 1906, and to be secured by a first mortgage upon unmortgaged railway belonging to the Company, and by the pledge of securities owned by it and held in its treasury; and

Whereas, $40,000,000. of said bonds, are to be underwritten and offered to the stockholders of Union Pacific Railroad Company at par; and,

Whereas, an increase of the common capital stock of the Company by the amount of $100,000,000 is required, and to this end an amendment of the Articles of Association or charter of this Company authorizing such increase of its common capital stock is necessary.

Resolved, that recommendation is hereby made to the stockholders of the Union Pacific Railroad Company that the following amendment of this Company's Articles of Association be adopted and made as and in the manner provided for by the laws of the State of Utah, viz.:

"Amendment to Articles of Association of Union Pacific Railroad Company.

"Know all men by these presents, that Union Pacific Railroad Company, a corporation organized and existing under the laws of the State of Utah, does hereby, for the purpose of increasing its common capital stock by the amount of one hundred million dollars ($100,000,000) amend its Articles of Association by substituting as Articles 4 thereof, and in place of said article as originally and heretofore existing, the following:

"Article 4. The amount of the capital stock of the said corporation shall be Two hundred and ninety-six million one hundred and seventy-eight thousand seven hundred dollars ($296,178,700.) which shall be divided into and represented by two million nine hundred and sixty-one thousand seven hundred and eighty-seven (2,961,787) shares of the par value of one hundred dollars ($100) each, and each of which shares shall be entitled to one vote at any meeting of stockholders. Of such capital stock, one million
1959 (1,000,000) shares of one hundred dollars ($100) each may be issued as preferred stock, and one million nine hundred and sixty-one thousand seven hundred and eighty-seven (1,961,787) shares of one hundred dollars ($100) each may be issued as common stock.

"Such preferred stock shall be entitled in preference and priority over the common stock of said corporation to dividends in each and every fiscal year at such rate, not exceeding four per cent. per annum payable out of net profits, as shall be declared by the Board of Directors. Such dividends are to be non-cumulative and the preferred stock is entitled to no other or further share of the profits. The directors may adopt proper by-laws to carry into effect the provisions of this article."

Further resolved, that a meeting of the stockholders of Union Pacific Railroad Company be, and the same is hereby, called to be held at the office of the said Company at Salt Lake City, in the State of Utah, on the 23rd day of March, 1901, at 12 o'clock noon, for the purpose of considering and acting upon the proposed amendment of the Articles of Association of this Company increasing its Common Capital Stock by the amount of $100,000,000., and of authorizing the issue and use of such additional stock, and of taking all suitable action in this behalf and in the premises, and that the books for the transfer of stock (both Common and Preferred) be closed for the purpose of the meeting, as well for the purposes of the dividends already declared, at 12 o'clock noon on February 23rd, 1901, and reopened at 10 a. m. on March 25th, 1901.

Further resolved, that the Secretary of this Company be, and he is hereby, authorized and directed to give and publish notice of a special meeting of the stockholders of this Company as required or provided by law or by the by-laws of this Company, and, in addition thereto, mail to each registered holder of stock of this Company at the closing of the books on February 23, 1901, a copy of this action.

1960

MILLAR EXHIBIT No. 26.

Union Pacific Railroad Co.

(Certified Copy.)

(DIRECTORS, *Jan.* 31, 1901.)

(*Securities of Other Companies*).

The general subject of making financial provisions for contemplated acquisitions of securities of other companies, and for branches and extensions of this Company's system, and the subject of protecting the properties of the separate companies embraced in the system, and of unifying the operation of the several lines constituting the system, were considered and discussed at length, and, upon motion duly made and seconded, it was

Resolved:

1. That reference be and it is hereby made to the Executive Committee, with full power, of the subject of making immediate provision for present and future financial requirements of the Company, including provisions for financing acquisitions, now or hereafter contemplated in the interest of this Company, of securities of any other company or companies, and including full power to conduct and provide for all measures, proceedings, and actions to carry out such acquisitions; and among the measures which may be so taken for said purpose, or for any of the purposes expressed in these resolutions, the Executive Committee is hereby authorized to provide for the issue and negotiation of bonds and obligations of this Company, in an amount not exceeding $100,000,000. Said Committee may determine the terms and period, or periods, of said bonds and the rate of interest, not to exceed four per cent., which the same shall bear; and for the purpose of securing the payment of the principal and interest of said bonds, as the same shall
1961 mature, the Executive Committee may authorize the making, execution, and delivery by this Company of a mortgage, deed of trust or pledge, upon such terms, conditions, and trusts as said Committee may determine, of lines of railroad, franchises, stocks, bonds, assets, and properties of any kind belonging or which may belong to this Company.

2. That any such new bonds which may be issued by this Company may be made convertible at any time, at the option of the holders, into the common stock of this Company, and the Executive Committee may take any and all steps necessary and considered by it proper to provide for such increase of the authorized issue of this Company's common stock as will enable such conversion of all such new bonds as may be authorized for issue and negotiation by this Company.

3. That, pending such final and complete action as may be determined by the Executive Committee and taken by this Company

in the premises, temporary provision for any of the purposes herein expressed may be made by the Chairman of the Executive Committee, in the name and on behalf of this Company, through the issue of any obligations or certificates of indebtedness of this Company, or by the sale or by the pledge or other temporary disposition of such property and assets of this Company as may in his judgment be required for such purposes.

4. That all matters touching the financial and operating relations between this Company and any and all other companies of the system are hereby referred to the Executive Committee, with full power; and said Committee is hereby authorized to provide in its discretion for settlement of accounts between said companies and the acquisition of any property and any assets of any other of said companies, and for any lease or operating agreements, and for any control or use of the properties and assets of said other companies that said Committee may deem advisable, and upon such terms, conditions and guarantees as said Committee may determine or approve.

1962 MILLAR EXHIBIT NO. 27.

Union Pacific Railroad Company.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *Dec.* 13, 1906.)

(*Equipment Association Organization.*)

The Chairman stated that in his opinion it was advisable to have a corporation formed for the purpose of purchasing equipment to be used by this Company and its allied lines, the intention being that the Equipment Company should take title to the rolling stock and then lease it to the various associated companies, or at all events should hold the title thereto until such rolling stock should be distributed among the said companies; that, pursuant to this plan, he had heretofore caused a corporation to be organized under the laws of the State of Utah, known as "Union Pacific Equipment Association," with an authorized capital stock of $100,000, and had caused the entire amount of this stock to be subscribed for account of Union Pacific Railroad Company as follows: W. H. Bancroft, 996 shares; P. L. Williams, W. S. McCornick, E. Buckingham, and C. J. McNitt, 1 share each; that under the laws of Utah it was necessary that 10 per cent. of these subscriptions should be paid in in cash at the time of the organization of the Company, and that he had directed the Union Pacific Railroad Company's treasurer to pay this sum, namely, $10,000 into the treasury of Union Pacific Equipment Association, which had been done.

On motion, duly made and seconded, it was unanimously.

Resolved, That the action of the Chairman of the Executive Committee in causing the organization of Union Pacific Equipment As-

1963 sociation under the laws of the State of Utah, with a capital stock of $100,000, and in causing the said stock to be subscribed for account of this Company, and in directing that 10 per cent. thereof be paid in in cash; and the action of the treasurer of this Company in paying $10,000 into the treasury of Union Pacific Equipment Association upon said subscriptions be and the same is hereby ratified, approved, and confirmed.

Further Resolved, That the treasurer of this Company be and he is hereby authorized and directed to pay into the treasury of said Union Pacific Equipment Association the remainder of said subscriptions, namely, the sum of $90,000 when and as the same shall be called by the Board of Directors of said Union Pacific Equipment Association.

MILLAR EXHIBIT No. 28.

Union Pacific Railroad Company.

(Certified Copy.)

EXECUTIVE COMMITTEE, *Dec.* 13, 1906.

(*Pacific Fruit Express Company Organization.*)

The Chairman stated that the contract between this Company and Armour Car Lines with reference to the transportation of fruit and other perishable freight, contained a provision authorizing the termination thereof upon six months' notice from either party, and that the latter had given notice of its intention to terminate such contract; that he was advised that under the Interstate Commerce Act as amended Railroad Companies are required to provide refrigerator cars and to show the charges for such cars and for the service of refrigeration, ventilation, etc., in their tariffs, and to include such

1964 charges in their freight bills; that under the circumstances it seemed advisable for this Company and the Southern Pacific Company to provide for the incorporation of a Company, whose stock should be taken by them, to acquire and furnish them and their allied lines refrigerator cars required by them, and to take over and carry on the business of furnishing cars for traffic originating upon their lines which require refrigeration and ventilation, and of attending to the icing and ventilation of such cars; and that, pursuant to this plan, he had heretofore caused a corporation, known as "Pacific Fruit Express Company" to be organized under the laws of the State of Utah, with an authorized capital of $12,000,000, and had arranged with W. H. Bancroft to subscribe for 11,996 shares, and P. L. Williams, D. E. Burley, J. A. Reeves, and F. H. Knickerbocker each to subscribe for 1 share, of such capital stock, and that such subscriptions had been made for account of Union Pacific Railroad Company and Southern Pacific Company each to take one-half of the shares so subscribed for. He further stated that, under the

laws of the State of Utah, it was necessary that 10 per cent. of the authorized capital stock should be paid in in cash at the time of the organization of the company, and that he had directed the treasurer of the Union Pacific Railroad Company to pay that amount, one-half of it to be repaid to said company by the Southern Pacific Company.

The Chairman further stated that, in furtherance of this plan, he had some time ago authorized the purchase for account of said Pacific Fruit Express Company of 6000 refrigerator cars at a cost of $1700 each, amounting in the aggregate to $10,200,000, some of which cars were about ready for delivery, and it was hoped that the others would be delivered by the time or very soon after the expiration of the contract with Armour Car Lines Company under the notice heretofore given; and he further stated that, in order to provide the Pacific Fruit Express Company with the funds necessary to pay for such cars, it should issue its stock from time to time,
1965 and the Southern Pacific Company and Union Pacific Railroad Company each should take one-half of such stock when and as issued at par.

The Chairman further stated that it might be necessary or advisable to admit some other railroad companies as stockholders of said Pacific Fruit Express Company, but that this could be done later by the sale by the Southern Pacific Company and Union Pacific Railroad Company of portions of the stock so taken by them to such other railroad companies.

On motion, duly made and seconded, it was unanimously

Resolved, (1), That the action of the President of this Company in causing the incorporation and organization of Pacific Fruit Express Company under the laws of the State of Utah, with an authorized capital stock of $12,000,000, and in arranging for the subscription on account of this Company for 6,000 shares of such capital stock, and for the payment into the treasury of said Company of 10 per cent. of the authorized capital stock, be and such action is hereby ratified and approved.

Resolved, (2), that the President of this Company be and he is hereby authorized to subscribe and pay for and receive, or to arrange for the subscription and payment for and receipt of, one-half of the remaining capital stock of said Pacific Fruit Express Company, from time to time, as issued by said Company, pursuant to the recommendation of the Chairman, as above set forth.

Resolved (3), That this Company, as a subscriber to the capital stock of said Pacific Fruit Express Company, hereby assents to the purchase by said company of 6000 refrigerator cars at a cost of $1700 each, amounting in the aggregate to $10,200,000, as above stated by the Chairman of this Committee.

1966

MILLAR EXHIBIT No. 29.

Oregon Short Line R. R. Co.

(Certified Copy.)

EXECUTIVE COMMITTEE, *March* 13, 1903.

Authority to Sell Southern Pacific Stock.

The Chairman reported that the 900,000 shares of the capital stock of the Southern Pacific Company, sold to this Company in accordance with the resolution adopted by this Committee on March 11, 1903, had been delivered to this Company.

Upon motion, duly made and seconded, it was unanimously

Resolved, that the Chairman be and is hereby authorized to sell and dispose of all or any part of the shares of stock of the Southern Pacific Company held by this Company at not less than its cost to this Company, upon such terms and conditions as he may deem advisable.

MILLAR EXHIBIT No. 30.

Oregon Short Line R. R. Co.

(Certified Copy.)

(EXECUTIVE COM., *Mar.* 11, 1903.)

(Southern Pacific.)

Purchase of Southern Pacific Stock.

There was presented to the meeting a certified copy of a resolution adopted by the Executive Committee of the Board of Directors of Union Pacific Railroad Company, offering to sell to this Com-
1967 pany, upon the terms and conditions set forth in said resolution, certain shares of the capital stock of the Southern Pacific Company, which resolution is as follows:

"On motion duly seconded, the following preamble and resolution were unanimously adopted:

Whereas the sale of certain securities to Oregon Short Line Railroad Company authorized by resolutions adopted by the Board of Directors of this Company on February 26, 1902, has not been consummated with reference to the 900,000 shares of the capital stock of the Southern Pacific Company, and it is desired that as respects said shares the sale thereof shall be had upon terms modified and fixed as herein provided; and

Whereas Oregon Short Line Railroad Company has consented that the sale be so made and consummated,

Resolved, that this Company sell to Oregon Short Line Railroad Company 900,000 shares of the stock of the Southern Pacific Company, for the sum or price of $55,428,183.38, and that in partial payment for such purchase price this Company accept, at their par value, 162,814 shares of the common capital stock of Oregon Railroad & Navigation Company, the balance of said purchase price, upon the settlement of the accounts between this Company and the Oregon Short Line Railroad Company, to be paid by the issue to this Company of obligations of the Oregon Short Line Railroad Company bearing four per cent. interest and payable on demand.

Further Resolved, that the proper officers of this Company be and they are hereby authorized to arrange and carry out such sale."

"I, Alex. Millar, Secretary of Union Pacific Railroad Company, do hereby certify that the foregoing is a true copy of a preamble and resolution duly adopted by the Executive Committee of the
1968 Board of Directors of said Company at a meeting of said Committee held on March 11, 1903.

Attest:

[SEAL.] ALEX. MILLAR, *Secretary.*"

Upon motion, duly made and seconded, it was unanimously

Resolved, that this Company hereby accepts the offer made to it by Union Pacific Railroad Company to sell to this Company 900,000 shares of the capital stock of the Southern Pacific Company upon the terms and conditions set forth in said offer.

Further Resolved, that the proper officers of this Company be and they are hereby authorized and empowered to take such action, execute such instruments, and execute, deliver, or receive such securities and obligations, as may be necessary or proper to carry out and complete such sale.

MILLAR EXHIBIT No. 31.

Oregon Short Line R. R. Co.

(Certified Copy.)

(DIRECTORS, *Nov.* 12, 1903.)

(S. P. Co.)

Sale and Purchase of Southern Pacific Stock.

The Chairman reported that, in pursuance of a letter received from Mr. Wm. Rockefeller, dated November 5, 1903, and submitted to the Board, he had closed the transaction in respect of the 300,000 shares of the capital stock of the Southern Pacific Company, and that the officers of the Company had paid the principal
1969 amount involved, together with interest and commission;

Wherefore, on due consideration and discussion, and on motion duly made and seconded, it was

Resolved, that the action of the Chairman in the transactions with Mr. Rockefeller relating to said stock of the Southern Pacific Co. be in all things adopted, ratified and approved.

MILLAR EXHIBIT No. 32.

Union Pacific Railroad Co.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *March* 11, 1903.)

Release of S. P. Stock from First Lien Mtge.

On motion, duly seconded, the following preamble and resolutions were unanimously adopted:

Whereas, by Article Twelfth of this Company's First Lien Mortgage and Deed of Trust, dated April 15, 1901, to the Mercantile Trust Company, as Trustee, it is provided among other things that this Company has the right at any time or times, by resolution of its Board of Directors or Executive Committee to require the said Trustee to deliver to this Company fully discharged from the lien and trusts of said mortgage, any and all shares of the capital stock of the Southern Pacific Company pledged with the said Trustee upon the delivery to the said Trustee, in substitution therefor, of certain securities in said Articles mentioned, such substitution to be upon the basis of valuation in said article fixed; and

Whereas, this Company desires to secure the delivery to it, fully discharged from the liens and trusts of said mortgage, 1970 495,140 shares of the capital stock of the Southern Pacific Company, and to deliver to the said Trustees, in substitution therefor, the following described securities named in said Articles, viz.: 162,814 shares of the par value of One Hundred (100) Dollars each, of the common capital stock of the Oregon Railroad & Navigation Company; $8,476,000 par value, of the Income B Bonds of the Oregon Short Line Railroad Company,

Resolved that the Mercantile Trust Company, the Trustee of this Company's First Lien Mortgage and Deed of Trust, dated April 15th, 1901, be and it is hereby required to deliver to this Company, fully discharged from the lien and trust of said mortgage, 495,140 shares of the capital stock of the Southern Pacific Company pledged with said Trustee under said mortgage, and to accept, in substitution therefor, the following described securities mentioned in Article Twelfth of said mortgage, and which, by the terms of said article, may be received by said Trustee in substitution for the shares of the capital stock of the Southern Pacific Company, viz.: 162,814 shares of the par value of One Hundred (100) Dollars each, of the common stock of the Oregon Railroad & Navigation Company; $8,476,000 par value, of the Income B Bonds of the Oregon Short Line Railroad Company, which said bonds are stamped or to be stamped as follows:

"With the consent of the owner and holder of this bond the 162,814 shares of the common capital stock of the Oregon Railroad & Navigation Company pledged with the Trustee of the mortgage referred to in said bond have been fully released from the trusts of said mortgage and delivered to the Oregon Short Line Railroad Company."

Further Resolved, that the proper officers of this Company be and they are hereby authorized and empowered to execute such instruments and take such action as may be necessary or proper to carry out the foregoing resolution.

1971 MILLAR EXHIBIT No. 33.

Union Pacific R. R. Company.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *March* 11, 1903.)

Release of Southern Pacific Stock from First Lien Mtge.

On motion, duly seconded, the following preamble and resolution were unanimously adopted:

Whereas by Article Twelfth of this Company's First Lien Mortgage and Deed of Trust, dated April 15th, 1901, to the Mercantile Trust Company as Trustee, it is provided, among other things, that this Company shall have the right, by resolution of its Board of Directors or its Executive Committee, to require said Trustee to deliver to the Railroad Company, fully discharged from the lien and trusts of said mortgage, any and all securities pledged and deposited under said mortgage upon the delivery to the Trustee of a certified copy of a resolution of the Board of Directors or Executive Committee of this Company, calling upon the Trustee to make such delivery or release, and specifying the securities to be withdrawn, and upon the payment by the Railroad Company to the Trustee in cash or in bonds issued under said mortgage, taken at their face value, of an amount equal to and at the rate of the valuation attributed or affixed to the securities so withdrawn; and

Whereas the valuation attributed or affixed to the capital stock of the Southern Pacific Company pledged under said mortgage is fifty (50) per cent. of the par or face value thereof; and

Whereas by Article Thirteenth of said mortgage it is provided among other things, that all bonds issued thereunder and converted by the holders into common stock of this Company and cancelled shall be available to this Company, at their face value, as
1972 payment for securities withdrawn at the valuation mentioned in Article Twelfth of said mortgage; and

Whereas bonds issued under said mortgage, in the par amount of $12,743,000 have been converted by the holders thereof into common stock of this Company, and this Company desires to deliver said bonds to the Trustee of said mortgage for destruction, and to receive

the release from the terms and provisions of said mortgage of such an amount of the capital stock of the Southern Pacific Company pledged thereunder as by the terms of said mortgage is deliverable against said bonds;

Resolved, that the Mercantile Trust Company, the Trustee of this Company's First Lien Mortgage and Deed of Trust, dated April 15, 1901, be and it is hereby required to deliver to this Company fully discharged from the lien and trust of said mortgage 254,860 shares of the capital stock of the Southern Pacific Company pledged under said mortgage upon delivery to said Trustee of $12,743,000 face value, of bonds issued under said mortgage and converted by the holders into common stock, together with all unpaid coupons pertaining thereto.

MILLAR EXHIBIT No. 34.

Union Pacific Railroad Co.

(Certified Copy.)

(DIRECTORS, *Feb.* 26, 1902.)

Sale of Stocks to Oregon Short Line.

Upon motion, duly seconded, the following resolution was unanimously adopted:

Resolved: that this Board hereby authorizes a sale to the
1973 Oregon Short Line Railroad Company of the securities below described owned by Union Pacific Railroad Company for the sum of $69,347,129.13, to be represented by certificates of obligation of the Oregon Short Line Railroad Company in the same general form and tenor as those heretofore executed by said Company in respect of the shares of the Northern Pacific Railroad Company, and in the respective amounts below set opposite the securities hereby authorized to be sold, namely:

900,000 shares of the stock of the Southern Pacific Co.	$51,796,179 13
76,684 shares of the common stock of the Oregon Railroad & Navigation Co.	7,668,400 00
98,825.50 shares of the preferred stock of the Oregon Railroad & Navigation Co.	9,882,550 00

and the following shares of stock, to be paid for in like manner, in the sum of $1,000,000 (or in cash):

$5,000,000 face value, Occidental & Oriental Steamship Co.'s stock
150,000, face value, Ogden Union Depot & Railway Company's stock
2,400,000 face value, Pacific Express Company's stock
5,000,000 face value, Union Pacific Coal Company's stock,

such sales to be subject to the lien of the First Lien Mortgage and Deed of Trust of this Company as to the securities above specified

which are therein embraced, and deliveries of said securities to be made to the Short Line Company against its said certificates of obligation as such securities are from time to time released and discharged from the lien of said Mortgage.

Further resolved: That the Executive Committee and the proper officers of this Company be and they are hereby authorized to arrange and carry out such sale, and to make and deliver or receive on behalf of this Company such contracts, agreements, or in-
1974 dentures as may be advised by counsel for the purpose of carrying out such sale, and to take such steps and proceedings as may be necessary to withdraw from the trust of the First Lien Mortgage and Deed of Trust of this Company such of the above mentioned securities as are embraced therein, and to arrange for the investment of the proceeds resulting from the withdrawal of such securities or any other cash which may be in the hands of the Trustee.

MILLAR EXHIBIT No. 35.

Union Pacific Railroad Co.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *March* 11, 1903.)

Sale of Southern Pacific Stock to Short Line.

On motion duly seconded, the following preamble and resolution were unanimously adopted:

Whereas the sale of certain securities to Oregon Short Line Railroad Company authorized by resolutions adopted by the Board of Directors of this Company on February 26, 1902, has not been consummated with reference to the 900,000 shares of the capital stock of the Southern Pacific Company, and it is desired that as respects said shares the sale thereof shall be had upon terms modified and fixed as herein provided; and

Whereas Oregon Short Line Railroad Company has consented that the sale be so made and consummated.

Resolved, that this Company sell to Oregon Short Line Railroad Company 900,000 shares of the stock of the Southern Pacific Company for the sum or price of $55,428,183.38, and that in par-
1975 tial payment of such purchase price this Company accept, at their par value, 162,814 shares of the Common Capital Stock of Oregon Railroad and Navigation Company, the balance of said purchase price upon the settlement of the accounts between this company and Oregon Short Line Railroad Company, to be paid by the issue to this Company of obligations of the Oregon Short Line Railroad Company bearing four per cent., interest and payable on demand.

Further Resolved, that the proper officers of this Company be and they are hereby authorized to arrange and carry out such sale.

MILLAR EXHIBIT No. 36.

Union Pacific R. R. Co.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *March* 11, 1903.)

Release of O. R. & N. Stock from Short Line Income B. Mtge.

On motion, duly seconded, the following preamble and resolutions were unanimously adopted:

Whereas this Company is the owner of $14,779,000., par value of Collateral Trust Income B Bonds of Oregon Short Line Railroad Company, being all of the bonds issued and outstanding under said mortgage with the exception of $62,000., par value, thereof; and

Whereas there are deposited with the Trustee of said mortgage, as a part of the security for the bonds issued thereunder, 162,814 shares of the common capital stock of the Oregon Railroad & Navigation Company; and

Whereas the Oregon Short Line Railroad Company desires to obtain the release by the Trustee of said Income B Mortgage
1976 of the shares of the common stock of the Oregon Railroad and Navigation Company held by said Trustee,

Resolved, that this Company, as owner of $14,779,000, par value, of the Collateral Trust Income B Bonds of the Oregon Short Line Railroad Company, does hereby consent to the withdrawal from said mortgage of the shares of stock of the Oregon Railroad and Navigation Company deposited with the Trustee thereof, and the Trustee of said Mortgage be and it is hereby requested to release said stock from said mortgage and deliver the same to Oregon Short Line Railroad Company.

Further Resolved, that the proper officers of this Company be and they are hereby directed to cause the Income B Bonds owned by this Company, together with the coupons annexed thereto to be stamped as follows:

(Stamp for Bond.)

With the consent of the owner and holder of this bond the 162,814 shares of the common capital stock of the Oregon Railroad and Navigation Company pledged with the Trustee of the Mortgage referred to in said bond have been fully released from the trusts of said mortgage and delivered to the Oregon Short Line Railroad Company.

(Stamp for Coupon.)

Security partially released. See bond.

1977 MILLAR EXHIBIT 37.

Union Pacific Railroad Co.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *July* 17, 1902.)

Correspondence with Kuhn, Loeb & Co. re Oregon Short Line Participating Bonds.

The Chairman submitted certain correspondence between himself and Messrs. Kuhn, Loeb & Co., which correspondence is as follows:

NEW YORK, *July* 16, 1902.

Messrs. Kuhn, Loeb & Co., 27–29 Pine Street, New York.

DEAR SIRS: The Oregon Short Line Railroad Company has decided to create an issue of Oregon Short Line Four Per cent. and Participating Twenty-five year Gold Bonds, redeemable at the option of the company on any semi-annual interest day at one hundred two and one-half and accrued interest. These bonds are to be secured by the pledge and deposit with a New York Trust Company, subject to an indenture of trust, of ten shares of the Common Stock of the Northern Securities Company for every $1,000. face value of such bonds, and the holders of the bonds are to be entitled for each year, beginning with 1903, to any dividends in excess of four per cent. per annum which shall be paid for such year upon such deposited stock.

The Union Pacific Railroad Company will become the owner of a large amount of the above-mentioned bonds, and proposes, before July 25, 1902, to offer to its stockholders the privilege of subscribing for such bonds to a face amount equal to fifteen per cent. of the par amount of the stock which they respectively hold, at ninety
1978 (90) and accrued interest, under the terms of an offer of subscription of which a draft is submitted herewith.

In order to insure the necessary funds to provide for present commitments and future requirements, I am instructed by the Executive Committee of the Union Pacific Railroad Company to request you to agree to purchase, or form a guaranty syndicate which shall agree to purchase, at said price of ninety and accrued interest, upon the terms of said offer of subscription, such part of $31,000,000. of said bonds as may not be subscribed for by the stockholders upon the proposed offering.

I should be obliged if you would state the terms upon which you will agree to make such purchase or undertake the formation of a Syndicate for the purpose.

Yours truly,

(Signed) E. H. HARRIMAN,
Chairman of Executive Committee.

NEW YORK, *July* 17, 1902.

E. H. Harriman, Esq., Chairman, Executive Committee, Union Pacific Railroad Company, 120 Broadway, City.

DEAR SIR: Referring to your letter of yesterday's date, we beg to advise you that we will undertake, upon the terms stated below, to form a guaranty syndicate which will agree to purchase at ninety (90) and accrued interest, upon the terms of the proposed offer of subscription to the stockholders of your company, such part of $31,000,000. of Oregon Short Line Four Per Cent. and Participating Twenty-five Year Gold Bonds as may not be subscribed for by the stockholders of your company upon such offering.

1. Your company to pay to the syndicate which we form a commission of two and one-half per cent. upon the face value of said $31,000,000 of bonds.

1979 2. Our firm to have, as compensation for our services in forming the syndicate (in addition to any commission we may receive as syndicate participants), a commission of one per cent. upon the face value of said bonds, and a firm option to purchase all or any part of $20,000,000 additional of said bonds on or at any time before August 1, 1903, at ninety (90) and accrued interest less a commission of one per cent.

3. The form of the bonds and of the trust indenture under which they are to be issued to be subject to the approval of ourselves and our counsel, counsel fees to be borne by your company.

Yours truly,

(Signed) KUHN, LOEB & CO.

NEW YORK, *July* 17, 1902.

Messrs. Kuhn, Loeb & Co., 27-29 Pine Street, City.

DEAR SIRS: I beg to acknowledge receipt of your letter of this date setting forth the terms on which you are prepared to purchase so many of $31,000,000 of Oregon Short Line Four Per Cent. and Participating Twenty-five Year Gold Bonds as are not subscribed for by the stockholders of the Union Pacific Railroad Company upon the proposed offering. The conditions stated by you are satisfactory, and your offer is hereby accepted on behalf of the Union Pacific Railroad Company.

Yours truly,

(Signed) E. H. HARRIMAN,
Chairman of Executive Committee.

Upon motion, duly made and seconded, it was unanimously

Resolved, that the action of the Chairman as set forth in the correspondence between himself and Messrs. Kuhn, Loeb & Co., submitted to this meeting, be and the same is hereby in all things ratified, approved and confirmed.

1980 MILLAR EXHIBIT No. 38.

This agreement, made and entered into this fourth day of October, 1904, by and between E. H. Harriman, Jacob H. Schiff, James Stillman, and R. S. Lovett, all of the State of New York, parties of the first part; W. B. Leeds, W. H. Moore, D. G. Reid, all of the State of New York, and J. H. Moore, of the State of Illinois, parties of the second part; and Central Trust Company of New York, a corporation of the State of New York, hereinafter called the Trustee, party of the third part:

Witnesseth:

For a valuable consideration the parties hereto have covenanted and agreed to and with each other as follows:

First. The parties of the first part have transferred, set over and assigned, and do hereby transfer, set over and assign to the Trustee certificates for one hundred and three thousand, four hundred and thirty-one (103,431) shares of the preferred stock of The Chicago and Alton Railway Company, a corporation organized and existing under the laws of the State of Illinois, hereinafter called the Railway Company. The parties of the second part have transferred, set over and assigned, and do hereby transfer, set over and assign unto the Trustee certificates for forty thousand (40,000) shares of the preferred stock and for sixty-three thousand four hundred and thirty-one (63,431) shares of the common stock of the Railway Company. All said shares of stock shall be held by the Trustee under the powers and subject to the terms and conditions of this agreement.

Second. The Board of Directors of the Railway Company is composed of the following named six persons, who are the nominees of the parties of the first part, to wit:

1981

Directors whose terms expire in 1905	Directors whose terms expire in 1906	Directors whose terms expire in 1907
Norman B. Ream,	S. M. Felton,	James Stillman,
James B. Forgan,	John J. Mitchell,	E. H. Harriman,

and the following named five persons who are the nominees of the parties of the second part, to wit:

Directors whose terms expire in 1905	Directors whose terms expire in 1906	Directors whose terms expire in 1907
W. B. Leeds,	Wm. H. Moore,	Robert Mather.
James Hobart Moore,	Daniel G. Reid,	

At the annual meeting of the stockholders of the Railway Company for the election of directors to be held in the year 1905, the Trustee shall vote or cause to be voted all the shares of stock de-

posited with the Trustee under this agreement in favor of the election as directors of the Railway Company, of two persons to be nominated by the parties of the first part, and of two persons to be nominated by the parties of the second part. At the annual meeting of the stockholders of the Railway Company for the election of Directors to be held in the year 1906, the Trustee shall vote or cause to be voted all the shares of stock deposited with the Trustee under this agreement in favor of the election as director of the Railway Company of one person to be nominated by the parties of the first part and of three persons to be nominated by the parties of the second part. Thereafter at each annual meeting of the stockholders of the Railway Company, for the election of directors, the Trustee shall vote or cause to be voted all the shares of stock deposited with the Trustee under this agreement in favor of the election as directors of the Railway Company, or person to be nominated by the parties hereto respectively, in such manner that in each year the board of directors of the Railway Company shall
1982 be composed of six nominees of such party hereto as shall have been represented on said board of directors during the preceding year by five nominees; the purpose and intent of this agreement being to provide and to insure that during the continuance of this agreement the board of directors of the Railway Company shall until the usual election of directors in the year 1906, and during each aiternate year thereafter, be composed of a majority nominated by the parties of the second part. To that end the parties of the first part and the parties of the second part covenant and agree to and with each other, for themselves as directors of the Railway Company and for their nominees, that all vacancies occurring in the board of directors of the Railway Company shall be so filled as to effectuate and carry out the purpose and intent of this agreement; and that the executive committee of the Railway Company shall in each year be composed of a majority of directors nominated by or representing the parties whose nominees for the time being are entitled under this agreement to constitute a majority of the board of directors of the Railway Company.

If at any time the board of directors of the Railway Company shall include a majority of the nominees of the party not then entitled to such majority under the provisions and in accordance with the purpose and intent of this agreement, the Trustee shall join with the other party and with any other stockholder or stockholders of the Railway Company in calling a special meeting of the stockholders of the Railway Company for the purpose of removing a director or directors in order that the board of directors may be constituted in accordance with the provisions, purpose and intent thereof; and at such special meeting shall vote all the shares of stock deposited with the Trustee hereunder in favor of such removal, and in favor of the election, in place of the director or directors so removed, of a person or persons, as the case may be, nominated for that purpose by the party hereto then entitled to
1983 nominate such majority. If at any other meeting, annual or special, of the stockholders of the Railway Company, di-

rectors shall be elected by the stockholders for the filling of vacancies other than those occurring by reason of the annual expiration of the terms of the directors, the Trustee shall vote or cause to be voted the shares of stock deposited with the Trustee hereunder in such manner as to secure the purpose and intent of this agreement as herein expressed.

In the event that either the parties of the first part or the parties of the second part shall at any time fail to nominate the person or persons which such party would then be entitled to nominate hereunder for election as director or directors of the Railway Company, the Trustee shall, in its discretion, vote all the shares of stock deposited with the Trustee hereunder, in favor of the election as director or directors of the Railway Company in lieu of such person or persons as such party so failing to nominate would be entitled to nominate hereunder, of such person or persons as in the judgment of the Trustee will fairly represent the interests of the party so failing to nominate.

Third. The Trustee shall and will collect any and all dividends declared and paid upon or in respect of all the shares of stock transferred to it, and shall and will pay over to the holders of the stock trust certificates issued hereunder as hereinafter set forth the dividends received by it in respect of the shares of stock represented by such stock trust certificates.

Fourth. The Trustee, on the request of the parties of the first part, shall and will issue unto the parties of the first part certificates of interest in respect of the shares of stock delivered by the parties of the first part to the Trustee, such certificates to be substantially in the following form:

1984 The Chicago and Alton Railway Company.

Preferred Stock Trust Certificate.

Subject to Option of Purchase.

No. .... Shares.

This is to certify that upon the termination of that certain agreement bearing date October 4th, 1904, by and between E. H. Harriman, Jacob H. Schiff, James Stillman, and R. S. Lovett, parties of the first part; W. B. Leeds, W. H. Moore, D. G. Reid, and J. H. Moore, parties of the second part; and Central Trust Company of New York, party of the third part, an original of which is in the possession of the undersigned,..... will be entitled to receive either

(*a*) in the event the option of purchase hereinafter mentioned shall not have been exercised, a certificate or certificates for..... ..... fully paid shares of one hundred dollars ($100.00) each in the preferred capital stock of The Chicago and Alton Railway Company, a corporation of the State of Illinois; or

(*b*) in the event the option of purchase hereinafter mentioned shall have been exercised and the price thereof paid to the undersigned, an amount of money equal to the price so paid in respect of a like number of such shares;

and in the meantime to receive payment of the actual dividends, if any, collected by the undersigned on a like number of such shares standing in the name of the undersigned; and until the actual delivery of such certificates or of such cash, the undersigned shall be entitled to possess and exercise the right to vote in respect of any and all of such stock, in the manner and to the extent specified in
1985 said agreement, it being expressly stipulated that no voting right passes by or under this certificate.

The shares of preferred stock of the Chicago and Alton Railway Company represented by this certificate are subject to an option of purchase in favor of the parties of the second part to the aforesaid agreement at the time and on the terms and conditions specified in said agreement, to which for a statement of such time, terms and conditions, reference is hereby made.

This certificate is issued in accordance with the provisions of said agreement, and is subject to the provisions, terms and conditions thereof.

This certificate is transferable only on the books of the undersigned by the registered holder thereof, either in person or by attorney duly authorized, upon the surrender of this certificate properly endorsed.

In witness whereof, Central Trust Company of New York has caused these presents to be signed by its president or a vice-president, and its corporate seal to be hereto affixed and attested by its secretary or assistant secretary, this ..... day of ..... 19..

CENTRAL TRUST COMPANY OF NEW YORK, *Trustee.*

By —— ——, *President.*

Attest:

—— ——, *Secretary.*

Fifth. The Trustee, on the request of the parties of the second part, shall and will issue unto the parties of the second part certificates of interest in respect of the shares of stock delivered by the parties of the second part to the Trustee, such certificates for the preferred stock to be substantially in the following form:

1986 The Chicago and Alton Railway Company.

Preferred Sock Trust Certificate.

No. .... Shares.

This is to certify that upon the termination of that certain agreement bearing date October 4th, 1904, by and between E. H. Harriman, Jacob Schiff, James Stillman, and R. S. Lovett, parties of the first part; W. B. Leeds, W. H. Moore, D. G. Reid, and J. H. Moore,

parties of the second part, and Central Trust Company of New York, party of the third part, an original whereof is in the possession of the undersigned, ... will be entitled to receive a certificate or certificates for..... ..... fully paid shares of one hundred dollars ($100.00) each in the preferred capital stock of the Chicago and Alton Railway Company, a corporation of the State of Illinois, and in the meantime to receive payment of the actual dividends, if any, collected by the undersigned on a like number of such shares standing in the name of the undersigned; and until the actual delivery of such certificates the undersigned shall be entitled to possess and exercise the right to vote in respect of any and all such stock, in the manner and to the extent specified in said agreement, it being expressly stipulated that no voting right passes by or under this certificate.

This certificate is issued in accordance with the provisions of said agreement, and is subject to the provisions, terms, and conditions thereof.

This certificate is transferrable only on the books of the undersigned by the registered holder thereof, either in person or by attorney duly authorized, upon the surrender of this certificate properly endorsed.

In witness whereof, Central Trust Company of New York has caused these presents to be signed by its president or a vice-
1987 president, and its corporate seal to be hereto affixed and attested by its secretary or assistant secretary, this .... day of ....., 19..

CENTRAL TRUST COMPANY OF NEW YORK, *Trustee.*

By —— ——, *President.*

Attest:

—— ——, *Secretary.*

And such certificates for the common stock to be in substantially the following form:

The Chicago and Alton Railway Company.

Common Stock Trust Certificate.

No. .... Shares.

This is to certify that upon the termination of that certain agreement bearing date October 4th, 1904, by and between E. H. Harriman, Jacob H. Schiff, James Stillman, and R. S. Lovett, parties of he first part; W. B. Leeds, W. H. Moore, D. G. Reid and J. H. Moore, parties of the second part, and Central Trust Company of New York, party of the third part, an original of which is in the possession of the undersigned, ... will be entitled to receive a certificate or certificates for..... .....fully paid shares of one hundred dollars ($100.00) each in the common capital stock of the

Chicago and Alton Railway Company, a corporation of the State of Illinois, and in the meantime to receive payment of the actual dividends, if any, collected by the undersigned on a like number of such shares standing in the name of the undersigned; and until the actual delivery of such certificates the undersigned shall be entitled to possess and exercise the right to vote in respect of any and
1988 all such stock, in the manner and to the extent specified in said agreement, it being expressly stipulated that no voting right passes by or under this certificate.

This certificate is issued in accordance with the provisions of said agreement, and is subject to the provisions, terms and conditions thereof.

This certificate is transferable only on the books of the undersigned by the registered holder thereof, either in person or by attorney duly authorized, upon the surrender of this certificate properly endorsed.

In witness whereof, Central Trust Company of New York has caused these presents to be signed by its president or a vice-president, and its corporate seal to be hereto affixed and attested by its secretary or assistant secretary, this ..... day of ....., 19..

CENTRAL TRUST COMPANY OF NEW YORK, *Trustee*,
By —— ——, *President*.

Attest:
—— ——, *Secretary*.

Sixth. The parties of the first part hereby give and grant to the parties of the second part the right, privilege and option to purchase from the parties of the first part on the 1st day of September, 1906, all of said one hundred and three thousand four hundred and thirty one (103,431) shares of the preferred stock of the Railway Company deposited with the Trustee hereunder by the parties of the first part, at the price of ninety dollars ($90.00) per share. In the event that the parties of the second part shall elect to exercise the option hereby given and granted, written notice of their intention so to do shall be served on the parties of the first part and upon the Trustee not less than thirty days before the said 1st day of September, 1906. Such notice shall be deemed to be sufficiently served if deposited
1989 in the mail addressed to the parties of the first part and to the Trustee in New York City, New York, with postage prepared, at least thirty days before September 1, 1906. If such notice shall be given, and if, on or before the first day of September, 1906, the parties of the second part, or some one for them or in their behalf, shall pay to the Trustee the price aforesaid, this agreement shall thereupon terminate, and the Trustee shall thereupon deliver

(*a*) to the parties of the second part, certificates for all the shares of the preferred stock of the Railway Company deposited hereunder by the parties of the first part;

(*b*) to the holders of the "Preferred Stock Trust Certificates subject to Option", upon surrender thereof, all moneys received by it

in respect of the shares of stock represented by such " Preferred Stock Trust Certificates Subject to Option ";

(*c*) to the holders of all other stock trust certificates, upon surrender thereof, certificates for shares of stock of the Railway Company represented by such stock trust certificates.

Seventh. In the event of the failure of the parties of the second part to exercise the option of purchase herein given and granted to them, this agreement shall be and continue in full force and effect until either

(*a*) the parties of the first part and the parties of the second part shall in writing notify the Trustee that they have elected to terminate this agreement; or

(*b*) the holders of three-fourhs in amount of the outstanding stock trust certificates issued hereunder shall, in writing, notify the Trustee that they desire to terminate this agreement, and shall, together with such notice, surrender to the Trustee stock trust certificates issued thereunder, representing at least three-fourths of the shares of the capital stock of the Railway Company deposited with the Trustee hereunder.

Upon the giving of either of such notices this agreement shall terminate, and the Trustee shall deliver to any and all parties
1990 surrendering stock trust certificates issued hereunder the shares of stock represented by the stock trust certificates so surrendered.

Eighth. All the rights and privileges herein secured or intended to be secured to the parties of the first part shall, inure to, and the covenants and agreements of said parties of the first part shall bind, the survivor or survivors of said parties. All such rights and privileges may be exercised, and all nominations, notices and requests relating thereto or provided for herein may be given, by a majority of the parties of the first part, or of the survivors of them. All the rights, privileges and options herein secured or intended to be secured to the parties of the second part shall inure to, and the covenants and agreements of the parties of the second part shall bind, the survivor or survivors of said parties. All such rights, privileges and options may be exercised, and all nominations, notices and requests relating thereto or provided for herein may be given, by a majority of the parties of the second part or of the survivors of them.

Ninth. The Trustee shall not be answerable for anything whatever in connection with this trust except for the safe keeping of the certificates of stock deposited with it hereunder, or further except for its wilful misconduct or gross negligence. The Trustee shall be entitled to reasonable compensation for all services rendered by it in the execution of the trusts hereby created, and for all expenses necessarily incurred or disbursed by the Trustee hereunder, and the parties of the first and second parts agree each to pay one-half of all such compensation and expenses from time to time on demand, and for the payment of such compensation and expenses of the Trustee shall have a first lien on the shares of stock of the Railway Company held by it hereunder. The Trustee shall be protected in acting upon

any notice, request or other paper or document believed by it to be genuine and to have been signed by the proper party.

Central Trust Company of New York joins in the execution
1991 of this instrument in evidence of its acceptance of the trusts hereby created upon the terms hereinbefore set forth.

In witness whereof, the parties hereto have executed these presents the day and year first above written.

Witness:
F. W. HILL.
E. H. PAUL.
W. A. DEWOLF.
M. L. BELL.
T. R. BEMAN.
T. R. BEMAN.
M. L. BELL.
T. R. BEMAN.

E. H. HARRIMAN. [SEAL.]
JACOB H. SCHIFF. [SEAL.]
JAS. STILLMAN. [SEAL.]
R. S. LOVETT. [SEAL.]
W. B. LEEDS. [SEAL.]
W. H. MOORE. [SEAL.]
D. G. REID. [SEAL.]
J. H. MOORE. [SEAL.]

CENTRAL TRUST COMPANY OF NEW YORK, *Trustee*,
By J. N. WALLACE,
Fourth Vice-President.

[Seal C. T. Co. of N. Y.]
Attest:
GEO. BERTINE, *Secretary.*

This supplemental agreement made and entered into this 30th day of January, 1906, by and between E. H. Harriman, Jacob H. Schiff, James Stillman and R. S. Lovett, all of the State of New York, parties of the first part; W. H. Moore and D. G. Reid, both of the State of New York, and J. H. Moore, of the State of Illinois, parties of the second part; and Central Trust Company of New York, a corporation of the State of New York (hereinafter called the Trustee) party of the third part.

Whereas, on October 4, 1904, an agreement was entered into between the above named parties of the first part, W. B. Leeds, W. H. Moore, D. G. Reid and J. H. Moore, as parties of the second
1992 part, and the Trustee, as party of the third part, and certain changes therein are deemed necessary;

Now, therefore, this supplemental agreement witnesseth, that, for a valuable consideration, the parties hereto have covenanted and agreed to and with each other as follows:

First. The parties of the first part consent to the assignment by W. B. Leeds, one of the parties of the second part to said agreement, dated October 4, 1904, to W. H. Moore, D. G. Reid and J. H. Moore, the other parties to the second part of said agreement, and their

survivor or survivors, of all the right, title and interest of said Leeds in, and all his rights, powers and privileges under and by virtue of, said agreement dated October 4, 1904; an executed original of said assignment, bearing even date herewith, is hereto attached, the terms of which are hereby made a part hereof. And the parties hereto agree that said W. H. Moore, D. G. Reid and J. H. Moore, their survivor or survivors, shall henceforward be deemed to be and shall be the parties of the second part under said agreement of October 4, 1904, for every purpose whatsoever, with the same effect as if said W. H. Moore, D. G. Reid and J. H. Moore had been originally named as the parties of the second part to said agreement and had executed said agreement as such parties of the second part.

Second. The provisions of said agreement, dated October 4, 1904, as to voting for the election or removal of directors of The Chicago and Alton Railway Company, shall remain in all respects as contained in said agreement of October 4, 1904, unchanged by this Supplemental Agreement.

Third. The Trustee shall execute and deliver to the parties of the first part or to such nominee or nominees as shall be designated in writing by said parties of the first part, or by a majority of them, a proxy or proxies to vote the 103,431 shares of the preferred stock of The Chicago and Alton Railway Company deposited by said parties of the first part with the Trustee under said agreement of
1993 October 4, 1904, at the special meeting of the stockholders of said The Chicago and Alton Railway Company called to be held at the office of the Company in the Railway Exchange Building, in Chicago, Illinois, on the eighth day of March, 1906, or at any adjournment thereof, in favor of consolidating The Chicago and Alton Railroad Company with The Chicago and Alton Railway Company, and in favor of approving and authorizing the execution of such form of articles or agreement of consolidation as shall be submitted at said meeting or at any adjournment thereof. The written request made under the provisions of this paragraph "Third," shall be accompanied by a form of proxy, to which proxy shall be attached a form of the articles or agreement of consolidation to be voted for.

The Trustee shall execute and deliver to the parties of the second part, or to such nominee or nominees as shall be designated in writing by said parties of the second part, or by a majority of them, a proxy or proxies to vote the 40,000 shares of preferred stock and the 63,431 shares of common stock of The Chicago and Alton Railway Company deposited by said parties of the second part with the Trustee under said agreement of October 4, 1904, at the special meeting of the stockholders of said The Chicago and Alton Railway Company called to be held at the office of the company in the Railway Exchange Building, in Chicago, Illinois, on the eighth day of March, 1906, or at any adjournment thereof, in favor of consolidating The Chicago and Alton Railroad Company with The Chicago and Alton Railway Company, and in favor of approving and authorizing the execution of such form of articles or agreement of consolidation as shall be submitted at said meeting or at any adjournment thereof. The written request made under the provisions of this paragraph

"Third," shall be accompanied by a form of proxy, to which proxy shall be attached a form of the articles or agreement of consolidation to be voted for.

1994 Fourth. The Trustee from time to time, upon a request in writing signed concurrently by

(*a*) a majority of the parties of the first part, or a majority of the survivors of such parties of the first part; and by

(*b*) a majority of the parties of the second part, or a majority of the survivors of them, shall execute and deliver to and in the name of such nominee or nominees as shall be designated in such written request, a proxy or proxies to vote the 143,431 shares of the preferred stock and the 63,431 shares of the common stock of said The Chicago and Alton Railway Company deposited by the parties of the first part and the parties of the second part with the Trustee under said agreement, dated October 4, 1904, in respect of any and all propositions to be submitted to or voted upon by the stockholders of said The Chicago and Alton Railway Company, at any annual or special meeting of such stockholders, excepting in respect of a proposition for the election or removal of a director or directors of said The Chicago and Alton Railway Company.

Fifth. If and when said The Chicago and Alton Railroad Company shall have been consolidated with said The Chicago and Alton Railway Company, the Trustee shall forthwith cause the certificates for the shares of stock held by it under said agreement of October 4, 1904, to be surrendered for cancellation and exchange for stock in the new company to be formed by such consolidation, and shall receive certificates for the stock in such new corporation to the aggregate par value to which it shall be entitled under the provisions of the articles or agreement of consolidation, whereby such new corporation shall have been formed.

Sixth. Except as modified by the paragraphs numbered "First," "Third," "Fourth" and "Fifth" of this Supplemental Agreement, the terms, provisions and conditions of said agreement, dated October 4, 1904, shall remain in full force and virtue.

1995 Seventh. Central Trust Company of New York joins in the execution of this Supplemental Agreement in evidence of its acceptance of the trusts created by said agreement, dated October 4, 1904, and by this Supplemental Agreement, upon the terms therein and hereinbefore set forth.

Eighth. Anything herein contained to the contrary notwithstanding, this agreement shall not take force or effect unless and until all of the stock trust certificates issued and outstanding in pursuance of the provisions of said agreement of October 4, 1904, shall have been surrendered to the Trustee for stamping or endorsement and there shall have been stamped or endorsed upon all of said stock trust certificates a notation substantially in the following form, to wit:

"The holder of this certificate has assented to the Supplemental Agreement bearing date January 30, 1906, an original of which is on file with the Trustee, and to the terms and provisions thereof. The rights of all present or future holders of this certificate are subject to the provisions of said Supplemental Agreement."

All stock trust certificates hereafter issued by the Trustee in place of outstanding stock trust certificates bearing a notation in substantially the form hereinbefore set forth, shall bear a like notation.

In witness whereof, the parties hereto have executed these presents the day and year first above written.

E. H. HARRIMAN. [SEAL.]
JACOB H. SCHIFF. [SEAL.]
R. S. LOVETT. [SEAL.]
W. H. MOORE. [SEAL.]
J. H. MOORE. [SEAL.]
D. G. REID. [SEAL.]

1996 *Assignment.*

Know all men by these presents, that I, W. B. Leeds, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto W. H. Moore and D. G. Reid, of the State of New York, and J. H. Moore, of the State of Illinois, jointly, and to their survivor or survivors, all my right, title and interest in, and my rights, powers and privileges under and by virtue of, a certain agreement made and entered into the 4th day of October, 1904, by and between E. H. Harriman, Jacob H. Schiff, James Stillman and R. S. Lovett, all of the State of New York, parties of the first part; W. B. Leeds, W. H. Moore, D. G. Reid, all of the State of New York, and J. H. Moore, of the State of Illinois, parties of the second part; and Central Trust Company of New York, a corporation of the State of New York, as Trustee, party of the third part. And I do hereby constitute and appoint said W. H. Moore, D. G. Reid and J. H. Moore, their survivor or survivors, my true and lawful attorneys or attorney, irrevocably, for me and in my name and stead, but to their use, to take, under said agreement of October 4, 1904, any action that I might take thereunder; hereby ratifying and confirming all that my said attorneys or attorney shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal at New York the 29th day of January, 1906.

W. B. LEEDS.

Signed, sealed and delivered in the presence of
J. S. ELDER.

1997 MILLAR EXHIBIT No. 39.

Oregon Short Line R. R. Co.

(Certified Copy.)

(STOCKHOLDERS, *October* 14, 1903.)

Approval of San Pedro Agreements, Conveyances, Etc.

Upon motion, duly made and seconded, it was unanimously Resolved, that all and singular the action of the Board of Direc-

tors and Executive Committee, as set forth or referred to in their respective minutes, be and they are hereby ratified, approved and confirmed.

Resolved further, that all the acts of E. H. Harriman, as Trustee, and the acts of each of the officers of this Company, in making the arrangements, contracts, and conveyances between E. H. Harriman, Trustee, and W. A. Clark, Trustee, the said Harriman and Clark, as Trustees, and the San Pedro, Los Angeles and Salt Lake Railroad Company, and each of the other arrangements, contracts, and conveyances made in connection with the settlement of controversies with said San Pedro Company, and to provide for acquiring and holding an interest in the capital stock of the said San Pedro Company, and to provide for certain traffic arrangements, all of which are set forth in full in the minutes of the Executive Committee; including the making, execution, and delivery of conveyances by the Oregon Short Line Railroad Company, the New East Tintic Railway Company, the Utah & Pacific Railroad Company, the Utah, Nevada & California Railroad Company, and by W. H. Bancroft, as Trustee, to the San Pedro, Los Angeles & Salt Lake Railroad Company; and also including the making of assignments of the capital stock of the New East Tintic Railway Company, the Utah & Pacific Railroad Company, the Utah, Nevada & California
1998 Railroad Company, and the Utah, Nevada & California Railroad Company in California, to the said San Pedro, Los Angeles & Salt Lake Railroad Company; and including also the execution and delivery of a certain agreement between W. A. Clark, Trustee, for himself and as Trustee, as the party of the first part, and E. H. Harriman, as Trustee, as party of the second part, and the Farmers' Loan & Trust Company, as party of the third part, and the assignment and delivery to said Farmers' Loan & Trust Company of the stocks in said agreement specified; and also in executing a certain agreement between said W. A. Clark and E. H. Harriman, as Trustees, and the said San Pedro, Los Angeles and Salt Lake Railroad Company, dated June 3, 1903, providing for the loan of certain capital stock of the said San Pedro Company, to be pledged as therein provided, and all of the acts of the said E. H. Harriman, as Trustee, done or performed, and all of the acts of each and every officer of this Company required or deemed necessary to be done to fully perform and execute the terms and conditions of each of said contracts and arrangements; including that certain contract of July 9, 1902, made between W. A. Clark and E. H. Harriman, and each and every one of them, be and the same are hereby ratified, approved and confirmed.

MILLAR EXHIBITS NOS. 52 AND 53.

Clark-Harriman Agreement, July 9, 1902.

This agreement made and entered into this ninth day of July 1902, by and between William A. Clark, hereinafter designated as Clark, Trustee, for his own account and upon account of his

associates, who are, with himself, owners of approximately
1999 seventy per cent. of the capital stock of the California Improvement Company hereinafter called the California company, and of the capital stock of the Empire Construction Company, hereinafter called the Empire company, and who own or control, through stock or otherwise, the San Pedro, Los Angeles & Salt Lake Railroad Company, hereinafter called the San Pedro company, and Los Angeles Terminal Land Company and Los Angeles Terminal Railway Company, as party of the first part, and Edward H. Harriman, hereinafter designated as Harriman, Trustee, as trustee for the Oregon Short Line Railroad Company, hereinafter called the Short Line company, or such company or companies as he may declare parties to said trust, party of the second part,

Witnesseth:

Whereas, said California company is a corporation existing under the laws of the State of Illinois having an issued capital stock of $2,599,000, but no funded or other debt, and is the owner of all the capital stock of the said Los Angeles Terminal Land Company in the amount of $300,000, and is also the owner of all the capital stock of the said Los Angeles Terminal Railway Company in the amount of $3,000,000, all of which capital stock of said two last named companies is now in the treasury of said California company; and the said California company also owns 25,000 shares of the capital stock of the San Pedro Company in the aggregate amount of $2,500,000 par value, which stock of said San Pedro company is now issued to and held by William A. Clark and R. C. Kerens in trust for the stockholders of said California company, as their interests may appear; said capital stock of all said companies being divided into shares of $100 each; and also owns and claims the right to receive and obtain from said San Pedro company, to be delivered to W. A. Clark and R. C. Kerens as Trustees for its stockholders as their interests may appear, $2,500,000 par value, of the
first mortgage bonds of said San Pedro company when the
2000 same shall be hereafter issued; and

Whereas, all of the railroad, franchises, rights of way, terminal facilities and railroad property, and all other property, real, personal and mixed, acquired by the Los Angeles Terminal Railway Company, has been by said company sold and conveyed to the San Pedro company; and,

Whereas, the Empire Construction Company is a corporation of the State of Utah organized for the purpose of providing for the financing, construction and equipment of the railroad of said San Pedro company, with a capital stock of $1,000,000 divided into shares of $100 each, par value, all of which capital stock has been subscribed for and has been fully paid up and issued; and

Whereas, said William A. Clark, for himself and his said associates in whose behalf he now owns or directly controls approximately seventy per cent. of the capital stock of the California company, the Empire Construction Company and the San Pedro company, and the remainder of said capital stock, being approximately thirty

per cent. of said capital stock of said companies, is owned, held or controlled by others not directly represented by said Clark; and

Whereas, the assets of said Empire company consist of its claims against, and contracts with, the said San Pedro company for money advanced, work done and material furnished on account of the improvement and acquirement of railroad property for said San Pedro company; and

Whereas, the San Pedro company is the owner of the railroad, equipment, rolling stock, terminal properties, station grounds, and all real, personal and mixed property formerly owned by the Los Angeles Terminal Railway Company, and also owns certain other railroads, railroad properties, franchises, rights of way, road beds, stations, station grounds, water stations, equipment, rolling stock, tools, machines, machinery, supplies and other property procured for and intended to be used as a part of the railroad property
2001 of the said San Pedro company, and situated in the States of California, Utah and Nevada, all of which property is free and clear of any debts, incumbrance or charges except the indebtedness to the said Empire company, and its promise to execute and deliver, when issued, its said first mortgage bonds in the aggregate par amount of $2,500,000 to William A. Clark and R. C. Kerens, Trustees for said stockholders of said California company, as aforesaid; and

Whereas, the said Los Angeles Terminal Land Company is the owner of certain real estate situated in Los Angeles County, California, including a tract of real estate situated on or near the harbor of San Pedro in said county and state, all of which property of said Los Angeles Terminal Land Company is free and clear of all incumbrances, liens and claims of every kind; and

Whereas, said Short Line company is the owner of and controls and operates a system of railroads generally described as follows:

A line of railroad extending from Granger, Wyoming, to the western boundary of said state, thence across the State of Idaho and to a terminus at the town of Huntington, Oregon, with branch lines connecting therewith;

Also a line of railroad extending from Salt Lake City, Utah, northerly through Ogden, Utah, to the northern boundary of the state of Utah, and thence North across the State of Idaho to a terminus at Silver Bow, Butte and Garrison, in the State of Montana, with branch lines connecting therewith; the line between McCammon and Pocatello being common to both said lines;

Also a line of railroad extending from Salt Lake City, Utah, southerly through Juab to Milford and Frisco, Utah, together with a branch line extending from Lehi Junction into the Tintic Mining District, and the branch lines connecting therewith, and also
2002 a branch line known as the Terminus line, together with various controlled, owned and auxiliary lines of railroad in the above named states, and the States of Nevada and California.

The Short Line company, through ownership of capital stock, also owns and controls the railroads of the Utah & Pacific Railway Company, the Utah, Nevada & California Railroad Company (in

Nevada), and the Utah, Nevada & California Railroad Company in California, and the new East Tintic Railway Company; and

Whereas, the said railroads of the Short Line company are operated in harmony with and as connections of the railroads of the Union Pacific Railroad Company extending from its terminus near Ogden, Utah, easterly through the States of Utah, Wyoming, Colorado and Nebraska to a terminus at Council Bluffs, Iowa, and extending from Cheyenne, Wyoming, to Denver, Colorado, and thence easterly through the State of Kansas to a terminus at Kansas City, Missouri, with branch and auxiliary lines in the States of Utah, Colorado, Kansas and Nebraska; and said lines of railroad of the Short Line company are also operated in connection with a certain line of railroad of the Southern Pacific Company commencing at Ogden, Utah, and extending westwardly through Utah and Nevada, and into California and beyond; and

Whereas, the San Pedro company and the Short Line company, and its auxiliary companies, under their respective charters each have power to construct a line of railroad between Salt Lake City and San Pedro Harbor in Southern California, via Los Angeles; and

Whereas, the parties hereto desire to provide for the establishment, construction, ownership and operation of a line and system of railroad between said terminii by using therefor a part of the lines of railroad now owned or controlled by the Short Line company, and all the railroads and properties of the San Pedro company now owned by it or owned in its interest or for its use, and by
2003 connecting said several lines either by the construction of a new line or by securing leasehold or trackage rights over other lines of railroad to connect said lines, and by means thereof to make one connected through line of railroad between said terminii, to the end that the same may constitute a new through transportation line for the use of the business of said San Pedro company and said Short Line company and their connections, and for the carriage of business which may originate on or be destined to points on or beyond their respective lines, or which may be delivered to them, or either of them by connecting railroads, and for the carriage of business between stations on their respective lines, and between all points on or beyond their respective lines as well as to all points on or beyond the lines of railroad owned or operated by the connections of said Short Line Company or said San Pedro company, as aforesaid, upon through tariffs to be jointly made and lawfully published and upon just and fair divisions of through rates and charges upon interchanged business.

Now therefore, for the purposes aforesaid and to accomplish the same the parties hereto have covenanted and do hereby mutually covenant and agree to and with each other as follows:

Article First.

SECTION 1. The said William A. Clark, for himself and as Trustee for his said associates, in consideration of the premises and of the undertakings of said Edward H. Harriman, as Trustee as aforesaid, hereby covenants and agrees to and with the said Edward H. Harriman, as Trustee as aforesaid, as follows:

That he will sell at the prices defined in section 2 hereof, and within six months after the date hereof cause to be assigned and delivered to said Harriman as such Trustee, or otherwise as provided by Section 4 of this article, an equal undivided half interest in approximately seventy per cent. of the capital stock of each of the companies below named, that is to say:

2004 (*a*) An undivided half interest in said approximately seventy per cent. of the capital stock of the California Improvement Company held by said Clerk and his associates as aforesaid, and through the medium of said stock an undivided half interest in said approximately seventy per cent. of $2,500,000 par value of the first mortgage bonds of the said San Pedro Company by it agreed to be issued and delivered to said William A. Clark and R. C. Kerens, Trustees as aforesaid.

(*b*) An equal undivided half interest in said approximately seventy per cent. of the outstanding capital stock of said San Pedro company owned by said Clark and his associates but held in the names of Clark and Kerens, Trustees, and one-half of the outstanding qualifying shares issued to the names of the present stockholders of said company, about sixteen in number.

(*c*) An equal undivided half interest in said approximately seventy per cent. of the said capital stock of the Empire Construction Company.

(*d*) An undivided half interest in said approximately seventy per cent. of the capital stock of the Los Angeles Terminal Railway Company.

(*e*) An equal undivided half interest in said approximately seventy per cent. of the said capital stock of the Los Angeles Terminal Land Company;

And that he will endeavor to secure all of the remainder of the stock of said several companies to and for himself and his associates as to one undivided half thereof and to and for said Harriman, Trustee, as to the other undivided half thereof, and at prices satisfactory to the parties hereto as hereinafter provided.

SECTION 2. In consideration of the foregoing the said Harriman as Trustee as aforesaid undertakes to buy an undivided half of said approximately seventy per cent. of said outstanding capital stock of each said California company and said Empire company, and to pay therefor amounts to be determined as follows: For such of said stock as is sold to him by said Clark individually he shall pay, and

2005 said Clark shall receive payment at the amount and rate which the same cost the said Clark, with four per cent. interest thereon from the time he acquired the same, less any amounts which the said Clark shall have received directly or indirectly as dividends or profits from said companies or in connection with said stock; provided, however, that if no dividends or profits have been so received the entire earnings of said properties since the purchase of the stocks thereof by said Clark shall have been applied or used in the operation, betterments or extensions of the said properties, or shall now be in the treasury of the said companies; and that as to the stock the undivided half of which is so purchased by said Harriman,

as Trustee, from the associates of said Clark, the prices and conditions of sale shall be the same as above provided for the purchase of the said Clark's individual stock as above provided, unless the parties hereto shall hereafter otherwise agree.

SECTION 3. The said Harriman, as Trustee, further covenants and agrees that he will join with said Clark, Trustee, in the purchase at prices satisfactory to both parties hereto, of the remaining outstanding approximately thirty per cent. of said stocks, and that the same when so purchased for joint account of said Clark and himself as such Trustees shall be transferred and assigned to and held jointly in the names of himself and said Clark as hereinafter provided, or to and held in the name of a trust company as trustee as in Section 4 hereof provided, it being the intention of this agreement that the said Clark and his associates, and the said Harriman, as Trustee as aforesaid, as such Trustees, shall own each an equal undivided half of all of the capital stocks of all of the above named companies.

SECTION 4. It is hereby agreed that all of said capital stock in which an undivided half interest as aforesaid shall be purchased by said Harriman, Trustee, under the provision of said Sections 1, 2, and 3, hereof shall be transferred upon the books of said several companies either to "William A. Clark, Trustee for himself and his
2006 associates, and Edward H. Harriman, as Trustee," and that all of the capital stock of the San Pedro Company now outstanding, so to be held by joint title as above provided, shall, unless the parties hereto otherwise agree, be in like manner transferred to and stand upon the books of said companies in the names of said Clark and Harriman, Trustees, together with all of the stock of the San Pedro company which shall be hereafter issued, and as the same shall be issued, and shall be represented by certificates in the joint names of "William A. Clark, as Trustee for himself and his associates, and Edward H. Harriman, as Trustee," and each of the parties hereto shall have the possession and custody of certificates representing one-half in number and par value of said stock when so transferred to the parties hereto as aforesaid, and neither party hereto shall in any manner dispose of said holdings of the said capital stock of the said California company, or said Empire Company, or of said San Pedro company, or any part thereof, or any interest therein, for the full period of ten years after the opening for business of said through line of said San Pedro company as in this agreement provided, without first obtaining the consent of the other party hereto, nor at any time without giving said other party hereto the right to purchase such holdings, or interest therein, so offered for sale, on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years the said then jointly held stock and the certificates thereof may be, and shall be, at the request of either party hereto, divided between said Harriman and Clark as Trustees according to their respective interests; *provided*, however, that if the parties hereto shall agree upon a trust company to be the holder of said certificate of stock, as trustee for the said "William A. Clark, Trustee, for himself and his associates, and Edward H. Harriman, as Trustee," all of the said several shares of

stock and certificates representing the same referred to in this
2007 section shall be transferred upon the books of the said several corporations to said trust company as trustee, and certificates duly issued to it therefor as trustee, to be held by it in trust for the parties hereto, in accordance with and subject to the terms of an agreement to be executed between the parties hereto and the said trust company concerning the holding of said shares.

The said last named agreement shall, among other things, provide first, that said trust company shall issue to the parties hereto certificates of interest running to the said "William A. Clark, Trustee, for himself and his associates, and Edward H. Harriman, Trustee," jointly, each party hereto to have possession of certificates representing one-half in number of the shares and one-half in par value thereof, which may be deposited with the said trustee, and second, that said trust company will, from time to time, when jointly requested by the said "William A. Clark, Trustee, for himself and his associates, and Edward H. Harriman, Trustee" give and issue to such person or persons as said parties hereto may direct, a proxy or proxies authorizing the person or persons named in said proxy or proxies to vote any and all of said stock at any meeting of the stockholders of said several companies; and, third, that said trust company shall pay over to the parties hereto, or such persons as they shall jointly direct, any and all dividends, whether of stocks, bonds, moneys or property of any sort belonging to any of said several corporations, and which may be paid to or received by said trust company in any manner by reason of its holdings of any of said capital stock as aforesaid, together with such other provisions as may be hereafter agreed upon touching instructions which may, from time to time, be given to said trustee jointly by the parties hereto, said certificates of interest above named to be held and possessed by the parties hereto, but neither party shall in any manner dispose of said certificates of interest, or any part thereof, or of any interest therein, before the full period of ten years after the opening for business of said through line of
2008 said San Pedro Company, as in this agreement provided, without first obtaining the consent of the other party hereto to such transfer, nor at any time without giving such other party hereto the right to purchase such holdings or certificates offered for sale on as favorable terms as the same are offered for sale or agreed to be sold to any other person or company. At the end of said period of ten years said certificates of interest may be surrendered by the parties hereto, or by the holders thereof to said trust company, which shall thereupon assign and deliver the said stock certificates so held by it, to the said holders of said certificates of interest, in number and par value of shares named in such surrendered certificates of interest, and said shares of stock may then be transferred upon the corporate books of said several companies accordingly. At any time thereafter said certificates of stock issued jointly to said "Clark, Trustee and Harriman, Trustee" may upon demand of either party hereto be divided between them according to their respective interest, yet subject, however, to the right of either party hereto to purchase said stock

from the other party hereto at the price and on the terms in this section hereinbefore provided.

SECTION 5. It is agreed by the parties hereto that pending the carrying out of this agreement no further stock of the California company or of the San Pedro company shall be issued.

SECTION 6. Upon the completion of the sale and purchase of the said one undivided one-half of the capital stock of said companies, now owned by said Clark, Trustee, will whenever requested by said Harriman, Trustee, cause one-half of the membership of the directorate of each of the several companies to be vacated, and will cause directors to be nominated and named by the said Harriman, Trustee, to be elected to the directorate to fill such vacancies in each and every of said several companies, but said Harriman, Trustee, appreciating the advantage to be obtained by preserving the
2009 independent character of the San Pedro Company, and to that end disturbing as little as may be the present organization of said company until the through line of said San Pedro Company in this agreement mentioned is completed and in operation, will not exercise the right herein given him to name one-half of the said boards of directors unless he shall deem the exercise of such right necessary to the protection of the interests which he represents.

SECTION 7. The contract relations between the said Empire Construction Company and the San Pedro company not having been definitely agreed to, it is mutually covenanted and agreed between the parties hereto that within six months from the date hereof a contract shall be entered into between the said Empire company and the said San Pedro company which shall be in terms satisfactory to the parties hereto.

SECTION 8. It is mutually agreed that in all matters pertaining to the construction, opening for business and operation of the railroad of the San Pedro Company, including the purchase of equipment, the making of contracts for construction and the purchase of material therefor, and any and all contracts establishing relations of trackage or traffic with other railway companies, the parties shall act jointly, and no such contracts or arrangements, or any of them, shall be made, nor any corporate action taken by said San Pedro company, the California company or the Empire company without the approval of both parties hereto, and that in all such matters each of the parties hereto may be represented by an agent or agents to be appointed by them respectively with power to act for and in the names of their respective principals, and the said parties shall also act jointly in naming and prescribing the accounting and other officers and agents to be engaged in the operation of said companies, and each of them, and the auditor of said Empire company shall be a person selected by the said Harriman, Trustee, and upon
2010 the request of either party hereto any of said officers or agents shall be removed.

SECTION 9. It is understood that pending the carrying out of the terms of this agreement said Harriman, Trustee, may by his agent or agents inspect and examine the corporate records, books, accounts, rights and franchises of each of said several companies.

Article Second.

SECTION 1. In consideration of the covenants of the said Clark Trustee for himself and his associates, and also on behalf of the San Pedro company, in this agreement written, the said Harriman, Trustee as aforesaid, covenants and agrees with said Clark, as Trustee, that he will in the time hereinafter stated, negotiate with said Short Line company, and obtain from said Short Line company the sale and lease to said San Pedro company of the property hereinafter mentioned as follows:

(Parcel 1.) A conveyance from said Short Line company to said San Pedro company, by good and sufficient deed, free and clear of incumbrance, of all of the following described property: The line of railroad known as the Terminus branch of the Short Line railroad from a point or points beginning at the connection of said branch with the yards of the Short Line company to be agreed upon when said yards are defined as hereinafter provided, in Salt Lake City, County of Salt Lake, State of Utah, and extending in a generally westwardly and southerly direction to a point near Terminus in the County of Tooele, State of Utah, together with a branch line of railroad extending from Saltair Junction to the salt works, in Salt Lake County, State of Utah, except that part of said line the right of way for which is to be surrendered to the United States, and also the partially completed railroad and right of way, surveys and maps thereof, and railroad property, other than equip-
2011 ment, acquired by the Short Line company for or used in connection with the construction of its proposed new line of railroad now under construction extending from a point of junction with said Terminus line above named southerly to a point known as Leamington Junction, upon payment therefor by said San Pedro company as hereinafter provided.

(Parcel 2.) A conveyance from said Short Line company to said San Pedro company by a good and sufficient deed containing a covenant to save and protect that said San Pedro company harmless from the lien or charge of the Consolidated Mortgage of the Oregon Short Line Railroad Company, dated March 1, 1897, and from the liens of the Income A and Income B mortgages of said company, for all and singular the following described property: All the line of railroad extending from a point near Sandy and about ten miles south of Salt Lake City, Utah, to be hereafter definitely fixed by a description and agreement between the parties hereto, and running from said point southerly through Provo, Juab and Leamington to Milford, Utah, and thence a further distance of about 17 miles to a terminus of said line of railroad at Frisco, Utah, and also all those certain other branch lines of railroad owned by said Short Line company which extend into what is known as the Tintic district, and which are generally described as follows: A line extending from Lehi Junction to the Tintic district, together with all branches and interest in joint tracks connecting therewith.

(Parcel 3.) A lease from the said Short Line company for the term of ninety-nine years granting to said San Pedro company the general and common use for its sole and separate business in com-

mon with the Short Line company of that part of the main line or lines of the said Short Line company's railroad extending from the northerly yard limit point thereon Southerly through the City of Salt Lake for a distance of about ten miles south from the southern limits of said Salt Lake City to a point on said main line
2012 to be hereafter definitely fixed but which is to be so fixed as to admit the Short Line company and the San Pedro company to the unobstructed use of the side tracks and switches necessary or convenient for use of and access to the side tracks, switches and properties of either of said companies, or to any or all of the smelters or other industrial institutions now existing or that may be hereafter established upon or near to said main tracks, together with all side tracks, stubs, spurs, switches, crossovers, standing places for cars, stations, signals, buildings, coal chutes, shops, roundhouses, turntables, and every other facility or property used in connection with or appurtenant to the property or business of the Short Line Company between said northerly yard limit and said point near Sandy about ten miles south of the southerly boundary of said Salt Lake City, as above indicated.

It is agreed that the lease to be executed by the Short Line company to the San Pedro company, providing for the said use of the properties of the said Short Line company from the north yard limit in Salt Lake City to the said point near Sandy, including the terminal facilities of the Short Line company in Salt Lake City, Utah, shall be upon the consideration that the San Pedro company shall pay, in monthly instalments a rental based upon a four per cent. interest charge upon an agreed valuation of said property, and the cost of any capital additions thereto hereafter made, apportioned between said Short Line company and said San Pedro company upon the basis of use, but with a fixed minimum proportion to be paid by said San Pedro company, and also a proportionate amount of the expense of maintenance, improvement and operation of said property, including taxes, special assessments and insurance, the amounts of which rental and other payments, and the rules for ascertaining the same, together with rules for governing extensions and betterments, and the cost, rental and use thereof, and rules governing the operation of said yard, shall be agreed to by the operating officials of said Short Line company and said San
2013 Pedro company subject to the approval of the parties hereto, and which shall then be incorporated in said contract of lease, together with all formal provisions usual to such contracts.

The said property, the use of which for its own separate business is let to the San Pedro company, shall be managed and controlled by the Short Line company, provided, however, that for cause upon demand of the San Pedro company, after thirty days' written notice to be given to the general manager of the Short Line company by the San Pedro company, a competent superintendent for the same shall be jointly chosen by the respective presidents of the San Pedro company and the Short Line company, who shall be charged with the care, management and operation of said property, to the end that the rights and privileges of the said parties thereto under this

agreement shall be fully secured and preserved. Said superintendent shall be removed or discharged upon reasonable notice upon the written demand of either party to said lease given to the other party.

(Parcel 4.) The Short Line company is the owner of all of the capital stock and first mortgage bonds of the Utah & Pacific Railway Company which owns a line of railroad extending from Milford, Utah, to the Nevada-Utah state line at a point known as Uvada, and said Short Line company owns all of the capital stock of the Utah, Nevada and California Railroad Company, a corporation of the State of Nevada which owns a railroad extending from the Utah-Nevada State line, at the point aforesaid, southerly to Calientes in Lincoln County, Nevada, and a right of way and partially constructed road bed for a line of railroad extending from said Calientes to a point near Pioche in said Lincoln County, and also a right of way and partially constructed road bed for a line of road extending from said Calientes southwesterly across the State of Nevada to the Nevada-California state line; and said Short Line company also owns all of the capital stock of the Utah, Nevada & California Rail-
2014 road Company in California a corporation of the State of California which claims or owns a right of way extending from the Nevada-California state line to a point on the railroad of the Santa Fe company near Ludlow, Cal., and other railroad properties; said Short Line company also owns all of the capital stock of the New East Tintic Railway Company, which last named company owns a line of railroad in the Tintic district.

The said Harriman, Trustee, undertakes and agrees to procure from the Short Line company an agreement to sell to the San Pedro company, upon payment of prices to be fixed as hereinafter provided, all of the capital stock and first mortgage bonds of each of the following named companies: The said Utah & Pacific Railway company, the said Utah, Nevada & California Railroad Company, the said Utah, Nevada & California Railroad Company in California, and the said New East Tintic Railway Company; and an agreement from the Short Line company that it will, upon the request of the San Pedro company, if necessary, act with the said San Pedro company in procuring from each of the said several companies lastly above named, a cancellation of the first mortgage bonds and the release and satisfaction of the said first mortgages, and also in procuring conveyances to said San Pedro company from each of said four companies above named, of all the railroad, franchises and other property owned by said companies, respectively, so as to vest the said San Pedro company with the full title to and ownership in all of said railroads, franchises and other property in this paragraph mentioned.

(Parcel 5.) The said Harriman, Trustee as aforesaid, undertakes and agrees that said Short Line Company will sell and convey to the San Pedro Company such a proportion of its equipment appropriate and proper for use upon and heretofore assigned to use upon its lines of railroad south of Salt Lake City above referred to, as may determine between the chief operating officers of said companies, upon

being paid therefor the value of said equipment as the same
2015 shall be found and determined by the joint action of the superintendent of motive power of the parties hereto, and said Clark as Trustee undertakes that said San Pedro Company will buy said equipment and pay for the same on the delivery thereof at the price so found and determined.

SECTION 2. The said Clark, Trustee as aforesaid, in consideration of the covenants and agreements of the said Harriman, as Trustee as aforesaid, as written in this article, hereby undertakes and agrees that he will negotiate with and obtain from said San Pedro company a covenant and agreement on its part that it will buy from the said Short Line company and pay for all of the properties referred to and described in this article as Parcels 1, 2, 4, 5, and that the value of the said railroads and properties to be conveyed by the Short Line company described in said parcels shall be ascertained and determined, except as to said equipment, in the following manner: By a fair estimate of the value thereof to be agreed upon by the parties hereto, based upon the cost, which is to be the minimum factor and upon the earning power of the said railroads, franchises and properties, capitalized at four per cent. per annum, respectively described in said several parcels in this article, and that the aggregate value of all of said several properties referred to in said several parcels shall constitute the purchase price thereof to be paid by the San Pedro company to the Short Line company upon making the conveyance, transfers and assignments as aforesaid.

Said agreement shall provide that said San Pedro company will and shall assume all the obligations of the Short Line Company to contractors and others in respect to the location, relocation, construction and reconstruction upon the premises described in Parcel 1 hereof, and will carry out, fulflll and perform all of the said Short Line company's obligations in respect to said work, and will use the said new work when completed as part of the San Pedro company's main line of railroad, and that said San Pedro company will
2016 accept said lease for the property described in Parcel 3 on the terms above written.

All said conveyances, assignments and transfers and said lease to be made and delivered, and considerations therefor paid, contemporaneously with the exchange of stock, and the execution of the agreement hereinafter mentioned, are to be accomplished within six months from the date hereof.

Article Third.

SECTION 1. The said Harriman, as trustee, further covenants and agrees that he will negotiate with the Southern Pacific Company and if possible obtain from said company the right for the San Pedro company to use the tracks of the Southern Pacific company from the point of its junction with the tracks of the Southern California company at or near Colton, to the point of junction with the tracks of the San Pedro company at or near Riverside, at a rental that will not exceed four per cent. per annum on one-half the valuation of the property of the Southern Pacific company so used, and a share

of the cost of maintenance thereof, including taxes, in proportion to the use of said tracks and property on a wheelage basis.

SECTION 2. The said Harriman, as Trustee, further covenants and agrees that he will negotiate with the Southern California Railroad Company, and if possible obtain from said company the right for the San Pedro company to use the tracks of the Southern California company from the point of its junction with the tracks of the Southern Pacific company at or near Colton, to the point of junction of its tracks with the tracks of the Santa Fe Pacific company at or near Barstow, at a rental not exceeding four per cent. per annum on one-half the valuation of the property of the Southern California company so used, and a share of the cost of maintenance thereof, including the taxes, in proportion to the use of said tracks and property on a wheelage basis.

2017 SECTION 3. Said Harriman, as Trustee, further covenants and agrees that he will negotiate with the Santa Fe Pacific Railway company, and if possible obtain from said company the right for the San Pedro company to use the tracks of the said Santa Fe Pacific company between Barstow and Ludlow, California, or other point of connection of junction with the proposed line of railroad of the San Pedro company, at a rental which shall not exceed four per cent. per annum on one half the valuation of the property of the said Santa Fe Pacific company so used, and a share of the cost of maintenance thereof including taxes, apportioned upon the use of said tracks and property upon a wheelage basis.

SECTION 4. Each of the several trackage contracts referred to in this article may also contain provisions requiring the San Pedro company to pay to each of said lessors for water, fuel and other supplies, labor or material furnished to and for the sole use of the San Pedro company while upon the tracks of said several companies, and also the usual conditions and agreements for payment by the San Pedro company to said several lessors for losses and damages to persons or property arising from the negligence or wrong doing of its sole employes.

Article Fourth.

The parties hereto, as Trustees aforesaid, hereby covenant and agree to and with each other that the said San Pedro company and the said Short Line company shall and will, on or before the date named in Section 2 of Article second hereof, enter into an agreement and agreement for a term of ninety-nine years with each other concerning the new line of transportation and traffick substantially to the effect following:

(*a*) The said new transportation line shall consist of the line of railroad to be created, secured, constructed and operated under the charter and franchises of the San Pedro company. Its main

2018 line shall commence at the City of Salt Lake, Utah, and run southerly via Garfield, Leamington, Milford, Calientes, and thence through the States of Nevada and California to a junction with the line of railroad of the Santa Fe Pacific company, and thence by trackage arrangements over the lines of the Santa Fe Pacific Com-

pany, the Southern California company and the Southern Pacific Company to a connection with the San Pedro company's line in California at Riverside, and thence via Los Angeles to San Pedro Harbor.

(*b*) But if for any reason any of said trackage arrangements referred to Article Fourth cannot be obtained, then upon and along a line of railroad to be otherwise acquired or to be constructed by the San Pedro company in lieu thereof, making and constituting a through line of railroad from the City of Salt Lake to San Pedro Harbor via Los Angeles in California.

(*c*) The branch lines of said new through transportation line shall be the lines of railroad heretofore operated by the Short Line company and described in Parcel 2 above mentioned and the branch lines of the San Pedro company in southern California, and such other branch lines as may be constructed or acquired hereafter by said San Pedro company, it being understood that the San Pedro company shall not hereafter extend its main line of railroad as herein defined, or any branch lines of railroad, or construct or build any line of railroad, or aid any other company or companies in the construction or building of any line or lines of railroad, nor assist or advise in building or constructing any other line of railroad northward or into the territory northward of the parallel of Salt Lake City, Utah.

(*d*) Said agreement shall further provide that should conditions develop hereafter which require the construction of branch lines connecting with the said San Pedro company's road south of Salt Lake City the construction of such lines shall be subject to agreement before the commencement thereof; providing, however, that if either party objects to the construction the other may build said
2019 branches and connect the same with the main line of said San Pedro company and be entitled to an interchange of traffic with it upon reasonable terms, it being understood that said branch lines shall not directly or indirectly invade the territory of the Short Line company north of Salt Lake City, nor be built for the purpose of diverting business naturally tributary to the Short Line company's road north of Salt Lake City. On the other hand it is agreed and understood that the Short Line company shall not build branch lines which will invade the territory of the San Pedro company south of Salt Lake City or divert business which would be naturally tributary to the San Pedro company's road south of Salt Lake City.

SECTION 2. The San Pedro company will, in said contract, agree to construct the railroad from a junction on the line of the Santa Fe Pacific company's road above mentioned, near Ludlow, or some other agreed point on said line in California, to a connection with the Short Line company's present road at Calientes, Nevada, and that all of the line of railroad constructed, reconstructed or to be constructed by the San Pedro company, and which is to become a portion of the main line thereof, shall be constructed with not less than seventy-five pound rail, and shall be completed and equipped as first class in every respect, the construction and equipment to be of a standard equal at least to that already adopted by the San Pedro company upon that portion of its road heretofore constructed in southern California.

SECTION 3. The Short Line company will in said contract under-

take for itself and its connections, the Union Pacific Railroad Company, and the roads of the Southern Pacific company, to join with the San Pedro company in forming through lines of service necessary for the interchange of any and all business which can be carried over said Short Line and its connections in conjunction with said San Pedro company's road to and from all points which may be reached via Salt Lake City on as favorable terms and conditions as
2020 are offered by any carriers competing for the same business.

SECTION 4. In said contract provision shall be made by the parties thereto for the adoption of classifications governing through or interchanged traffic, for the making of through and joint tariffs and rates, and the maintenance thereof, and the publication thereof as required by law, and provision shall also be made for just and equitable divisions of all such agreed through rates and charges respecting all interchanged business.

SECTION 5. Said agreement shall also contain the following provision:

"It is agreed that the interchange of traffic by and between the San Pedro road on the one hand, and the Short Line company and the Union Pacific company on the other hand, as against any competitor of said Short Line company or said Union Pacific company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of said Union Pacific company; and, in like manner, that the interchange of traffic by and between said Short Line company and said Union Pacific company on the *other* hand, and the San Pedro company on the other hand, as against any competitor of the said San Pedro company, shall be preferential, but not exclusive, except as hereinafter provided, in favor of the San Pedro company;

"That is to say,

"Whereas, the value of the Short Line company of its lines in Utah south of Salt Lake City, the transfer of which to the San Pedro company is hereinbefore provided, consists largely of their relation as feeders of said Short Line company and said Union Pacific company, and, whereas, it is not practicable to capitalize the value to said Short Line and said Union Pacific company of said lines south of Salt Lake City as feeders of traffic, or in any other manner to compensate said Short Line company and said Union Pacific company for the
2021 loss which would result from the diversion to other carriers of the traffic moving to and from points on said lines in Utah south of Salt Lake City.

"Now therefore, it is mutually agreed and understood that all traffic which is either taken up or laid down on the lines of the San Pedro company in Utah for transportation to or from any and all points which can be reached with reasonable expedition by way of the lines of said Short Line and said Union Pacific company, and their respective connections, shall be forwarded exclusively, in so far as that may lawfully be done, by way of and over the lines of said Short Line and said Union Pacific company. In consideration whereof said Short Line and said Union Pacific company undertake and are bound hereby to solicit the transportation of traffic to or from points in Utah reached by the roads of said San Pedro company, ex-

clusively in connection with said San Pedro company against any and all said San Pedro company's competitors.

"Whereas, the owners of said Short Line and said Union Pacific company had projected and proposed to build a railroad from Calientes, Nevada, to Los Angeles, Cal., or to a connection with a railroad already constructed which would give entrance to Los Angeles and other points in Southern California; and, whereas, the value to said Short Line and said Union Pacific company of said projected line from Calientes to southern California consisted largely in the profit to be derived from the carriage over the line or lines of road north of Calientes, Nevada, and east of Ogden, Utah, now owned and controlled by said Short Line and said Union Pacific company, or by persons or companies friendly to said Short Line and said Union Pacific company, of the traffic interchanged by points on the line of, or to be reached by way of, the line of said projected line between Calientes, Nevada, and Los Angeles, California, with points north of Calientes, Nevada, and Ogden, Utah, reached by or by way of the roads owned or controlled by said Short Line
2022 and said Union Pacific company, or by companies friendly to them; and, whereas, by the sale of, or by the transfer by lease or purchase, to the said San Pedro company, of the lines of said Short Line company south of Salt Lake City, Utah, and the Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah & Pacific Railway between Uvada and Milford, Utah, and the abandonment of its projected line between Calientes, Nevada, and Los Angeles, California, in favor of the line proposed to be built by the San Pedro company, the said Short Line and said Union Pacific company are deprived of the profit to be derived from the ownership and control of a railroad line from Salt Lake City, Utah, to Los Angeles, California, which might be lawfully conducted in the interest of said Short Line and said Union Pacific company.

"Now, therefore, it is covenanted and agreed, in part consideration of the transfer to said San Pedro company of the ownership or control of the lines of the Short Line company south of Salt Lake City, in Utah, and of said Utah, Nevada & California Railroad between Calientes, Nevada, and Uvada, and the Utah and Pacific Railway between Uvada and Milford, Utah, and the abandonment of its purpose to build said projected line from Calientes, Nevada, to Los Angeles, California, or to said point of connection with a railroad which would give it entrance to Los Angeles, Cal., as follows:

"To unite the roads now owned by said San Pedro company, or transferred to it by this instrument, or hereafter constructed by it, to form a connected line of railroad between Salt Lake City, Utah, and Los Angeles, California, and other points in California and then roads of the Short Line and Union Pacific company so as to form a through line of transportation service between points in California on the said San Pedro company's roads, and points east of Ogden, Utah, on or to be reached by way of the Union Pacific com-
2023 pany's lines and its connecting railroad lines. It is further understood and agreed that in so far as it may lawfully be

done and profitably, that said through line shall be operated and worked as a unit with respect to all traffic which is, in whole or in part, the subject of competition by other carriers. To this end it is understood and agreed that each of the parties hereto will work, in so far as they lawfully may, to promote the interests of said through line against any other line competing in whole or in part for the same traffic, and each party to said through line is bound in good faith in every lawful way to preferentially promote the interest of said through line in the conduct of all traffic which may be lawfully, reasonably and profitably conducted by said through line against any and all competitors of said through line.

"But this obligation of preference is not to be understood or to be construed as requiring either party hereto to refuse or neglect to receive and properly forward any of the traffic referred to in this subdivision which shall be offered for transportation by other connecting carriers nor so as to require either party hereto to refuse or neglect to receive and duly forward in accordance with shipper's instructions any traffic for which the shipper thereof shall have given or tendered written instructions directing that said traffic be delivered for forwarding to destination to a connecting carrier other than a party hereto; provided, however, that the through rates and the subdivisions of said through rates for traffic thus provided to be interchanged with carriers other than parties hereto shall not be less than those which at the same time are offered and in effect by or by way of the said through line, and each of the parties hereto is bound to the other party and agrees not to join any connection in through rates which are lower than those which are at the same time in effect or obtainable by the use of said through line, nor to engage with any carrier in any device or practice whatsoever designed to, or
2024 which shall have the effect of giving said connection an advantage or preference over said through line or any part thereof in soliciting or carrying the business properly subject to carriage by said through line."

SECTION 6. Said agreement shall also contain the following provision:

"No arrangement, contract, covenant or agreement for shipment or carriage of persons or property shall be made, permitted or suffered by either party hereto with any other transportation company or carrier by means whereof any such carrier or transportation company shall have or enjoy directly or indirectly any better rates or have any better divisions of through rates, or better transportation facilities or service than are had or enjoyed by either of the parties hereto with the other party."

SECTION 7. Said agreement shall also contain the following provision:

"Nothing contained herein shall be construed as limiting the rights or privileges of the Union Pacific Railroad Company or of the Southern Pacific Company or of the Short Line company in respect to interchange of traffic each with the other."

SECTION 8. Said agreement shall also contain the following provision:

"Said Short Line company is bound for itself, and undertakes to secure a like obligation upon the part of the Union Pacific company and the roads of said Southern Pacific company to deal with said San Pedro company in the matter of interchange of traffic in respect to rates of charge for all traffic and the divisions of said rates and in respect to class and quality of service as they, respectively deal with each other or with the most favored connection, and not to discriminate in any respect in favor of each other or of any connecting line to the prejudice and disadvantage of said San Pedro company."

SECTION 9. Said agreement shall also contain the following provision:

"It is covenanted and agreed that said Short Line company
2025 and its connection, the Union Pacific Railroad Company, and each of them, shall have the right to name and make the through rates between points (that is, in both directions) on or reached via their respective lines, and points on the line of said San Pedro company in Utah, for business which said Short Line company or said Union Pacific company might give to or receive from said San Pedro company, in competition with any and all other connections of said San Pedro company; provided, however, that on demand said Short Line company and said Union Pacific company shall join said San Pedro company in any through rates necessary to meet the rates offered by any competing through line for such business."

SECTION 10. Said agreement shall also contain the following provision:

"Each party hereto hereby covenants and agrees with the other party that it will not discriminate in any manner whatever against the other party hereto, or any of said other party's connections, in favor of any of the competitors of either of said parties, or in favor of any other connecting carrier in respect of the class or quality of its service, or in any other respect whatever affecting rates or service."

SECTION 11. Said agreement shall also contain the following provision:

"Neither party hereto shall or will agree with, or make any convention with a competitor of the other party hereto in any respect designed to, or which shall have the effect of excluding such other party from the full and free opportunity to meet any rate or grant any facility offered by such competitor for any and all traffic of every sort, and that the rates and facilities necessary to meet the offers of such competitor shall be held to be common to both parties hereto, subject to established divisions."

SECTION 12. Said agreement shall also contain the following provision:

"Said San Pedro company hereby covenants and agrees
2026 that it will not now or hereafter interchange traffic with any carrier connecting with it at a point in Utah south of Salt Lake City, or in Nevada, upon more favorable terms as to character or quality of service, nor at any lower rate of charge or lower divisions of rates, nor in any respect whatever than those governing the

interchange of the same or similar traffic with the Short Line company at Salt Lake City."

SECTION 13. Said agreement shall also contain the following provision:

"Said Short Line company hereby further undertakes and agrees to negotiate with, and secure if possible, from said Southern Pacific Company, an undertaking and agreement on its part for the interchange of traffic in southern California with said San Pedro Company in like manner and upon as favorable terms and conditions as said Southern Pacific Company has for the interchange of traffic with the Southern California Railroad Company.

"The San Pedro company covenants and agrees that it will make a covenant or agreement with the Southern Pacific Company for its, (said San Pedro company's) performance of an undertaking that it will in the first instance adopt all lawful rates, tariffs and charges used by said Southern Pacific Company for the handling of local traffic by said San Pedro company which is or may be subject to competition between said Southern Pacific Company and said San Pedro company, and that thereafter neither party shall change said rates without the consent of the other party, unless it may be made necessary so to do to meet the rates, charges or tariffs of another competing line of railroad."

SECTION 14. Said agreement shall also contain the following provision:

"The parties hereto mutually covenant and agree to establish a daily through passenger train service, consisting of not less than one train each way, over their respective lines, and over the lines of railroad of the Union Pacific company to its terminus at Council Bluffs, Iowa, and thence *via* its connections, if it can accomplish the same, between Council Bluffs, Iowa, and Chicago, Illinois, through to Los Angeles, California. Such joint through passenger service shall be so established and put in operation whenever either party hereto shall give to the other written notice of its desire so to do. When so established the trains necessary therefor shall be made up of such cars as the managing officials of the parties hereto shall determine. The equipment of such trains shall be of the latest modern design, and in all respects the equal or superior of that of competing lines. Each party shall furnish its just quota in proportion to length of haul, of such equipment. The time schedules for such joint passenger train shall be no greater in point of time than the shortest time of the trains of competing lines between the same points, and the time established shall be divided *pro rata* per mile, reasonable allowance to be made for difference in physical conditions, unless otherwise specifically agreed. Either party hereto shall receive the through passenger trains of the other party upon delivery and dispatch the same regularly without any delay other than the ordinary station service required by through trains of like class, to their respective destinations. Each party hereto shall maintain all equipment used in such joint passenger service upon its own line, and car mileage at usual rates shall be paid for all cars of either party used upon the lines of the other in the joint business."

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SECTION 15. Said agreement shall also contain the following provision:

"It is further covenanted and agreed by and between the parties hereto that for the performance of the joint through freight service over said through line each of the parties hereto shall furnish its proportion of the cars necessary or convenient for use in the transportation of through freight, and that each party shall pay to the other the usual rates allowed for car service; that all joint through freight rates for competitive business shall be divided between the parties hereto and their respective connections, the Union Pacific Railroad Company and the Oregon Railroad & Navigation
2028 Company, *pro rata* per mile in proportion to the length of the haul performed by each, but all arbitrary rates, including the customary Missouri River bridge arbitraries, shall be first deducted and the remainder of the joint or through revenue then divided upon said basis; *provided*, that neither party shall be required to perform any service other than switching service in connection with the other party for less than one dollar per ton, except as may be mutually agreed upon from time to time. Joint through rates for business other than that which is subject to the competition of rival carriers, shall be divided *pro rata* per rate, that is to say, each party shall receive of such through rate a share equal to the proportion its separate local rate for identical service separately performed bears to the sum of said local rates of both parties."

SECTION 16. Said agreement shall also contain the following provision:

"Each party shall be liable for all damages to persons or property in its possession or under its charge for the purpose of transportation or storage. When the injury for which damages are claimed cannot be located or arises from concealed or unknown causes the damages shall be jointly paid by the party hereto in the proportion in which the through rates are divided, as hereinafter provided. Cars of each of the parties hereto received on the lines of the other shall be promptly returned, preference being always given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars so loaded are in good condition."

SECTION 17. Said agreement shall also contain the following provision:

"It is further mutually covenanted and agreed by and between the parties hereto that all joint through passenger rates shall be divided in the following proportions:

"1. When the joint passenger rate is made of the sum of the published local rates of the parties, each party shall receive its local rate.

2029 "2. If the through passenger rate shall be less than the sum of the two or more local rates, made less to meet competition, or to promote the public interest, each party shall receive its local rate reduced in the precise proportion that the through rate is less than the rate made by the sum of the locals, and neither party shall in any division receive more than its published local tariffs."

SECTION 18. Said agreement shall also contain the following provision:

"Any difference that shall hereafter arise as to the meaning or the proper construction of this agreement, or any part thereof, or as to the performance of any of the covenants and agreements herein contained by either party, shall first be referred to the two presidents of the said parties for settlement, and to that end the party complaining shall deliver to the said presidents a concise written statement of the matter regarding which complaint is made. If the two presidents within thirty days after receiving such complaint, are unable to settle such diff-rences so submitted, then the same shall, within thirty days thereafter be referred to a committee of the two boards of directors to be created as provided in this article. Notice of the time and place of hearing thereof by said committee shall be given by them to the parties hereto at least ten days before the same shall be heard. Each party may submit such evidence and statements as it may think proper for the consideration of such committee at such hearing, and the decision of such committee, when reduced to writing and signed by them or a majority of them, shall be binding upon the parties hereto, and such written decision shall thereafter be taken and held to be a part of this agreement."

Article Fifth.

It is further agreed between the parties hereto that all contracts necessary to carry out the provisions of this agreement shall
2030 be formulated and entered into by the parties appropriate to such contracts, whether hereinabove expressly provided for or not.

It is understood and agreed that the execution of this agreement by the party of the second part is subject to ratification and approval by the Executive Committee of the Short Line Company, and that the party of the first part shall be furnished with evidence of such approval when the same shall have been given.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

WILLIAM A. CLARK,
In Trust for Himself and His Associates.
EDWARD H. HARRIMAN,
As Trustee, as in Above Instrument Recited.

MILLAR EXHIBIT No. 54.

Oregon Short Line R. R. Co.

(Certified Copy.)

(EXECUTIVE COM., *Aug.* 18, 1904.)

(S. P. Pref.)

Subscription to Southern Pacific Preferred Stock.

Upon motion, duly seconded, the following resolutions were unanimously adopted

Resolved, (1), that Mr. E. H. Harriman be and he is hereby requested to subscribe in his name, but for account and on behalf of this Company, for the preferred stock of the Southern Pacific Company to which he is entitled to subscribe by reason of the stock of the Southern Pacific Company registered in his name, but which he holds for this Company; and that Messrs. T. Jefferson Coolidge, Jr., Geo. J. Gould, James H. Hyde, Otto H. Kahn, Winslow S. Pierce, Jacob H. Schiff, James Stillman, J. P. Adams, C. D.
2031 Haines, J. J. Hanauer, Siegfried Haymann, Kuhn, Loeb & Co., Rich E. Pestel, S. Siegman, and E. S. Steinam be and they are hereby requested to transfer and assign to W. D. Cornish the warrants issued to them respectively on account of the stock of the Southern Pacific Company registered in their name, but held by them for and on account of this Company; and that upon such transfer being made said W. D. Cornish be and he is hereby requested to subscribe in his name, but for account and on behalf of this Company, for the Preferred Stock of the Southern Pacific Company, to which, as the holder of such warrants, he will be entitled to subscribe.

Resolved (2), that, upon such subscriptions being made, the Treasurer of this Company be and he is hereby authorized and directed to pay the first instalment thereon, and to pay the remaining instalments as they shall severally mature.

On motion adjourned.

MILLAR EXHIBIT No. 55.

Oregon Short Line R. R. Co.

(Certified Copy.)

(EXECUTIVE COM., *Mar.* 9, 1905.)

(O. R. R. & N. Com. & Pref.)

Purchase of Oregon R. R. & Nav. Co. Stock.

On motion, duly seconded, it was unanimously

Resolved, that this Company purchase from Union Pacific Railroad Company 239,793 shares of the common stock of the Oregon Railroad and Navigation Company, at a price not exceeding $125.00 per share, and 108,623 shares of the preferred stock of the Oregon Railroad and Navigation Company, at a price not to exceed $125.00 per share; and the President of this Company be and he hereby is authorized in his discretion to pay for the said stock in the 2032 Four Per Cent. Refunding Twenty-five Year Gold Bonds of this Company, at par and accrued interest, or to execute a Note of this Company to said Union Pacific Railroad Company for the amount necessary to pay for said stock.

MILLAR EXHIBIT No. 57.

(Advertising.)

CHICAGO, *July* 6, 1905.

Mr. E. H. Harriman, President, Union Pacific Railroad Company, 120 Broadway, New York City.

DEAR SIR: Attached to this letter is a table showing the amount required for advertising purposes for the Related Lines, for the fiscal year ending June 30th, 1906. The table shows that the appropriation was for 1905, and an increase for 1906 over 1905. This table, however, should be read in the light of the following explanation:

While the appropriation for 1905 was $516,296.05, there was spent but $422,044.71, or $94,251.34 less than the appropriation. Of this $94,251.34, the sum of $16,500.00 was appropriated for the wall map which has not yet been completed nor paid for. The cost of the wall map is included in the appropriation asked for, for 1906. The balance of $94,251.34 surplus, has been contracted to be paid, but the work has not yet been done. It is also included in the estimate for 1906, so that the net sum requested for 1906—as compared with the amount requested for 1905—is but $497,360.91, the remainder, $94,251.34, having been appropriated during 1905.

Yours truly,

(Signed) J. C. STUBBS.

U. P. requisition also includes $12,500, necessary to advertise opening of San Pedro line—with expectation that the San Pedro Co. will appropriate a like sum.

2033 *Advertising Appropriations System Lines, Fiscal Years Ending June 30th, 1906–1905.*

	1906.	1905.	Increase.
Union Pacific Railroad Co.....	$209,227.49	$152.757.49	$56,470.00
Oregon Short Line Railroad Co.	29,106.05	26,706.05	2,400.00
Oregon Railroad & Navigation Co.....	44,306.68	42,394,68	1,912.00
Pacific System—Sou. Pac. Co...	168,722.16	163,667.96	5,054.20
Atlantic System—Sou. Pac. Co.	140,249.87	130,769.87	9,480.00
Grand Total.....	$591,612.25	$516,296.05	$75,316.20
Net Increase 1906 over 1905.....			$75,316.20

MILLAR EXHIBIT No. 66.

Union Pacific Railroad Company.

(Certified Copy.)

(EXECUTIVE COM., *March* 19, 1903.)

Amounts Loaned and Amounts Borrowed.

The Chairman submitted a memorandum showing the amounts borrowed by the company, and also the amounts loaned by the company to the Southern Pacific Company, The Chicago & Alton Railway Company, The Kansas City Southern Railway Company and the Union Depot & Railway Company of Denver,

2034 Whereupon, on motion duly seconded, the amounts borrowed and also the loans made by the company were approved, and the action of the Chairman in arranging for the same was ratified and confirmed.

Statement Above Referred To.

Union Pacific R. R. Co.

Loans.

Borrowed.	Loans	Collateral.
From Natl City Bank.....	$2,000,000	$2,500,000 O. S. L. Inc. B. Bonds
" Equitable Trust Co.....	1,000,000	1,300,000 O. S. L. 4% & P. "
" Mercantile Trust Co.....	500,000	630,000 O. S. L. 4% & P. "
" Western Natl. Bank.....	250,000	310,000 O. S. L. 4% & P. "
" Morton Trust Co.....	500,000	630,000 O. S. L. 4% & P. "
" Farmers L. & T. Co.....	500,000	630,000 O. S. L 4% & P. "
" Wells, Fargo & Co.....	750,000	950,000 O. S. L. 4% & P. "
" Guaranty Trust Co.....	250,000	310,000 O. S. L. 4% & P. "
	$5,750,000	$7,260,000
Loaned.		
To Southern Pacific Co.....	$9,000,000	Demand Note, no collateral.
" Chicago & Alton Ry. Co....	250,000	None.
" Kansas City Southern Ry. Co.	430,000	"
" U. Depot & Ry. Co., Denv..	300,000	
Total.....	$9,980,000	

March 18, 1903. WM. MAHL.

2035

MILLAR EXHIBIT No. 67.

Union Pacific Railroad Company.

(Certified Copy.)

(EXECUTIVE COMMITTEE, *Oct.* 4, '06.)

Purchase of Baltimore & Ohio Stock.

The agreement made by the President of Oregon Short Line Railroad Company with Messrs. Kuhn, Loeb & Co. for the purchase of 323,342 shares of the common stock and 72,064 shares of the preferred stock of the Baltimore & Ohio Railroad Company, and the resolution adopted by the Executive Committee of said Oregon Short Line Railroad Company approving such agreement, were submitted to this meeting, and thereupon upon consideration of the same the following resolution was unanimously adopted, viz:

Resolved, that the Union Pacific Railroad Company, as owner of the capital shock of Oregon Short Line Railroad Company, hereby approve the agreement made by the President of said Oregon Short Line Railroad Company with Messrs. Kuhn, Loeb & Co. and submitted to this meeting for the purchase of 323,342 shares of the common stock and 72,064 shares of the preferred stock of the Baltimore & Ohio Railroad Company.

Copy of Agreement Referred to Above.

NEW YORK, *Sept.* 14, 1906.

E. H. Harriman, Esq., President Oregon Short Line Railroad Company, 120 Broadway, City.

DEAR SIR: We beg to confirm the sale to you of 323,342 shares of the common stock of the Baltimore & Ohio Railroad Com-
2036 pany at $120 per share, and of 72,064 shares of the preferred stock of that Company at $92.50 per share. The purchase price, which amounts to $45,466,960. is payable as follows: $9,073,528. on delivery to you of the shares, $2,293,212. on or, at your option in whole or in part, before March 13th, 1907, and $34,100,220. on or, at your option in whole or in part, before September 13th, 1907, the deferred payments to be evidenced by notes of your Company, secured by satisfactory collateral. The purchase price is to bear interest at the rate of 4½% per annum from September 13th, 1906, to the respective dates of payment; any dividends on said stock in the meantime, and any rights and privileges accruing on said stock to belong to you.

Will you kindly confirm the above, and believe us,

Yours very truly,

(Signed) KUHN, LOEB & CO.

NEW YORK, *September* 14, 1906.

Messrs. Kuhn, Loeb & Co., 52 William St., City.

GENTLEMEN: On behalf of Oregon Short Line Railroad Company I hereby confirm the purchase from you of 323,342 shares of common and 72,064 shares of the preferred stock of the Baltimore & Ohio Railroad Company at the prices and upon the terms specified in your letter of this date addressed to me as President of that Company.

Yours truly,
(Signed) E. H. HARRIMAN, *President.*

2037 MILLAR EXHIBIT NO. 68.

Union Pacific Railroad Company.

(Certified Copy.)

(EXECUTIVE COM., *Oct.* 23, 1902.)

Agreement with Chicago & North Western Ry. Co.

The Chairman submitted memorandum of agreement between the Union Pacific Railroad Co., Southern Pacific Company, the Oregon Short Line Company and The Oregon Railroad & Navigation Company, of the first part, and the Chicago & North Western Railway Company, of the second part, dated October 22, 1902, covering the formation of through lines of transportation between the companies named by way of Omaha, Nebraska.

Whereupon on motion duly seconded the agreement was approved, and the action of the Chairman in executing the same was ratified and confirmed.

Agreement Referred to Above.

Memorandum of Agreement made this 22nd day of October, 1902, between the Union Pacific Railroad Company, the Southern Pacific Company, the Oregon Short Line Company and The Oregon Railroad and Navigation Company, first parties, and the Chicago & North Western Railway Company, second party.

Witnesseth:

First. That the parties hereto shall form through lines of transportation by way of Omaha, Nebraska, in pursuance thereof.

Second. That the existing mutual relations between the parties hereto in respect to through train service, and through car service, for passengers, mail and express, and for freight, shall continue subject only to such modifications as may be agreed upon from time to time to serve the mutual interest of both parties.

2038 Third. That such through service shall at all times upon the demand of either party be equal to the highest class of

similar service performed by either party in conjunction with any other connecting carrier.

Fourth. It is also agreed that said through train service shall, upon demand, of either party be made equal to the highest grade of similar service performed by any competitor or competitors of the parties hereto to serve the same communities.

Fifth. The parties hereto agree in behalf of said joint line that the rates of charge for any and all transportation service, the rules governing the conduct of the joint business, the facilities employed and provided for the purpose of soliciting, carrying and delivering the traffic, and the means used to advertise the said through line, shall be equal in all respects to those jointly made or used by the first parties in connection with any other carrier competing with said second party.

Sixth. All officers, agents and employees of the respective parties shall be required to work for said through line as diligently and faithfully as they severally or jointly work for any other carrier or transportation line.

Seventh. It is understood that all of the parties hereto are bound to advertise said through line as liberally and conspicuously as they or either of them advertise themselves in connection with any other carrier not parties hereto, and this provision shall extend to signs and lettering of equipment.

Eighth. In consideration of the foregoing mutual covenants and agreements, the second party agrees and is hereby bound to work preferentially with and for the said through line by way of Omaha as against any other line passing any Missouri River gateway which may be used in competition therewith.

Ninth. Any question which may arise as to the intent or meaning of the foregoing stipulation and agreements shall be determined by Mr. W. K. Vanderbilt or by such person or persons as he may elect.

2039 In witness whereof, the undersigned, duly authorized to represent the parties hereto, have set their hands and seals this 22nd day of October, 1902.

UNION PACIFIC RAILROAD COMPANY.
SOUTHERN PACIFIC COMPANY.
OREGON SHORT LINE COMPANY.
OREGON RAILROAD & NAVIGATION COMPANY,
By E. H. HARRIMAN, *Chairman.*
CHICAGO & NORTH WESTERN RAILWAY CO.,
By MARVIN HUGHITT, *President.*

MILLAR EXHIBIT No. 69.

Union Pacific Railroad Co.

(Certified Copy.)

(DIRECTORS, *April* 10, 1906.)

Amendment to Pension Rules.

Upon motion, duly made and seconded, it was unanimously

Resolved, that Rule 6 of the Rules and Regulations of the Pension Department, established by this Company, and promulgated by the President to take effect January 1, 1903, be amended so that said Rule shall hereafter read as follows:

"6. The term "Service" and "In the Service" refers to employment upon or in connection with any of the railroads owned or operated by the Oregon Short Line Railroad Company, The Oregon Railroad & Navigation Company, Southern Pacific Company, Central Pacific Railway Company, Southern Pacific Railroad
2040 Company, Oregon & California Railroad Company, The Galveston, Harrisburg & San Antonio Railway Company, Texas & New Orleans Railroad Company, Houston & Texas Central Railroad Company, The Houston East & West Texas Railway Company, Louisiana Western Railroad Company, and Morgan's Louisiana & Texas Railroad & Steamship Company respectively, as well as upon or in connection with any line of railway now owned or operated by this company; and the service of any employee of either of said companies shall be considered as continuous from the date from which he has been continuously employed by said companies or either of them or by this company."

MILLAR EXHIBIT No. 71.

Copy.

STANDARD OIL CO.,
26 BROADWAY, NEW YORK, *Nov.* 5, 1903.

E. H. Harriman, Esq., Chairman, Executive Committee, Oregon Short Line R. R. Co.

DEAR SIR: Referring to the agreement entered into between you and me on March 30, 1903, in respect to the 300,000 shares of the capital stock of the Southern Pacific Company, I beg to state that I should be glad to have you take over the stock now, instead of waiting until the 1st of May, 1904, as originally contemplated. If you are prepared to do this, I am willing to reduce the commission agreed upon to five-eighths of one per cent. viz. $187,500, and shall be ready to close the matter upon receipt of your check for the principal amount involved, with interest at 6%, together with the amount of said commission.

Yours very truly,

(Sgn.) WM. ROCKEFELLER.

2041 MAHL EXHIBIT No. 1.

Union Pacific Railroad Company.

Common Capital Stock Authorized, Issued, and Outstanding December 31, 1906.

Date.	Authorized. Amount.	Outstanding.	Remaining to be issued.
July 1, 1897	$61,000,000	$61,000,000	
January 10, 1899	27,460,100	27,339,300	$120,800
October 9, 1899	7,718,600	7,690,600	28,000
March 23, 1901	100,000,000	99,450,000	
Total	$196,178,700	$195,479,900	

Purposes for which Stock was Issued or was to be Issued.

$61,000,000 Issued to Reorganization Committee.
27,460,100 Issuable against $27,460,100 shares capital stock Oregon Short Line R. R. Co.
7,718,600 Issuable against $7,718,600 shares common capital stock of the Oregon Railroad & Navigation Co.
100,000,000 Issuable against a like amount of Union Pacific R. R. Co. First Lien Convertible 4% bonds. Stock to the amount of $99,450,000. face value were issued in exchange for convertible bonds.

W. M.

January 2, 1907.

2042 MAHL EXHIBIT No. 2.

Union Pacific Railroad Company.

Preferred Capital Stock Authorized, Issued, and Outstanding December 31, 1906.

Date.	Authorized. Amount	Outstanding.	Remaining to be issued.
July 1, 1897	$75,000,000	$75,000,000	
October 9, 1899	14,841,000	14,669,500	$171,500
October 9, 1899	10,159,000	9,899,800	259,200
Total	$100,000,000	$99,569,300	

Purposes for which Stock was Issued or was to be Issued.

$75,000,000 Issued to Reorganization Committee.
14,841,000 Issuable against $14,841,000 O. S. L. R. R. Co. Income B. Bonds.
10,159,000 Issuable against $10,159,000 O. R. R. & N. Co. Preferred Stock.

W. M.

January 2, 1907.

2043 MAHL EXHIBIT No. 3.

Union Pacific Railroad Company.

	Owned.	Outstanding.	Per cent. owned.
Illinois Central R. R.....	$28,123,100	$95,040,000.00	29.59
St. Joseph & Grand Island—Common.....	2,900,000	4,600,000.00	63.04
St. Joseph & Grand Island—1st Pref.....	932,200	5,500,000.00	16.95
St. Joseph & Grand Island—2nd Pref.....	1,250,000	3,500,000.00	35.71
Per cent. of total.....	.....	.....	37.37

Oregon Short Line Railroad Company.

	Owned.	Outstanding.	Per cent. owned.
A. T. & S. F. Ry. Co.—Common.....	.....	$102,000,000.00	
A. T. & S. F. Ry. Co.—Preferred	$10,000,000	131,486,000.00	7.61
Per cent. of total.....	.....	.....	4.28
Baltimore & Ohio R. R.—Common.....	32,334,200	152,330,060.00	21.23
Baltimore & Ohio R. R.—Preferred	7,206,400	60,000,000.00	12.01
Per cent. of total.....	.....	.....	18.62
C. M. & St. P. Ry. Co.—Common.....	3,690,000	58,183,900.00	6.34
C. M. & St. P. Ry. Co.—Preferred	.....	49,654,400.00	
Per cent. of total.....	.....	.....	3.42
C. & N. W. Ry. Co.—Common.....	2,572,000	77,516,745.97	3.32
C. & N. W. Ry. Co.—Preferred	.....	22,398,954.56	
Per cent of total.....	.....	.....	2.58
N. Y. C. & H. R. R. R. Co.....	14,285,745	179,282,060.00	7.97

2044

MAHL EXHIBIT No. 5.

Oregon Railroad & Navigation Co.

Statement Showing Holdings of Portland & Asiatic S. S. Co. Stock.

993	shares	in	name	E. H. Harriman, Chairman,
1	"	"	"	W. W. Cotton,
1	"	"	"	Wm. Crooks,
1	"	"	"	W. D. Cornish,
1	"	"	"	R. P. Schwerin,
1	"	"	"	H. F. Conner,
1	"	"	"	R. S. Lovett,
1	"	"	"	W. R. Litzenberg.

Total—1000 shares.

January 5, 1907.

WM. MAHL.

MAHL EXHIBIT No. 6.

Oregon Short Line Railroad Co.

Statement Showing Holdings of Southern Pacific Co. Common Stock.

100	shares	in	name of	J. P. Adams,
100	"	"	"	T. Jefferson Coolidge, Jr.,
100	"	"	"	Geo. J. Gould,
400	"	"	"	C. D. Haines,
5,000	"	"	"	J. J. Hanauer,
756,950	"	"	"	E. H. Harriman,
20	"	"	"	Siegfried Haymann,
100	"	"	"	James H. Hyde,
100	"	"	"	O. H. Kahn,
111,430	"	"	"	Kuhn, Loeb & Co.,
100	"	"	"	Winslow S. Pierce,
2045 100	shares	in	name of	Jacob H. Schiff,
9,600	"	"	"	S. Siegman,
100	"	"	"	Rich. E. Pestel,
15,700	"	"	"	E. S. Steinam,
100	"	"	"	James Stillman.

900,000 shares.

January 5, 1907.

WM. MAHL.

Oregon Short Line Railroad Co.

Statement Showing Holdings of Southern Pacific Co. Preferred Stock.

180,000 shares in name of E. H. Harriman.

January 5, 1907.

WM. MAHL.

MAHL EXHIBIT No. 7.

Union Pacific Railroad Company.

Annual Report, Year Ending June 30, 1906.

Credit to Profit and Loss, June 30, 1906	$42,796,026.39
Credit to Profit and Loss, June 30, 1905	34,943,194.42
Gain during the year	$7,852,831.97

Distributed as follows:

Expended for extensions	$506,903.56
Expended for betterments and additions (after deducting amount appropriated from income and proceeds of lands and other property sold which was applied to betterments and additions)	1,593,224.30
Increase in assets	8,861,239.02
	$10,961,366.88

2046 Deductions:

Increase in capital	$2,174,836.00	
Increase in contingent liabilities	933,698.91	
		3,108,534.91
		$7,852,831.97

January 5, 1907.

WM. MAHL.

MAHL EXHIBIT No. 8.

Statement Submitted to the Board of Directors of the Union Pacific Railroad Co. at Their Meeting August 15, 1906.

Union Pacific System.

Estimated Income for the 12 Months Ending June 30, 1906.

	1906.	1905.	
Gross receipts	$67,281,542.60	$59,324,948.66+	$7,956,593.94
Operating expenses	35,261,170.84	28,252,702.04+	7,008,468.80
Net	$32,020,371.76	$31,072,246.62+	948,125.14
Taxes	1,702,602.32	1,492,012.39+	210,589.93
Surplus	$30,317,769.44	$29,580,234.23+	$737,535.21

Surplus as above	$30,317,769.44
Receipts from rentals and from other sources in excess of miscellaneous expenses	7,767,491.42
Total	$38,085,260.86
Less: Fixed charges, including rentals	8,883,416.03
Surplus, after payment of fixed charges	$29,201,844.83
Four per cent. dividend on preferred stock	3,982,032.00
Balance	$25,219,812.83

$6,657,305.36 Expended for betterments and additions.
17,230,919.40 Expenditures for construction of new lines and for equipment for 12 months ending June 30, 1906, dealt with as a free asset (estimated).

2047 There is charged in the above expenses and taxes and credited to the reserve fund for betterments, equipment and general extraordinary repairs, subject to the action of the Board of Directors the sum of $2,206,610.39.

WM. MAHL.

January 5, 1907.

CORNISH EXHIBIT No. 1.

Union Pacific Railroad Company.

First Lien Convertible Four Per Cent. Gold Bonds.

120 BROADWAY, NEW YORK, *Feb.* 13, 1901.

To the Holders of Preferred and Common Stock of Union Pacific Railroad Company:

This Company, by action of its Board of Directors and Executive Committee, has authorized the issue of $100,000,000 of ten-year four per cent. gold bonds, to *to* be known as First Lien Convertible Four Per cent. Gold Bonds, to be secured by a first mortgage upon unmortgaged railway belonging to the Company and by the pledge of securities owned by it and held in its treasury. These bonds will (subject to the authorization of the necessary increase of the Company's Common Stock) be convertible at the option of the holder, on or at any time before May 1, 1906, into the Common Stock of the Company at par—that is, at the rate of ten shares of stock for each bond. All or any of such bonds may be redeemed by the Company at a premium of 2½ per cent. on any interest day after the first day of May, 1906, upon notice published in two newspapers in the City of New York, and in one newspaper in the City of London, England, once a week for eight consecutive weeks preceding such interest day. In case part of the bonds are redeemed, they shall be chosen by lot.

The bonds will mature May 1, 1911, and bear interest from
2048 May 1, 1901, at the rate of four per cent. per annum, payable semi-annually, on the first days of May and November, in each year. Both principal and interest will be payable in gold and free of tax. The bonds will carry coupons for interest and the usual provision will be made for their registration. For the terms and provisions of the bonds and the mortgage reference is made to forms of those instruments, inspection of which, when completed, may be had at the office of the Company.

For the purpose of providing for the payment for shares of stock of the Southern Pacific Company purchased $40,000,000 of said bonds are now offered for subscription, and holders of the common and preferred stock of this Company, of record at the closing of the transfer books February 23, 1901, may subscribe for said bonds at par at the rate of one bond for every fifty shares of stock held by them.

Subscriptions must be made on or before the 20th day of March, 1901, at the office of the Company, 120 Broadway, New York, where blanks will be furnished upon which subscriptions must be made.

Payments on account of such subscriptions must be made at the office of the Company in New York in instalments and at dates as follows:

25 per cent. at the time of making the subscription, namely: on or before March 20, 1901;

25 per cent. on or before April 10, 1901;

25 per cent. on or before May 20, 1901;

25 per cent. on or before June 10, 1901;

As the average date of the foregoing payments, viz: May 1, 1901, is the date from which interest runs on new bonds, no adjustment of interest will be required, but all deferred payments may be anticipated under a discount at the rate of two per cent. per annum, when full paid certificates will be issued.

No subscription for a fraction of a bond will be received, but, as rights to subscribe may be assigned in accordance with a blank form which will be furnished upon application at said office of the
2049 Company in New York, any holder of certificates of stock, for a number of shares which cannot be divided by fifty without leaving a remainder, may, before making a subscription, buy or sell enough rights to make his holdings so divisible. The Company will not itself buy or sell rights.

The right to subscribe will expire at three o'clock P. M. March 20, 1901. A syndicate has been formed to take at par any portion of said $40,000,000, of bonds which shall not have been subscribed for within the period above specified.

Failure to pay any instalment of the subscription, when and as payable, will forfeit all rights in respect of the bonds subscribed for, and any instalments previously paid.

Subscriptions accompanied by payment of the first instalment of 25 per cent., must in all cases be in the hands of F. V. S. Crosby, Treasurer, 120 Broadway, New York, before 3 o'clock P. M., on March 20, 1901. Subscription certificates transferable by delivery will be issued to subscribers.

The bonds bearing coupons from May 1, 1901, or interim certificates representing said bonds, will be deliverable on surrender of subscription certificates, with all payments of instalments receipted thereon, at the office of the Company in New York, on or after June 10, 1901.

By order of the Board of Directors.

ALEX. MILLAR, *Secretary.*

STUBBS EXHIBIT No. 1.

Atlanta, Ga.
UP—J. F. Rensselaer, General Agent.
SP—J. F. Rensselaer, General Agent.
Other agents the same.
Offices the same place.

2050 Chicago, Ill.
UP—W. G. Neimyer, General Agent.
SP—W. G. Neimyer, General Agent.
Other agents the same.
Offices the same place.

Cincinnati, Ohio.
UP—H. W. Connor, General Agent.
SP—H. W. Connor, General Agent.
Other agents the same.
Offices the same place.

Des Moines, Iowa.
UP—J. W. Turtle, Trav. Pass. Agt.
SP—J. W. Turtle, Trav. Pass. Agt.
Offices the same place.

Detroit, Mich.
UP—F. B. Choate, General Agent.
SP—F. B. Choate, General Agent.
Other offices the same.
Officers the same place.

Kansas City, Mo.
UP—H. G. Kaill, Asst. Gen. Frt. & Pass. Agt.
SP—H. G. Kaill, Asst. Gen. Frt. & Pass. Agt.
Other agents the same.
Offices the same place.

Pittsburg, Pa.
UP—G. G. Herring, General Agent.
SP—G. G. Herring, General Agent.
Other agents the same.
Offices at same place.

Portland, Oregon.
UP { Wm. McMurray, Gen. Pass. Agt.
OR&N { R. B. Miller, General Freight Agent.
Wm. McMurray, General Pass. Agent.
SP { R. B. Miller, Gen. Frt. Agt. Lines in Oregon.
Wm. McMurray, Gen. Pass. Agt. Lines in Oregon.

2051 St. Louis, Mo.
UP—L. E. Townsley, General Agent.
SP—L. E. Townsley, General Agent.
Other agents the same.
Offices at same place.
St. Paul, Minn.
UP—H. F. Carter, Trav. Pass. Agt.
SP—H. F. Carter, Trav. Pass. Agt.
Offices at same place.
Salt Lake City, Utah.
UP { D. R. Gray, General Agent. / D. E. Burley, Gen. Pass. Agt.
OSL { D. R. Gray, D. F. & P. A.
SP } D. R. Gray, D. F. & P. A.
San Francisco, Cal.
UP —S. F. Booth, Gen. Agt. Pass. Dept.
OSL —S. F. Booth, Gen. Agt. Pass. Dept.
OR&N { S. F. Booth, Gen. Agt. Pass. Dept. / H. O. Wilson, Gen. Agt. Frt. Dept.
SP —A. S. Mann, Dist. Pass. Agt.
All offices in Ferry Bldg.
Seattle, Wash.
UP —E. E. Ellis, General Agent.
OR&N—E. E. Ellis, General Agent.
SP —E. E. Ellis, General Agent.
Spokane, Wash.
UP —Geo. J. Mohler, General Agent.
OR&N—Geo. J. Mohler, General Agent.
SP —Not represented.
Tacoma, Wash.
UP —Robert Lee, Agent.
OR&N—Robert Lee, Agent.
SP —Robert Lee, Agent.
Toronto, Ont.
UP—J. O. Goodsell, Trav. Pass. Agt.
SP—J. O. Goodsell, Trav. Pass. Agent.

2052 MEYER EXHIBIT No. 1.

Oregon Railroad & Navigation Company.

Southern Pacific Co.—Lines in Oregon.

Car Service Department.

O. R. & N. Circular No. 287.
S. P. Co. Circular No. 86.

PORTLAND, ORE., *August 6th*, 1906.

To Despatchers, Agents, Conductors:

Effective at once and until further notice, you will not permit any cars to load with D. & R. G., R. G. W., and Western Pacific Ry. com-

pany material shipments, also commercial lading, excepting cars that belong to those lines, or that route that way. We have taken up with them the necessity of furnishing cars for this business.

This action becomes necessary because our own Company material shipments (that is O. R. & N., O. S. L., U. P., and S. P.) have not been filled promptly.

It is desired that you explain this fully to all concerned in such a way that they cannot take exceptions; also, that we will not accept cars hereafter loaded for the above lines, excepting as indicated. If you are not certain as to the routing, take up with this office, altho a route card should be on all foreign cars.

Acknowledge receipt on enclosed card.

J. F. MEYER,
Car Service Agent.

2053 MEYER EXHIBIT No. 2.

The Oregon Railroad & Navigation Company.
The Southern Pacific Co.—Lines in Oregon.

Car Service Department.

O. R. & N. Co. Circular.....No. 287
S. P. Co. Circular..... 86

PORTLAND, ORE., *August 9th*, 1906.

To Despatchers, Agents, Conductors:

Referring to above circular. That portion prohibiting cars to load with commercial business via the Rio Grandes is hereby cancelled. Commercial shipments may be taken care of the same as heretofore.

Acknowledge receipt on enclosed card.

(Signed) J. F. MEYER,
Car Service Agent.

2054 MEYER EXHIBIT No. 3.

The Oregon Railroad & Navigation Company.
The Southern Pacific Co.—Lines in Oregon.

Car Service Department.

O. R. & N. Co. Circular.....No. 287
S. P. Co. Circular..... 86
Supplement No. 2.

PORTLAND, ORE., *August 15th*, 1906.

To Despatchers, Agents, Conductors:

Instructions contained in above circular are hereby modified to the extent that only O. R. & N., O. S. L., U. P. and S. P. and other cars belonging to the Harriman Lines must not apply on shipments

of R. G. W., D. & R. G. and Western Pacific Railway Company material shipments.

Acknowledge receipt on enclosed card.

(Signed) J. F. MEYER,
Car Service Agent.

2055 MEYER EXHIBIT No. 4.

The Oregon Railroad & Navigation Company.
The Southern Pacific Co.—Lines in Oregon.

Car Service Department.

O. R. & N. Co. Circular.....No. 290
S. P. Co. Circular.....No. 89

PORTLAND, ORE., *August 29th*, 1906.

To Despatchers, Agents, Conductors:

Effective at once, Circular O. R. & N. No. 287, S. P. No. 86, Supplements No. 1 and No. 2, is hereby cancelled. The matter of furnishing cars to load with R. G. W., D. & R. G., and Western Pacific Railway Company material should be handled the same as prior to issue of above circular.

Acknowledge receipt on enclosed card.

J. F. MEYER,
Car Service Agent.

SCHWERIN EXHIBIT No. 1.

Portland and Asiatic Steamship Co.

General Statement of Receipts and Expenses for 12 *Months ending June* 30 1906, 1905, 1904, 1903, *and* 1902.

Receipts.	1906.	1905.	1904. (Revised figures.)	1903.	1902.	Total 5 years.
From Steamers Operated:						
Passenger Earnings.....	$642.88	$148.78	$31,541.21	$31,113.52	$17,601.96	$81,048.35
Mail "	705.99	600.81	.....	.....	.....	1,306.80
Freight "	609,894.95	645,960.38	454,612.88	449,029.91	383,816.29	2,543,314.41
Miscellaneous "	207.56	483.16	116.93	217.15	2.52	1,027.32
Salvage S. S. Pleiades.....	.....	8,842.91	.....	.....	.....	8,842.91
Total Steamer Earn's..	611,451.38	656,036.04	486,271.02	480,360.58	401,420.77	2,635,539.79
From Other Sources:						
Misc. Receipts at Agencies..	2,928.22	1,745.63	105.55	.....	.....	4,779.40
Exchange.....	1,371.86	585.15	.....	.....	.....	1,957.01
Total Receipts.....	$615,751.46	$658,366.82	$486,376.57	$480,360.58	$401,420.77	$2,642,276.20

2057 *Expenses of Steamers Operated:*						
Steamer Expenses.....	$239,199.88	$221,464.88	$173,676.87			
Charter of Steamers.....	351,220.93	292,425.80	318,272.37			
Total Steamer Expen.	590,420.81	513,890.68	491,949.24			
Other Expenses:						
Agency Expenses.....	47,383.93	67,125.19	68,316.25			
Gen. Exp.—San Fran.....	11,481.40	13,032.87	13,872.74			
Int. Disc. & Commissions...	1,875.51	1,273.11	95.00			
Ins. on Frt. & Adv. Chgs...	1,817.50					
Fire of Apl. 18, 1906.....	3,421.35					
Total Expenses.....	$656,400.50	$595,321.85	$574,233.23	$572,735.89	$527,334.02	$2,926,025.49
Earnings over Expenses....	.....	$63,044.97				
Expenses over Earnings....	$40,649.04	.....	$87,856.66	$92,375.31	$125,913.25	$283,749.29

Omaha, Neb., January 15, 1907.

ERASTUS YOUNG,
General Auditor.

2058 CLARK EXHIBIT NO. 1.

This agreement made and entered into this twenty-third (23) day of September, 1904, by and between the San Pedro, Los Angeles & Salt Lake Railroad Company, a corporation of Utah, hereinafter designated as the Railway, and Armour Car Lines, a corporation of New Jersey, hereinafter designated as the Car Line, witnesseth:

Whereas the Railway is in need of ventilator-refrigerator cars for transporting shipments of fruits, vegetables, etc., from Southern California to eastern points, and

Whereas the Car Line has a large number of such ventilator-refrigerator cars suitable for this traffic.

Now therefore in consideration of the benefits mutually to accrue, and for the purpose of securing to the public the latest improved and suitable ventilator-refrigerator equipment, it is hereby agreed and understood:

1. Citrus Fruit, Vegetables and Deciduous Fruit from Southern California.

The Car Line agrees to furnish, as the demands of the business may require, such cars, from time to time, not to exceed Three Thousand (3,000) ventilator-refrigerators of the latest improved pattern, equal to the best (not less than eighty (80) per cent. of which cars are to be forty (40) feet long over end sills, and the balance not less than thirty-six (36) feet long over end sills, during the first year; not less than eighty-five per cent. (85) forty feet long and the balance not less than thirty-six (36) feet long during the second year, and not less than ninety (90) per cent. forty feet long and the balance not less than thirty-six (36) feet long during the third year), suitable for the transportation of citrus fruit, vegetables (including cantaloupes, potatoes and onions), and deciduous fresh fruit originating in Southern California destined to points east of and including Salt Lake City.

2059 2. The use of said cars to be open on equal terms to all shippers who make requisition upon the Railway for cars necessary from time to time, the distribution of said cars to be performed by the Railway, who shall have the option of determining at what junction the said Railway will deliver the loaded cars to connecting line and over what road or roads the cars shall move to destination. With respect to the distribution of cars for loading, there shall be such co-operation between the Railway and the Car line as shall promote mutual economies without impairing the efficiency of the service rendered the public, to the end that the Railway shall not have to render unnecessary service or the Car Line furnish unnecessary equipment.

3. Said cars to be equipped with automatic airbrakes and Master Car Builders' couplers, and to be in those and all other respects suitable for safe transportation over all standard gauge lines of the Railway.

4. The Car Line agrees to keep the interior of cars and all parts pertaining to the refrigeration in proper condition without cost to

the Railway, the Railway supplying free of charge suitable track room where necessary cleaning and repairing of cars can be done.

5. Car Line agrees to provide ice when necessary for refrigeration of contents of said cars at point of shipment and in transit to destination and agrees to be responsible to shippers or consignees for proper and adequate refrigeration and to hold the Railway harmless from loss and damage to contents of cars arising from improper or inadequate refrigeration. The Car Line to charge shippers or consignees reasonable compensation for the refrigerating service either by having such charges billed as advance charges by the Railway for Car Line's account or by making drafts on shippers or consignees therefor.

6. Labor and expense incident to refrigeration of said cars, aside from train and ordinary switching service, way-billing and collection of charges, to be done at the expense of the Car Line.

2060 7. Car Line agrees to protect the Railway from any loss or damage caused from defects or improper refrigerating portions of car, and also to hold the Railway harmless from damages or expenses of litigation by reason of use in said cars of any combination or device which may be claimed to be an infringement of any patented device owned by any other person or corporation.

8. If because of some unforeseen emergency resulting in car shortage it becomes necessary at any time for the Railway to furnish cars which are by it obtainable from other sources to meet the emergency, then the Car Line agrees to refrigerate such cars without prejudice same as it does its own at the same charge per car which it makes in the case of its own cars. The Car Line agrees to pay the Railway whatever amount said cars obtained to meet such emergency may cost the Railway in excess of what would have been the cost to the Railway if Car Line had furnished the necessary cars.

9. It is understood firm names, trade marks and the like, shall not be placed on cars; this not to be construed as forbidding posters of shipper or consignee which can be readily removed.

10. The Railway agrees to pay the Car Line and the Car Line agrees to accept for the use of said cars mileage as follows:

Eastbound: Cars loaded with citrus fruits, vegetables, and deciduous fruits from points in Southern California six-tenths (6/10ths) of one cent per car per mile run over the lines of the Railway.

Westbound: Six-tenths (6/10ths) of one cent per car per mile when cars are delivered to the Railway under load. No mileage to be paid on empty cars; the Railway to have the privilege of loading cars with suitable freight at or west of its eastern junction if it desires to do so.

The Railway shall not load any such cars with ice or other bulk commodities likely to injure such cars or impair their usefulness for the special purpose for which they are intended as aforesaid.

2061 11. The Railway agrees and obligates itself, during the term of this contract, to use the Car Line's equipment exclusively in the movement of fruits and vegetables as hereinbefore described from points on the Railway's lines in Southern California to Salt Lake City and other points of interchange when connecting

lines or points east thereof provided the Car Line supplies sufficient equipment to properly care for the business.

12. The Railway agrees to furnish free transportation for four representatives of the Car Line regularly and exclusively engaged in supervising the business herein described.

13. In the event of general labor troubles which make it impossible to obtain movement of cars in sufficient number or with sufficient despatch to furnish at junction points cars necessary to protect the traffic hereinbefore described, then and in that case the Railway will take cognizance of such disability of the Car Line in construing the terms of this agreement.

14. Should competition or other causes result in the demoralization of refrigerator rates on shipments hereinbefore described, the parties hereto agree jointly to provide ways and means for meeting such competition in so far as may be necessary to protect their mutual interests.

15. It is mutually agreed that in case of wilful or continued default by either party to observe the obligations of this agreement, such default of one party resulting in loss to the other, the party so in default shall fully indemnify the aggrieved party or in event of failure so to do, said aggrieved party shall have the option of terminating this agreement on thirty days' notice.

16. This agreement shall be binding on the successors or assigns of either the Railway or the Car Line.

17. This agreement to be in effect from and after November 1, 1904, for three years from that date and thereafter until cancelled by either party on and after having given six months written notice of an election to cancel same.

2062

SAN PEDRO, LOS ANGELES & SALT LAKE RAILWAY COMPANY,
By J. ROSS CLARK, *Second Vice President.*
ARMOUR CAR LINES,
By J. OGDEN ARMOUR, *Prest.*

Attest:

W. H. COMSTOCK, *Secretary.*

2063

"A."

CLARK EXHIBIT No. 2.

Form 3082. 5m–11–05–B.

San Pedro, Los Angeles & Salt Lake Railroad.

Traffic Department.

Class Rates Between Los Angeles and Utah Common Points.

		Classes.									
		1	2	3	4	5	A	B	C	D	E
Previous to											
May 1st, 1905,	East bound,	232½	198½	170	144½	116	111	100	91½	80½	71½
	West bound,	247½	209½	173½	146½	121½	112½	99	89	81½	71½
May 1st, 1905, to											
March 2, 1907,	East bound,	172½	150	127½	107	88½	81	70	64	53	46½
	West bound,	187½	161	131	109	94	82½	69	61½	54	46½
Effective											
March 2, 1907,	East bound,	154	131	115	96	79½	79½	62	56	38	31½
	West bound,	187½	161	131	109	94	82½	69	61½	54	46½

W. F. L., Feb. 6, 1907.
T. M. S., Feb. 6, 1907.

2064 CLARK EXHIBIT No. 3.

Members of Board of Directors San Pedro Co., July 1, 1903.

W. A. Clark,
J. Ross Clark,
R. C. Kerens,
Thomas Kearns,
T. E. Gibbon,
Reed Smoot,
W. S. McCormick,
E. W. Clark,
R. W. Smith,
F. K. Rule,
E. O. Leech,
T. F. Miller.

WELLS' EXHIBIT No. 1.

Carloads of Citrus Fruit Handled Season of 1905–6, *November* 1, 1905, *to October* 31, 1906.

Originating on	Local.	Through.	Total.
S. P., L. A. & S. L. R. R.	44	647	691
Southern Pacific	18	561	579
Santa Fe	34	1026	1060
Total	96	2234	2330
From November 1, 1906, to Feb. 3, 1907:			
S. P., L. A. & S. L. R. R.	13	134	147
Southern Pacific	19	173	192
Santa Fe	5	29	34
Total	37	336	373

2065 *Carloads Citrus Fruit Originating on S. P., L. A. & S. L. R. R. and Delivered Other Lines for Competitive Points.*

To Southern Pacific ..... 60 cars.
To Santa Fe ..... 56 cars.

Carloads Vegetables Handled from November 1, 1906, *to February* 3, 1907.

Local ..... 18 cars.
Through ..... 1092 cars.

Total ..... 1110 cars.

HARRIMAN EXHIBIT No. 1.

Union Pacific Railroad Co.

(Cerified Copy.)

(EXECUTIVE COMMITTEE, *May 29th*, 1906.)

(St. Jos. & G. Island.)

Purchase of Stock.

It appeared that Director Stillman, who with Director Hughitt was appointed a Special Committee on January 11, 1906, to consider the expediency in acquiring and to ascertain the terms upon which the capital stock of the St. Joseph & Grand Island Railway Company could be acquired, left for Europe soon after his appointment and is still absent and unable on that account to act upon said Committee. In view of which, upon motion duly made and seconded, the following resolution was adopted, Mr. Harriman not voting, viz.:

Resolved, that Director Frick be and he is hereby appointed
2066 in place of Director Stillman to act with Director Hughitt as a special committee to consider the expediency of acquiring and to ascertain the terms upon which the capital stock of the St. Joseph & Grand Island Railway Company can be acquired by this Company and recommend*ed* to this Company such action as they think should be taken in regard thereto.

Committee's Report.

The following report was submitted, viz.:

NEW YORK, *May 29th*, 1906.

To the Executive Committee, Union Pacific Railroad Co.

GENTLEMEN: The undersigned special Committee, heretofore appointed to consider the expediency of acquiring and to ascertain the terms upon which the capital stock of the St. Joseph & Grand Island Railway Company could be acquired by this Company and recommend such action as they think should be taken, in regard thereto, submit the following Report, viz.:

The Grand Island Company owns a railroad extending from St. Joseph, Mo., to Grand Island, Neb., a distance of 251.06 miles. Under agreements with the

Atchison, Topeka & Santa Fe Railway Company,

Quincy, Omaha & Kansas City Railroad Company,

Chicago, Milwaukee & St. Paul Railway Company, and Kansas City Southern Railway Company,

it also has trackage rights between St. Joseph and Kansas City, a distance of 61.15 miles, making in all 312.21 miles of main line operated. It also owns 12.4 miles of passing tracks and 34.6 miles

of industry tracks. A report made in January last (after a personal inspection of the property) by Mr. R. L. Huntley, Acting Chief Engineer of the Union Pacific Railroad Company, gives, briefly stated, the following information regarding its physical condition:

2067 Track: Between St. Joseph and Hanover 73 miles of track is laid with 80 lb. steel rails, and 55 miles with 60 lb. steel rails; the heavier rails having been laid in recent years.

Between Hanover and Grand Island, 48 miles of track is laid with 60 lb. steel rails, and 75 miles with 52 lb. steel rails. The ties throughout are nearly all of white oak and in fairly good condition.

Bridges: The Company has recently built a new single track railroad bridge, with highway on one side, across the Missouri River at St. Joseph, costing between $400,000 and $500,000. On the main line there are two riveted through truss bridges and one through pin truss bridge, built in about 1887, which have been strengthened to permit the use of the engines presently owned.

The remaining bridges are pile trestle bridges, in fair condition and probably average about five 15 foot spans per mile of main line.

Buildings, etc.: Generally the building and station grounds are poorly arranged throughout. All the depot buildings are very old, although in fair condition, and, with few exceptions, will probably have to be rebuilt soon.

Terminals, etc.: The St. Joseph terminal embraces a shop plant, consisting of a machine shop, transfer table, round house, and some small buildings, together with coal chute and sand house. This plant is owned jointly by the Atchison, Topeka & Santa Fe Railway Company and the St. Joseph & Grand Island Railway Company (one-half each), but it is operated almost exclusive by the Grand Island Company. The buildings were constructed about eighteen years ago and are in fair condition.

The Grand Island Company also owns a one-tenth interest in the Union Depot property at St. Joseph.

Equipment: The Grand Island Company owns the following rolling stock, the most of which is in good, or fair, condition:

27 locomotives,
28 passenger cars,
1,110 freight cars.

2068 In a supplemental report made in February, 1906, Mr. Kruttschnitt estimates the cost of needed improvements such as ballasting, the substitution of 75 lb. steel rails for those of lighter weight, new bridges, sidings, buildings, fences, etc., at $1,002,300, or $6,900 per mile of road. You will notice in the extract from the balance sheet which follows that the Company had, on December 31, 1905, a considerable amount of cash on hand, some of which would undoubtedly be available to meet the cost of these improvements.

In addition to the improvements just referred to it is our understanding that the company may, at some future time be confronted with the necessity of reducing the grades between Marysville and Hanover at an approximate cost of $547,000, but that the volume of traffic does not at this time warrant the expenditure.

The financial position of the Grand Island Company, as disclosed by its balance sheet, was on December 31, 1905, as follows:

Assets:		
Cost of property		$17,975,864.24
Cash	$474,228.34	
Open accounts	93,711.03	
Material & Supplies	88,191.40	
	$656,130.77	
Less, Current liabilities	285,557.40	370,573.37
Contingent assets	107,853.89	
Less, Contingent liabilities	18,789.52	89,064.37
		$18,435,501.98
Liabilities:		
First Preferred 5% non-cum. stock (auth. $5,500,000)		5,498,500.00
Second Preferred 4% non-cum. stock (auth. $5,000,000)		3,500,000.00
Common Stock (authorized issue)		4,600,000.00
		$13,598,500.00
2069 First mortgage 4% Gold Bonds, due Jan. 1, 1947 (authorized $5,000.00—$1,000,000 reserved for additional mileage at $6,000 per mile	$4,000,000.00	
Equipment notes 5% due May 1, 1909 (payable in semi-annual instalments)	245,000.00	4,245,000.00
Surplus to the credit of Income Account		592,001.98
		$18,435,501.98

Earnings, etc.:

For the four and one-half year- ending December 31, 1905, the average yearly earnings, operating expenses, taxes and charges of the Grand Island Company were as follows:

Gross earnings	$1,371,031.
Operating expenses and taxes	1,066,880.
Net earnings	304,151.
Interest, etc.	150,154.
Surplus for stock	153,997.
To which may be added about	48,000.
For the proportion of the cost of rebuilding the Missouri River Bridge, charged to the operating account in that period, making the normal average annual surplus about	$201,997.

In the event of the acquisition of the control of this property by the Union Pacific Railroad Company the surplus of stock would of course be augmented by the profit on such additional traffic as the Union Pacific Company could advantageously route via the Grand Island Road.

2070 We learn from Mr. E. H. Harriman, who controls the same, that 9,322 shares of the First Preferred, 12,500 shares of the Second Preferred, and 29,000 shares of the Common Stock (in all 37% of the total shares in force) of the St. Joseph & Grand Island Railway Company could be obtained on July 10, 1906, for $2,022,540., plus interest at 4% from February 1st, 1906. The acquisition of this stock would secure practical control of the property, and at the price named would (at 4%) impose upon the Union Pacific Railroad Company an annual carrying charge of substantially $80,500. In view of the expenditures necessary to place the property in proper physical condition to economically handle an increase tonnage, it is not likely that this carrying charge would, in the near future be materially offset by dividends on the stock of the Grand Island Company but the value of the stock would of course be enhanced by the application of surplus net earnings to permanent betterments.

After a careful review of such data as we have been able to obtain, it is our judgment that the strategic position of this property, the economies to be effected by its use due to the savings in distance and more favorable gradients and curvature and its entrance into the City of St. Joseph, considered in connection with the plans of the Union Pacific Company for the enlargement of its trans-Missouri River System and the further fact that its acquisiton by hostile interests might prove both vexatious and costly, fully warrant the Union Pacific Company in securing the practical control of the property on the terms suggested. We, therefore, recommend the purchase of 9,322 shares of the First Preferred, 12,500 shares of the Second Preferred, and 29,000 shares of the Common Stock, above referred to, of the St. Joseph & Grand Island Railway Company at the price and upon the terms above stated, delivery thereof to be made July 10, 1906; and we also recommend the purchase of additional shares of the capital stock of said Company when and

2071 as the same, from time to time, may be acquired upon satisfactory terms.

(Signed) MARVIN HUGHITT.
" H. C. FRICK.

Thereupon, upon motion duly made and seconded, the following resolution was adopted, Director Harriman not voting, viz:

Resolved, that the foregoing Report, submitted by Directors Hughitt and Erick, be and such report is hereby approved and adopted; and the purchase of 9,322 shares of the First Preferred, 12,500 shares of the Second Preferred, and 29,000 shares of the Common stock of the St. Joseph & Grand Island Railway Company, to *he* delivered July 10, 1906, at and for the price of $2,022,540, with interest on said price at the rate of 4 per cent. per annum from February 1st, 1906, be and such price is hereby authorized and approved.

HARRIMAN EXHIBIT NO. 2.

Statement Showing Dates of Stocks Purchased Since Last Annual Report, June 30, 1906, to Date, and Amounts Paid Therefor.

UNION PACIFIC RAILROAD COMPANY.

Illinois Central Railroad Co.

$18,623,100	par value, capital stock, purchased August 9, 1906, cost	$32,618,883.53

Railroad Securities Company.

890,500	par value, common stock, purchased August 9, 1906, cost	1,800,408.94
2072		
695,500	par value, common stock, purchased August 10, 1906, cost	1,406,314.91
636,900	par value, common stock, purchased August 16, 1906, cost	1,289,254.03
1,192,500	par value, common stock, purchased October 23, 1906, cost	2,409,178.54
$3,415,400	Total,	$6,905,156.42
495,000	par value, preferred stock, purchased August 9, 1906, cost	502,040.00
387,000	par value, preferred stock, purchased August 10, 1906, cost	392,547.00
353,900	par value, preferred stock, purchased August 16, 1906, cost	359,365.79
662,500	par value, preferred stock, purchased October 23, 1906, cost	664,035.63
$1,898,400	Total,	$1,917,988.42

St. Joseph & Grand Island Railroad Co.

$932,200	par value, 1st preferred stock, purchased July 11, 1906,	
1,250,000	par value, 2nd preferred stock, purchased July 11, 1906,	
2,900,000	par value, common stock, purchased July 11, 1906,	
	Total cost,	$2,022,540.00

Fresno City Railway Co.

$495,650	par value, capital stock, purchased July 19, 1906, cost	106,410.98

2073 Pacific Fruit Express Co.

10% subscription to $12,000,000 par value, capital stock, paid Dec. 10, 1906..... ..... 1,200,000.00

February 15, 1907.

WM. MAHL.

OREGON SHORT LINE RAILROAD CO.

Statement Showing Dates of Stock Purchased or Acquired by Subscription Rights Since Last Annual Report, June 30, 1906, to Date, and Amounts Paid Therefor.

Atchison, Topeka & Santa Fe Railway Co.

$10,000,000 par value, preferred stock, purchased July 10, 1906, cost..... $10,395,000.00

Baltimore & Ohio Railroad Co.

32,334,200 par value, common stock, purchased October 9, 1906, cost..... 38,801,040.00

7,206,400 par value, preferred stock, purchased October 9, 1906, cost..... 6,665,920.00

Chicago, Milwaukee & St. Paul Railway Co.

1,000,000 par value, common stock, purchased July 16, 1906, cost.... ..... 1,688,581.26

1,500,000 par value, common stock, purchased August 9, 1906, cost..... 2,681,735.68

500,000 par value, common stock, purchased August 22, 1906, cost..... 937,433.30

2074

360,000 par value, common stock, acquired September 25, 1906, cost..... 360,000.00

330,000 par value, common stock, acquired November 12, 1906, cost..... 330,000.00

Ten per cent. subscription to 18,450 shares preferred and 9,225 shares common stock paid December 31, 1906..... 276,750.00

$6,274,500.24

Chicago & Northwestern Railway Co.

$2,072,000 par value, common stock, purchased July 13, 1906, cost..... $4,320,795.60

500,000 par value, common stock, purchased July 16, 1906, cost..... 982,878.34

$2,572,000 $5,303,673.94

New York Central & Hudson River Railroad Co.

$1,640,000	par value, capital stock, purchased July 13, 1906, cost	$2,490,317.12
5,830,000	par value, capital stock, purchased July 16, 1906, cost	8,224,998.75
2,000,000	par value, capital stock, purchased July 17, 1906, cost	3,000,000.00
1,768,125	par value, capital stock, purchased July 18, 1906, cost	2,593,714.06
2075		
400,000	par value, capital stock, purchased December 6, 1906, cost	541,487.50
400,000	par value, capital stock, purchased December 7, 1906, cost	536,187.50
2,247,620	par value, capital stock, acquired December 26, 1906, cost	2,247,620.00
$14,285,745		$19,634,324.93

Northern Pacific Railway Co.

Five per cent. subscription to 24,916 shares capital stock paid February 1, 1907	$124,500.00

February 13, 1907.

WM. MAHL.

PAGE BOUN

Union Pacific Railroad and Auxiliary Companies.

Statement Showing Dates of Stocks Purchased Subsequent to Circular Letter in February, 1901, to June 30, 1906, from Whom Purchased, and Amounts Paid Therefor.

Date.		Stocks purchased.	Purchased from.	Paid.
March 31, 1901		$75,000,000. par value, common stock, Southern Pacific Co	Kuhn, Loeb & Co	$41,866,627.48
June 30, "		(a) 41,085,000. " " preferred stock, Northern Pacific Ry. Co.	" " "	87,925,686.43
" " "		(a) 37,023,000. " " common stock, " " "	" " "	
May 31, 1902		15,000,000. " " common stock, Southern Pacific Co	" " "	9,750,000.00
July 7, 1903		1,299,500. " " capital stock, California Improvement Co	Wm. A. Clark	15,855.00
" " "		500,000. " " capital stock, Empire Construction Co	"	
" " "		150,000. " " capital stock, Los Angeles Terminal Land Co	"	
" " "		12,500,000. " " capital stock, S. P., L. A. & S. L. R. R. Co	"	396,374.91
Jan. 22, 1904		1,150,000. " " capital stock, Occidental & Oriental S. S. Co	T. H. Hubbard & Co	51,750.00
" " "		100,000. " " capital stock, " " "	Thos. E. Stillman	4,500.00
" 25, "		1,250,000. " " capital stock, " " "	Crocker Estate	56,250.00
Feb. 18, "		1,250,000. " " capital stock, " " "	Jane L. Stanford	56,250.00
2077				
May 3, "		300,000. " " capital stock, Columbia Southern Ry. Co	E. E. Lytle	333,083.23
" " "		1,000,000 " " capital stock, Columbia Southern Ry. Extens. Co.	"	
" " "		3,000,000. " " capital stock, Dallas Southern Ry. Co	"	
" " "		1,500,000. " " capital stock, Oregon Southern Ry. Co	"	
Oct. 3, "		10,200,000. " " preferred stock, Chicago & Alton R. R. Co	Kuhn, Loeb & Co	8,823,000.00
Nov. 3, "		143,000. " " preferred stock, " " "	" " "	123,781.50
Dec. 31, "		18,000,000. " " preferred stock, Southern Pacific Co	Subscription rights, S. P. Co.	18,000,000.00
Feb. 1, 1901 to June 30, 1906		44,500. " " common stock, Oregon R. R. & Nav. Co	Public	44,610.00
" " "		38,800. " " preferred stock, " " "	"	39,025.00
" " "		23,100. " " capital stock, Oregon Short Line R. R. Co	"	23,100.00
" " "		9,933. " " capital stock, O. S. L. & U. N. Ry. Co	"	497.00

(a) Exchanged for $82,491,871, par value, capital stock of the Northern Securities Co., $10,000,000 of which was subsequently sold and the remainder exchanged for:
$25,396,489.49 par value, preferred stock, Great Northern Ry. Co.
28,182,882.15 " " capital stock, Northern Pacific Ry. Co.
724,918.71 " " capital stock, Northern Securities Co., stubs.

February 19, 1907.

WM. MAHL.

87—662

THE INTERSTATE COMMERCE COMMISSION.

D VERTICAL IN BOOK

HARRIMAN EXHIBIT No. 3, Page 2.

Union Pacific Railroad and Auxiliary Companies.

Statement Showing Dates of Stocks Sold Subsequent to Circular Letter in February, 1901, to February 15, 1907, to Whom Sold, and Amounts Received Therefor.

Date.	Stocks sold.	Sold to.	Received.
Aug. 28, 1902	$96,000. par value, capital stock, Bozeman Coal Co.	Public	$41,250.00
July 7, 1903	50,000. " " capital stock, New East Tintic Ry. Co.	S. P., L. A. & S. L. R. R. Co.	(a)
" " "	825,000. " " capital stock, Utah & Pacific R. R. Co.	" " " "	(a)
" " "	245,000. " " capital stock, Utah, Nevada & Cal. R. R. Co.	" " " "	(a)
June 30, 1905	7,150,000. " " capital stock, Northern Securities Co.	Public	11,842,664.46
July 31, "	1,000,000. " " capital stock, " " "	"	1,727,125.00
Aug. 31, "	1,850,000. " " capital stock, " " "	"	3,310,230.00
" " "	25,000. " " capital stock, Utah Lime & Cement Co.	"	2,500.00
Nov. 30, "	3,170,000. " " preferred stock, Great Northern Ry. Co.	"	10,077,116.00
" " "	2,650,000. " " capital stock, Northern Pacific Ry. Co.	"	5,547,482.50
Dec. 31, "	2,370,000. " " preferred stock, Great Northern Ry. Co.	"	6,631,088.50
" " "	2,490,000. " " capital stock, Northern Pacific Ry. Co.	"	4,991,514.50
Jan. 31, 1906	3,820,000. " " preferred stock, Great Northern Ry. Co.	"	11,907,761.00
" " "	5,040,000. " " capital stock, Northern Pacific Ry. Co.	"	10,485,142.00
Feb. 28, "	600,000. " " preferred stock, Great Northern Ry. Co.	"	1,965,342.50
" " "	2,950,000. " " capital stock, Northern Pacific Ry. Co.	"	6,318,097.50
2079			
March 1, "	18.71 " " capital stock, Northern Securities Co. stubs.	Northern Securities Co	56.13
May 19, "	89.49 " " preferred stock, Great Northern Ry. Co.	Great Northern Ry. Co.	268.47
" " "	82.15 " " capital stock, Northern Pacific Ry. Co.	Northern Pacific Ry. Co.	168.41
June 30, "	1,700,000. " " capital stock, " " "	Public	3,869,897.50
July 17, "	1,400,000. " " preferred stock, Great Northern Ry. Co.	Kuhn, Loeb & Co.	4,480,000.00
" " "	1,400,000. " " capital stock, Northern Pacific Ry. Co.	" "	3,010,000.00
Aug. 9, "	2,000,000. " " preferred stock, Great Northern Ry. Co.	" "	5,765,000.00
" " "	2,000,000. " " capital stock, Northern Pacific Ry. Co.	" "	3,915,000.00
" 22, "	2,000,000. " " preferred stock, Great Northern Ry. Co.	" "	5,800,000.00
" " "	2,000,000. " " capital stock, Northern Pacific Ry. Co.	" "	3,950,000.00
Sept. 24, "	1,000,000. " " preferred stock, Great Northern Ry. Co.	" "	3,175,000.00
" " "	1,000,000. " " capital stock, Northern Pacific Ry. Co.	" "	2,125,000.00
Feb. 1, 1907	2,800,000. " " capital stock, " " "	" "	5,954,055.56

(a) Included in sale of railways and other property under agreement of June 2, 1903.

February 19, 1907.

WM. MAHL.

2080 HARRIMAN EXHIBIT No. 4.

William and Pine Sts.

NEW YORK, *September* 14, 1906.

Kuhn Loeb & Co.
Confidential.

E. H. Harriman, Esq., President, Oregon Short Line Railroad Co., 120 Broadway, New York City.

DEAR SIR: We beg to confirm the sale to you of 323,342 shares of the common stock of the Baltimore & Ohio Railroad Company at $120. per share, and 72,064 shares of the preferred stock of that Company at $92.50 per share. The purchase price, which amounts to $45,466,960. is payable as follows:—$9,073,528. on delivery to you of the shares, $2,293,212. on or, at your option in whole or in part, before March 13th, 1907, and $34,100,220. on or, at your option in whole or in part, before September 13th, 1907, the deferred payments to be evidenced by notes of your Company, secured by satisfactory collateral. The purchase price is to bear interest at the rate of 4½% per annum from September 13th, 1906, to the respective dates of payment; any dividends on said stock in the meantime, and any rights and privileges accruing on said stock to belong to you.

Will you kindly confirm the above, and believe us,

Yours very truly,

(Signed) KUHN, LOEB & CO.

2081 Stock: B. & O. R. R. Co. Purchase.

Copy.

SEPTEMBER 14, 1906.

Messrs. Kuhn, Loeb & Co., 52 William St., City.

GENTLEMEN: On behalf of Oregon Short Line Railroad Company I hereby confirm the purchase from you of 323,342 shares of common and 72,064 shares of the preferred stock of the Baltimore & Ohio Railroad Company at the prices and upon the terms specified in your letter of this date addressed to me as President of that Company.

Yours truly,

(Sgd.) E. H. HARRIMAN, *President.*

HARRIMAN EXHIBIT No. 5.

The Chicago and Alton Railway Company—Preferred Stock.

Kuhn, Loeb & Co., Depositaries.

John A. Stewart,
Edward H. Harriman,
John J. Mitchell,
Committee.

Agreement.

Dated DECEMBER 23, 1903.

Agreement made this 23rd day of December, 1903, be-
2082 tween Kuhn, Loeb & Co. (hereinafter referred to as the Bankers) parties of the first part, and such persons (hereinafter referred to as the Depositors) as shall become parties hereto by depositing with the Bankers stock certificates representing shares of the preferred stock of The Chicago and Alton Railway Company, parties of the second part.

I. Any owner of preferred stock of the Chicago and Alton Railway Company may become a party to this agreement by depositing with the Bankers the certificates representing his stock, duly endorsed for transfer in blank. The Bankers, however, reserve the right to terminate, at any time, the privilege of deposit. The Bankers shall issue to each Depositor a certificate of deposit substantially in the form hereinafter prescribed, and the Depositor, by depositing his stock hereunder and accepting such certificate of deposit, shall become bound by the provisions hereof with the same effect as if he had subscribed his name hereto. Such certificates of deposit shall be transferable upon books kept by the Bankers for the purpose, and the successive holders of such certificates by acceptance thereof shall be bound by the provisions of this agreement to the same extent as the original holders of such certificates. The term "Depositor," whenever herein used shall be deemed to include all present and future holders of such certificates of deposit. Said certificates of deposit shall be substantially in the following form:

2083 [*Form of Certificate of Deposit.*]

Kuhn, Loeb & Co., William and Pine Streets, New York.

No..... .....Shares.

Chicago and Alton Preferred Stock.

Certificate of Deposit Under Agreement Dated December 23, 1903.

This is to certify, that.....has deposited with the undersigned.....shares, of the par value of one hundred

dollars ($100) each, of the preferred stock of The Chicago and Alton Railway Company, subject to an agreement dated December 23, 1903, between the undersigned and the holders of the certificates of deposit issued thereunder, which agreement is subject to inspection by depositors at the office of the undersigned. To all the terms of said agreement every holder of this certificate assents by acceptance hereof.

Under the terms of said agreement the holder of this certificate is entitled, upon surrender hereof, at the office of the undersigned in New York City, on or after September 30, 1904, or such earlier date as may be designated by the undersigned, to receive the shares of stock above described, or, in case the shares of stock deposited under said agreement shall have been sold as therein provided, to receive his pro rate share of the net proceeds of such sale.

The interest represented by this certificate is transferable only upon books kept by the undersigned for the purpose.

New York, ..., 190...

II. Each and all of the Depositors hereby authorize and empower the Bankers to sell the deposited shares of stock to any person
2084 or persons or to any corporation or corporations, at such price and upon such terms as shall be approved by a committee consisting of John A. Stewart, Edward H. Harriman and John J. Mitchell. The Bankers, with the approval of said committee, may receive in payment for the deposited shares, either cash or notes, negotiable in form, of one or more dividend-paying railroad corporations, or part cash and part such notes. Such notes shall mature not later than five years from their respective dates, shall bear interest at a rate which shall not be less than five per cent. per annum, payable semi-annually, and shall be secured by the pledge of The Chicago and Alton Railway Company preferred stock sold hereunder. The form and terms of such notes and of any agreement or agreements relating to the issue thereof and to the pledge of the collateral by which the same may be secured shall be subject to the approval of said Committee, and such approval shall be final and binding upon every Depositor.

III. So long as the said shares of stock shall remain on deposit with the Bankers hereunder, the Bankers may cause the same to be transferred to such name or names as shall from time to time be indicated by the Bankers, who shall have sole and exclusive authority to direct and control said stock and the voting thereof, and generally to do anything in their judgment necessary or expedient to accomplish any of the purposes of this agreement. In case such preferred stock shall be transferred by the Bankers, as hereinbefore provided, they shall collect any dividends which shall be paid upon the deposited shares of stock prior to the sale thereof, and any Depositor shall be entitled to receive his pro rate share of any such dividends upon presentation of his certificate of deposit at the office of the undersigned, in order that the payment of such dividends may be noted thereon.

IV. Any action by said committee, concurred in by two mem-

bers, shall have the same force and effect as if concurred in
2085 by all the members. In case of the death or resignation of any member of said committee, however constituted at any time, the vacancy thus caused may be filled by the remaining members, and the committee as then constituted shall have all the powers herein conferred upon the committee hereinbefore named.

V. In case the deposited shares of stock are not sold, the Bankers shall not be entitled to any compensation for their services hereunder, but in case of sale the Bankers may receive from the purchasers and retain for themselves without accountability to the Depositors, a commission upon the purchase price, which shall not exceed two and one half per cent. of the par value of the stock sold. The Bankers may include in any sale of the deposited shares of stock preferred stock of The Chicago & Alton Railway Company owned by them, and to the extent of any such stock shall be entitled to share *pro rata* with the Depositors in the proceeds of any sale concluded hereunder. Any member of the Committee may be a Depositor hereunder.

VI. In case of any sale of the deposited stock, the Bankers shall forthwith cause notice thereof to be given to the Depositors, and thereupon each Depositor shall be entitled to receive his *pro rata* share of the net proceeds of such sale upon the surrender of his certificate of deposit. In case no contract for the sale of the deposited stock shall be concluded by September 30, 1904, or in case the Bankers shall sooner elect to terminate this agreement, as they may do in their discretion, then each Depositor shall, upon surrender of his certificate of deposit, be entitled to receive back the shares of stock deposited by him hereunder, without any expense to him.

VII. Nothing herein shall be construed as creating any trust or obligation in favor of any person or corporation other than the Depositors, or any obligations in favor of the Depositors excepting only as herein expressly provided. Neither the Bankers nor
2086 any member of said committee shall be liable under this agreement, except for good faith in performing the obligations and exercising the discretion assumed hereunder and conferred hereby.

VIII. All of the covenants on the part of the Depositors are with one another as well as with the Bankers, and each depositor agrees with all the others and with the Bankers that, in consideration of the deposits of stock made hereunder by the respective Depositors, and the covenants to be performed by the Bankers hereunder, the authority hereby conferred shall be irrevocable during the period of this agreement.

IX. The Bankers will receive addresses furnished by Depositors and keep a record of the addresses so furnished. Any notice which shall be mailed to such of the Depositors as have furnished their addresses at the addresses so furnished, shall be sufficient notice to all of the Depositors, for every purpose hereof.

X. All powers herein provided to be exercised by the firm of Kuhn, Loeb & Co., may be exercised not only by said firm but by any successor firm which may succeed to their business. The State

of the execution, delivery and performance of this contract shall be deemed to be the State of New York, according to the laws of which State this contract shall be construed and the rights of the parties hereunder determined.

In witness whereof, the parties of the first part have executed this instrument in duplicate as of the day and year first above written, and the parties of the second part have become parties hereto in the manner hereinbefore provided.

KUHN, LOEB & CO.

HARRIMAN EXHIBIT No. 6.

This Exhibit is the same as Exhibit "K" to Hillard Exhibit No. 1. Printed at page 198.

2087 HARRIMAN EXHIBIT No. 7.

CHICAGO, *April* 23, 1900.

The adjourned meeting of the Board of Directors of the Chicago & Alton Railway Company was duly held at the public office of the company in the City of Chicago, on the twenty third day of April, 1900, at ten o'clock in the forenoon, pursuant to adjournment.

At such meeting were present the following directors as evidenced by the roll-call:

Samuel W. Felton
John A. Spoor
Clarence H. Wooster
Rudolph Brand
Bertram M. Winston
John A. Orb
William W. Tracy
Willey S. McCrea.

The meeting duly came to order, the President of the Company in the chair, in the absence of the Chairman of the Executive Committee, and the Secretary acting as secretary of the meeting.

On motion, regularly made and seconded, it was unanimously

Resolved that this company issue twenty-two thousand (22,000) of its Three and one half per cent. First lien Fifty Year Gold Bonds, and that the Farmers' Loan and Trust Company be authorized and requested to certify the same and to deliver the sam or upon the order of the President or any Vice-President of this company; and further

Resolved, that the said bonds be sold by the officers of the Company for $13,000,000 and the proceeds used to fund the existing indebtedness of this company; and further

Resolved, that out of the proceeds of the sale of the said 22,000 Three and one-half per cent. First Lien Fifty Year Gold Bond, there be paid to Mr. Louis L. Stanton $3,000,000 thereof, to pay
2088 for that portion of the railways and property formerly of the St. Louis, Peoria and Northern Railway Company conveyed

by said Louis L. Stanton to this company, and $10,000,000 thereof to pay for the 34,722 shares of the preferred stock of the Chicago and Alton Railroad Company purchased from him.

HARRIMAN EXHIBIT No. 8.

An agreement made and entered into the Fifth day of May, 1900, by and between Edward H. Harriman, Jacob H. Schiff, James Stillman and George J. Gould, jointly, parties of the first part; The Chicago and Alton Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, party of the second part, and the Chicago and Alton Railway Company, a corporation also organized and existing under and by virtue of the laws of the State of Illinois, as lessee of The Chicago and Alton Railroad Company, party of the third part.

Whereas, The Chicago Terminal Transfer Railway Company and the St. Louis, Peoria and Northern Railway Company heretofore made and entered into a certain agreement of lease bearing date October 1, 1898, whereby the said Terminal Company leased to the said Railway Company certain lands, premises and property as by reference to said agreement of lease will more fully and at large appear; and

Whereas, The Laclede Construction Company, the Chicago Terminal Transfer Railroad Company, the St. Louis, Peoria and Northern Railway Company and the Guaranty Trust Company of New York heretofore made and entered into an agreement bearing date October 1, 1898, for the commutal of rental provided to be paid in and by said agreement of lease; and

2089 Whereas, the Laclede Construction Company, the Chicago Terminal Transfer Railroad Company, the St. Louis, Peoria and Northern Railway Company, and Edward H. Harriman, Jacob H. Schiff, James Stillman and George J. Gould heretofore made and entered into a certain agreement dated May 25, 1899, modifying the said agreement for commutal of rental; and

Whereas, the parties of the first part are the owners and holders of all the shares of the capital stock of the Laclede Construction Company, which latter company owns and holds all the capital stock of said St. Louis, Peoria and Northern Railway Company; and

Whereas, in said last-mentioned agreement, the parties of the first part jointly and severally agreed that on or before January 1, 1904, they would cause The Chicago and Alton Railroad Company or some other corporation satisfactory to the said Chicago Terminal Transfer Railroad Company as to responsibility, to become the successor of the St. Louis Peoria and Northern Railway Company as lessee under said lease of October 1, 1898, as so amended; and

Whereas, the party of the third part has duly acquired and is now the owner and is operating a large portion of the railroad heretofore belonging to said St. Louis, Peoria & Northern Railway Company; and

Whereas, the parties of the second and third parts deem it advantageous and desire to secure unto themselves the option until January 1, 1904, of either becoming or designating the successor lessee of the said lease of October 1, 1898, in place of the said St. Louis, Peoria and Northern Railway Company;

Now, therefore, this agreement witnesseth that the parties hereto for and in consideration of the premises and of the sum of one hundred dollars, lawful money of the United States, to each in hand paid by the other, the receipt whereof is hereby acknowledged, have agreed and covenanted, and hereby so agree and covenant, to and with each other as follows:

2090 First. The parties of the first part jointly and severally agree and covenant to and with the parties of the second and third parts that they will cause the said lease of October 1, 1898, to be assigned to the parties of the second and third parts, or either of them, or to their nominee, at their request at any time prior to December 1, 1903, and that all benefit or consideration upon such assignment shall belong to the parties of the second and third parts or to such person or persons or corporation as they may designate.

Second. The parties of the second and third parts further agree that at any time after December 1, 1903, and prior to January 1, 1904, the parties of the first part shall have the right to assign or cause to be assigned the said lease to the parties of the second and third parts, or to either of them, and the parties of the second and third parts agree that the assignees or assignee shall thereupon forthwith agree to assume and shall assume the said lease, and to be bound by and to perform all the terms and conditions thereof, as so modified and amended.

Third. The parties of the second and third parts jointly and severally agree and covenant to and with the parties of the first part that they, the said parties of the second and third parts, will assume, and they hereby do assume, the performance of all and singular the terms and conditions of said agreement of May 25, 1899, to be kept and performed by the parties of the first part; and do jointly and severally further agree and covenant to indemnify and forever hold harmless the said parties of the first part, and every one of them, from and against any and all liability and obligations whatsoever, now existing or hereafter to arise or accrue, under said agreement of May 25, 1899.

In witness whereof, the parties of the first part have hereto set their hands and seals, and the parties of the second and third parts have caused these presents to be executed in their respective corporate names by their respective President and Vice-President, and their respective corporate seals to be hereunto affixed and attested

by their respective Secretaries or Assistant Secretaries the day
2091 and year first above written in triplicate.

EDWARD H. HARRIMAN. [SEAL.]
JACOB H. SCHIFF. [SEAL.]
JAMES STILLMAN. [SEAL.]
GEORGE J. GOULD. [SEAL.]
[SEAL.] THE CHICAGO AND ALTON RAILROAD COMPANY,
By S. M. FELTON, *President.*

Attest:
CHAS. H. DAVIS, *Ass't Secretary.*

[SEAL.] THE CHICAGO AND ALTON RAILWAY COMPANY,
By LOUIS L. STANTON, *Vice-President.*

Attest:
A. H. LIPPINCOTT,
Assistant Secretary.

HARRIMAN EXHIBIT No. 9.

Special Common Stock Dividend.

No. 65. NEW YORK, N. Y., *May* 7, 1900.

The National City Bank of New York, 52 Wall St.,

Will pay to the order of Kuhn, Loeb & Co., syndicate managers, $5,562,900 Five Million Five Hundred and Sixty-two thousand Nine Hundred Dollars.

CHICAGO & ALTON RAILROAD COMPANY,
By FRED V. S. CROSBY, *Assistant Treasurer.*

H. S. BRADT,
For the Secretary.

[Endorsed:] Pay to the order of Kuhn, Loeb & Co.
KUHN, LOEB & CO.

Pay to the order of the National City Bank.
KUHN, LOEB & CO."

2092 HARRIMAN EXHIBIT No. 10.

Special Preferred Stock Dividend.

No. —. NEW YORK, N. Y., *May* 7, 1900

The National City Bank of New York, 52 Wall St.,

Will pay to the order of Kuhn, Loeb & Co., syndicate Managers, $1,041,660 One Million Forty-one Thousand Six Hundred and Sixty Dollars.

CHICAGO & ALTON RAILROAD COMPANY,
By FRED V. S. CROSBY, *Assistant Treasurer.*

H. S. BRADT,
For the Secretary.

[Endorsed:] Pay to the order of Kuhn, Loeb & Co.
KUHN, LOEB & CO.

Pay to the order of the National City Bank.
KUHN, LOEB & CO."

HARRIMAN EXHIBIT No. 11.

Special Meeting Board of Directors of the Chicago and Alton Railroad Company Held June 27, 1899.

On motion, it was

Resolved: That this Company borrow such sums of money as may be necessary to fund its indebtedness, and to complete, furnish, improve, and operate or maintain its lines of railroad.

Resolved further, that in order advantageously to borrow said moneys, it will be necessary to issue bonds of this Company in a series of the denomination of one thousand dollars ($1000)
2093 each, of an authorized issue not exceeding in the aggregate forty million dollars ($40,000,000) face value, bearing interest at the rate of three per cent. per annum, payable semi-annually, principal and interest payable in gold coin of the United States, of or equal to the present standard of weight and fineness.

Resolved further, that in order to secure the payment of said bonds, a mortgage be executed by the officers of the Company to the Illinois Trust and Savings Bank, as Trustee, upon the corporate property, rights, powers and privileges, and franchises of the Company, including the right to be a corporation, provided that the consent and concurrence of the stockholders of the Company to the execution and delivery of such mortgage be first obtained, and that power be reserved in any such mortgage to issue additional bonds, if duly authorized by the stockholders of the Company, for the purpose of providing additional funds for building, completing, or acquiring

any extension of the railroad of the Company necessary and proper to its business; such additional issue not to exceed the rate of $20,000 per mile of main track, excluding sidings or switches, and not exceeding five hundred miles of such additional main track, and also for the purpose of funding the rental indebtedness of the Company upon its leased lines upon such terms as the stockholders may hereafter approve, and also providing for future requirements for betterments, not exceeding $5,000,000 face value of bonds; such issue for future betterments to be at the rate of not more than $1,000,000 per annum from and after January 1, 1900.

Resolved further, that the proceeds of about $25,000,000 of said issue of $40,000,000 face value of bonds be appropriated for the purpose of improvements, betterments, and extensions to the Company's lines of railroad, including the rebuilding of bridges, track elevation, the reduction of grades, the acquisition of new locomotive engines and other equipment, etc., and other lawful corporate pur-
2094 poses; and that the proceeds of the remaining $15,000,000 face value thereof, when received, be forthwith deposited with the United States Trust Company of New York, or other responsible trust company, and be used as needed primarily for the purpose of funding or paying the existing indebtedness of the Company, including the following:

Louisiana & Missouri River Railroad First Mortgage 7 per cent. Bonds, due August 1, 1900, assumed by your company	$1,785,000
Louisiana & Missouri River Railroad Second Mortgage 7 per cent. Bonds, due November 1, 1900	300,000
Chicago & Alton Sinking Fund 6 per cent. Gold Bonds, due May 1, 1903	1,695,000
Consolidated Chicago & Alton 6 per cent. Sterling Bonds £900,000, due July 1, 1903, say	4,379,830

Resolved further that any increase of such bonds under said mortgage beyond forty million dollars value thereof shall not be made by the directors without first procuring the due consent and concurrence of three-fourths in interest of the preferred and common stockholders of the corporation respectively.

Resolved further, that a special meeting of the stockholders of this company be called, to be held at the general office of the company in the city of Chicago, on Thursday, the 7th day of September, 1899, at 12 o'clock noon, for the purpose of submitting to the stockholders for their action, and obtaining their consent and concurrence in the creation of such debt and the execution of such mortgage, and that the notice be given—a copy of the notice is in the minutes.

Resolved, that it be recommended and proposed to issue and negotiate said forty million dollars face value of said bonds of and when duly authorized by the stockholders and to give to the stockholders the privilege of subscribing for and purchasing the same at the rate of $650 in cash for each one thousand dollars face value of
2095 the new bond, and that, as the capital stock of the company now issued and outstanding, both preferred and common,

amounts in the aggregate to $22,236,600 the stockholders shall be entitled and offered the privilege of subscribing to said bonds at the rate of 180 face value of their new bonds, for each share of common or preferred stock.

HARRIMAN EXHIBIT No. 12.

Copy.

The Chicago and Alton Railway Company to E. H. Harriman, Dr.

Address: New York, N. Y.

1904.

June 28, For services as Chairman of the Executive committee from April 23, 1900, to June 30, 1904, at the rate of $25,000 per annum..... $104,722.22

Authorized by resolution of the Board of Directors, Sept. 29, 1904.

Charge:

Pay'ts for Chicago office..... $25,000.00
C. & A. Railroad Co..... 79,722.22

Correct: ..... Approved: ..... Approved: (Signed) WM. MAHLE, *Comptroller.*

Received, June 28, 1904, of the Chicago and Alton Railway Company, the sum of One hundred & four thousand, seven hundred twenty-two 22/100 dollars, in full for above account.

(Signed) E. H. HARRIMAN.

—— —— *Witness.*

2096 Chicago & Alton Railway Co.

Executive Committee Records, Vol. I, Page 210—*Meeting of Sept.* 29, 1904.

"The Chairman laid before the committee a report under date of June 27, 1904, made by the special committee appointed to consider the compensation of the Chairman of the Executive Committee. After consideration of the same, upon motion duly made, seconded, and unanimously adopted, the compensation of the Chairman of the Executive Committee for all services rendered by him was fixed at the rate of $25,000 per annum, from April 23, 1900, the date of his appointment; and the action of the Chairman of the Executive Committee in drawing compensation at said rate was approved, ratified and confirmed."

KAHN EXHIBIT No. 1.

27 & 29 Pine Street.

Kuhn, Loeb & Co.

NEW YORK, *February* 5, 1901.

E. H. Harriman, Esq., Chairman Executive Committee, Union Pacific Railroad Company.

DEAR SIR: Referring to our letter of even date herewith we beg to say that in financing an issue of this class of bonds and in thus inviting the confidence of our clients in the securities, it is of serious concern to us that we assure ourselves, (*a*) that the future financial policy of the Union Pacific shall be consistent with the plan now undertaken and that it will be thus in support of the securities now issued, and (*b*) that the method of placing new securities issued in the further consummation of this policy shall be so under our control that we may secure the stability and credit of the initial issue undertaken by us.

In the foregoing view we write to say that our undertaking
2097 to purchase the $40,000,000 convertible bonds of a total authorized issue of $100,000,000 is subject to the following further condition, namely:

1. That so long as any of such issue of bonds are unissued the Railroad Company will, until May 1 1906, (unless we otherwise consent) raise such additional capital as it shall from time to time require exclusively by the issue of such convertible bonds, namely: the bonds of said issue convertible into the common stock of the Company at par at any time within five years after their respective dates of issue.

2. That we are to have the right and privilege with respect to any additional bonds of said issue which the Union Pacific Railroad Company may decide to sell prior to May 1, 1906, to purchase them at the same price as the initial issue of $40,000,000 of such bonds will net the Company after the payment of the Syndicate commissions and our own.

Yours truly,

(Sgd.) KUHN, LOEB & CO.

KAHN EXHIBIT No. 2.

Prices Illinois Central Stock.

Jan.	1905		1906		1907	
	Low.	High.	Low.	High.	Low.	High.
Jan	152¾	160¾	174	182	158 Feb. 23	172
Feb	155	163¼	168	179¾	158	
Mch	158	164	165	172¾		
Apl	157	170	165¾	176¼		
May	155	162¼	164	182		
June	157⅞	167⅛	174½	184½		
July	165¾	175½	171⅝	180		
Aug	170¼	180¾	173½	178½		
Sept	174⅜	183	171½	177		
Oct	177	183	171½	177		
Nov	173¼	180	172¼	180		
Dec	173	178¾	165	176		

2098 KAHN EXHIBIT No 3.

Correspondence Between Mr. Harriman and Kuhn, Loeb & Co., During April and May, 1901, *in Reference to Purchase of Northern Pacific Stock.*

NEW YORK, *April 15th*, 1901.

E. H. Harriman, Esq., Chairman, Executive Committee, Union Pacific Railroad Company, 120 Broadway, City.

DEAR SIR: We are the owners and holders of 100,000 shares of Preferred Stock and 150,000 shares of Common Stock of the Northern Pacific Railway Company. As in our opinion the acquisition of these shares by the Union Pacific Railroad Company would be of great value to its system, we offer to sell these shares to your Company at the price of 101% per share of Preferred Stock and 102½% per share of Common Stock. We believe that both classes of stock will shortly appreciate in value and that it would in all probability be impracticable to purchase such a large block at the present time without greatly increasing the market value. In view of existing conditions in the stock and money market, we must ask for an answer to this letter to-day, accepting or declining the offer, and we trust that it will be practicable for you to so advise us. If not practicable to give this answer to-day, we will keep the offer open for not to exceed two days, subject, however, to our right in the meantime to sell the stock to others without notice or to withdraw the same from sale without notice.

Yours very truly,

(Signed) KUHN, LOEB & CO.

Ex. dividend for which books close to-morrow.

2099 NEW YORK, *April* 15, 1901.

Messrs. Kuhn, Loeb & Company, 27 & 29 Pine Street, City.

DEAR SIRS: I beg to acknowledge receipt of your letter of to-day, offering, to sell to this Company 100,000 shares of the Preferred Stock and 150,000 shares of the Common Stock of the Northern Pacific Railway Company at 101% per share of Preferred and 102½% per share of Common Stock, the latter ex-dividend for which books close to-morrow. I have authority from this Company to purchase any such stock, and I believe with you that the acquisition of this stock will be of great benefit to this Company.

Under the circumstances and the necessity for prompt action, I hereby accept your offer and agree on behalf of the Union Pacific Railroad Company to purchase from you the above mentioned shares of preferred and common stock of the Northern Pacific Railway Company at the prices named. Your letter and this acceptance will constitute the contract between yourselves and the Company.

Yours very truly,

(Signed) E. H. HARRIMAN,
As Chairman of the Executive Committee of the Union Pacific Railroad Company.

NEW YORK, *April* 16, 1901.

E. H. Harriman, Esq., Chairman, Executive Committee, Union Pacific Railroad Company, 120 Broadway, City.

DEAR SIR: We are prepared to make delivery to-day at two o'clock P. M. of the 100,000 preferred shares and 150,000 common shares of the Northern Pacific Railway Company, at the National City Bank, against payment for the same which we calculate to be $25,475,000.

Yours very truly,

(Signed) KUHN, LOEB & CO.

2100 NEW YORK, *April 29th*, 1901.

E. H. Harriman, Esq., Chairman, Executive Committee, Union Pacific Railroad Company, 120 Broadway, New York.

DEAR SIR: We beg to acknowledge receipt of your letter of to-day. We are prepared to offer and sell to your Company the following shares of the capital stock of the Northern Pacific Railway Company, namely: 160,000 shares of preferred stock at $102.50 per share—ex dividend, for which books close May 10th next; and 120,000 shares of common stock at $112.50 per share. This offer is to remain open until to-morrow morning at ten o'clock.

Yours very truly,

(Signed) KUHN, LOEB & CO.

APRIL 29TH, 1901.

Messrs. Kuhn, Loeb & Co., 27 Pine Street, New York.

DEAR SIRS: I beg to acknowledge the receipt of your letter of to-day, in which you offer to sell to this company 160,000 shares of the

preferred stock of the Northern Pacific Railway Company at the price of $102.50 per share ex-dividend for which books close May 10th next, and 120,000 shares of the common stock of the Northern Pacific Railway Company at the price of $112.50 per share. Under the authority of the Company, I hereby accept your offer, and agree, on behalf of the Union Pacific Railroad Company, to purchase from you the above mentioned shares of preferred and common stock of the Northern Pacific Railway Company at the prices named. Your letter and this acceptance will constitute the contract between yourselves and the Company.

Yours very truly,

(Signed) E. H. HARRIMAN,
As Chairman of the Executive Committee of the Union Pacific Railroad Company.

2101 APRIL 29TH, 1901.

Messrs. Kuhn, Loeb & Co., 27-29 Pine Street, New York.

DEAR SIRS: The Union Pacific Railroad Company desires to purchase additional shares of the preferred and common stock of the Northern Pacific Railway Company to the amount at least of 250,000 shares, and I, on its behalf, desire to know whether these shares can be procured from or through yourselves, and upon what terms. In view of the existing conditions of the market, I must beg you to give me an answer to-day.

Yours very truly,

(Signed) E. H. HARRIMAN,
As Chairman of the Executive Committee of the Union Pacific Railroad Company.

APRIL 30TH, 1901.

DEAR SIRS: The Union Pacific Railroad Company, for the purpose of financing corporate requirements, desires to sell $25,000,000 face value, of its First Lien Convertible Four per cent. gold bonds. In compliance with the agreement between this Company and yourselves, evidenced by your letter of February 5, 1901, to the undersigned, I am authorized to offer on behalf of the Railroad Company to sell these bonds to you upon the terms mentioned in your letter. I shall be glad to hear promptly whether you will purchase the same.

Upon payment by you or your assigns for these bonds at their face value, less interest to May 1st, when the interest on the bonds begins to run, the Company will be prepared to pay you the 5% commissions as agreed upon February 5, 1901.

Yours very truly,

(Signed) E. H. HARRIMAN,
As Chairman of the Executive Committee of the Union Pacific Railroad Co.

Messrs. Kuhn, Loeb & Co., 27 & 29 Pine Street, City.

2102 MAY 7TH, 1901.

Messrs. Kuhn, Loeb & Co., 27-29 Pine Street, City.

DEAR SIRS: The Union Pacific Railroad Company desires to make additional purchases of the stock, common and preferred, of the Northern Pacific Railway Company to an amount up to but not exceeding $24,500,000 par value in the aggregate of both stocks. On behalf of the Executive Committee and with its authority, I desire you to make purchases for account of the Union Pacific Railroad Company, and shall be glad to hear promptly your views as to the prices at which the stock can be obtained, so far as you can judge.

Yours very truly,

(Signed) E. H. HARRIMAN,
Chairman Executive Committee.

NEW YORK, *May 7th*, 1901.

E. H. Harriman, Esq., Chairman Executive Committee, Union Pacific Railroad Company, 120 Broadway, City.

DEAR SIR: We beg to acknowledge the receipt of your letter of to-day.

We ourselves own and control 80,000 shares of preferred and 86,000 shares of common stock of the Northern Pacific Railway Company, and we offer to sell these shares to the Union Pacific Railroad Company at the rate of $109.00 per share of preferred stock, ex-dividend for which books close May 10th, and $131.50 per share of common stock. We must ask you to advise us before four o'clock to-day, if practicable, whether the Company will accept this offer, in order that we may govern ourselves accordingly.

Yours very truly,

(Signed) KUHN, LOEB & CO.

P. S.—We wish to point out that to-day's closing prices were as follows:

Northern Pacific Common Stock	143½%—144%
" " Preferred Stock	110%—110¼%

2103 MAY 7TH, 1901.

Messrs. Kuhn, Loeb & Co., 27-29 Pine Street, City.

DEAR SIRS: I beg to acknowledge the receipt of your letter of to-day, in which you offer to sell to the Company 80,000 shares of preferred stock and 86,000 shares of common stock of the Northern Pacific Railway Company at the rate of $109.00 per share of preferred stock, ex-dividend for which books close May 10th, and $131.50 per share of common stock. I hereby accept such offer on behalf of the Company, and it hereby agrees to purchase the stock on such terms.

In addition to such purchase, I authorize and direct you to make additional purchases in the market for account of the Union Pacific Railroad Company of preferred stock of the Northern Pacific Rail-

way Company up to but not exceeding in the aggregate a total cash expenditure or commitment of $9,200,000, using your discretion as to price and times of purchase, but not to exceed the average rate of $115.00 per share, ex-dividend for which books close May 10th.

Yours very truly,

(Signed) E. H. HARRIMAN,
Chairman Executive Committee.

EXHIBIT No. 112.

No. 7.

New York Life and Goldman, Sachs & Co. Joint Account Chicago & Alton Railroad Company 3% Refunding 50 yr. Gold Bonds.

Due Oct. 1st, 1949.

1899.			
Oct.	17.	To $4,000,000 at 96 and int.....	$3,845,333.33
Nov.	1.	To $1,500,000 at 96 and int.....	1,443,750.00
	22.	To $1,500,000 at 96 and int.....	1,446,375.00
Dec.	15.	To $3,000,000 at 96 and int.....	2,898,500.00
2104			
1901.			
June	29.	To amts. credited B. & S. in error.....	3,190.74
Sept.	30.	To amt. credited April 2, 1900, in error (flat price)	4.17
Oct.	7.	To temporary loans.....	400,000.00
	7.	To profits on joint account to G. S. & Co..	1,937.91
	31.	To profits on joint account to N. Y. Life.	1,937.92
			$10,041,029.07
1899.			
Nov.	8.	By $25,000 sold at 98½ and int.....	24,702.08
	10.	By $21,000 sold at 99 and int.....	20,858.25
1900.			
March	6.	By $50,000 sold at 98½ and int.....	49,895.83
April	2.	By $50,000 sold at 98½.....	49,250.00
	10.	By $5,000 sold at 98½ and int.....	4,928.75
Dec.	29.	By temporary loans.....	400,000.00
1901.			
June	26.	By $250,000 sold at 96 and int.....	242,395.83
	18.	By $500,000 sold at 96.....	480,000.00
	20.	By $250,000 sold at 96.....	240,000.00
	29.	By amts. charged B. & S. in error.....	33,958.33
Oct.	7.	By del'd G. S. & Co., $3,925,000. at 96...	3,768,000.00
	31.	By Transf'd to Reg. account.....	4,727,040.00
			$10,041,029.07

2105 *Chicago & Alton 3's Joint Account.*

July 26, 1899:

The object of the meeting was stated to be to consider the question of participation in a proposed syndicate to purchase $10,000,000 of an intended issue of $40,000,000 Chicago & Alton R. R. 3% Bonds at 96 and interest in conjunction with Goldman & Sachs, for resale, with authority to take $1,000,000 of same as investment,—the purchase to be subject to the bonds being made a New York State Savings Bank Investment before the adjournment of the next legislature, and to carry with it an option upon the next issue of said bonds—which, on motion was unanimously approved and the Treasurer was empowered in accordance therewith." (Page 125 Par. 1)

Present: The Chairman and Messrs. Langdon, Grace, Perkins and Randolph.

Oct. 31, 1900 (Page 195, par. 3):

Chairman submitted correspondence with Goldman Sachs & Company, relative to joint account interest in $10,000,000 Chicago & Alton Bonds.

Present: Messrs. Claflin, Fairchild, Langdon, Perkins and Mr. Randolph, Chairman:

Nov. 7, 1900:

Letters from Goldman, Sachs & Company of October 31st and November 7th were read in connection with tender of additional securities valued at $250,000 as further collateral against loss from depreciation in the stock market of their half interest in $10,000,000 Chicago & Alton bonds, purchased in joint account with them, which was authorized to be received in accordance with the terms of said two letters. (Page 196.)

Present: Messrs. Fairchild, Langdon, Perkins and Mr. Randolph, chairman.

Nov. 15, 1900:

Suggestion of Goldman, Sachs & Co. that they be allowed to purchase and substitute Chicago & Alton 1st Mortgage Bond
2106 Certificates to be accompanied by sales of corresponding amounts of 3% Mortgage bonds, whenever the market affords opportunity to do so at a difference of price sufficient to materially cheapen the 3% bonds held in joint account with them—was approved.

Present: Messrs. Fairchild, Langdon, Grace, Perkins, Morrison and Mr. Randolph, Chairman.

EXHIBIT 1, HILLARD.

Answers to Queries Set Forth in Letter of Frank B. Kellogg, Special Counsel for the Interstate Commerce Commission, to Robert Mather, Dated January 8, 1907.

Query (1) See attached exhibit "A."
Query (2) See attached exhibit "B."
Copy of mortgage of C. & A. R. R. Co., to Illinois Trust & Savings Bank, Trustee, dated October 1, 1899, securing $40,000,000 3% refunding 50 year bonds attached. (Exhibit "C.")
This mortgage provides for the issue of those bonds as follows: $15,000,000 for retirement of prior liens, any surplus to be used for improvements and betterments. $25,000,000 for improvements, betterments, extensions and corporate purposes authorized by law.
On June 27, 1899, the Board of Directors authorized sale to stockholders at $650. per $1,000. of entire issue of $40,000,000.
On October 10, 1899, $9,996,120. of these bonds were sold to subscribers at 65.
On May 7, 1900, $21,991,464. more were sold at same price and $8,000,000. of the subscriptions rescinded.
In April and May, 1902, $12,416 wer sold to Kuhn, Loeb & Co., at 85.

2107 List of subscribers attached (Exhibit "D.")

The proceeds of these $32,000,000 of bonds sold as above were.....	$20,802,483.20
There was deposited with the United States Trust Co., to refund prior liens.....	8,607,085.00
	$12,195,398.20
A cash dividend of 30% was paid May 7, 1900, "Out of net profits of the company earned and accruing prior to January 1, 1900"..... (Statement attached Exhibit "E.")	6,669,180.00
Leaving a balance of.....	$5,526,218.20

This balance was used in common with other treasury funds for additions, improvements, new construction, etc.
(Detailed statement attached (Exhibit "F") showing amounts of bonds and notes issued, amounts realized and disposition of same.)
Additional bonds under this mortgage were issued as follows:

September 7, 1904, for acquiring railroad formerly belonging to Quincy, Carrolton and St. Louis Ry. Co.	$350,000.00
March 31, 1905, issued in accordance with subdivision 3, article 3, refunding mortgage, for betterments, (sold at 83½)	2,000,000.00
July 31, 1905, issued in accordance with subdivision 3, article 3, refunding mortgage, for betterments, (sold at 83¾)	3,000,000.00

Sheet No. 3.

Query (3) Articles of Chicago and Alton Railway Company dated March 31st, 1900, attached (Exhibit "G.")

2108 *Assets Acquired.*

34,722 shares of Chicago & Alton R. R. Co., preferred stock, purchased for $10,000,000 cash.

183,224 shares Chicago & Alton R. R. Co. common exchanged for 194,890 shares preferred and 195,428 shares common stock of Chicago & Alton Railway Company.

The Chicago & Alton Ry. Co., issued a mortgage to the Farmers Loan & Trust Company covering issue of $22,000,000 of bonds—copy attached (Exhibit "H").

On April 23, 1900, this entire issue was authorized to be sold for $13,000,000 in cash.

$10,000,000 cash was authorized to be paid for 34,722 shares of preferred stock of the Chicago & Alton R. R. Co., as stated above.

$3,000,000 cash was authorized to be paid for the railroad between Springfield and Grove (St. L. P. & N. Ry.).

For general statement of this company at the close of each fiscal year see statement attached. (Exhibit "A.")

Sheet No. 4.

Query (4x) Consolidated statement of Chicago and Alton Railroad Company as of March 14, 1906,—the date of consolidation is attached—(Exhibit "I").

Also Articles of Consolidation (Exhibit "J"):

(*a* and *b*) Attached will be found report of President Felton to Board of Directors, and resolution of the latter, dated December 22, 1899, concerning "Construction expenditures—uncapitalized" (Exhibit "K").

(*c*) See detailed statement attached (Exhibit "L").

(*d*) From December 31, 1899 to June 30, 1906, the expenditures in improvements upon and additions to the Company's property, including expenditures for increasing weight of rails, improving ballast, grades and bridges, elevation of tracks, new side tracks and

terminals, additional mileage and rolling stock acquired, aggregated about $18,000,000.00.

2109 During this period the following additions were made to mileage and equipment:—

Mileage owned	103.12
Locomotives owned	18.
Passenger Cars owned	69.
Freight and service cars owned	3,730.

There are no records of the Laclede Construction Company in the C. A. R. R. files, excepting contract of May 5, 1900, which states that said construction company owned all the capital stock of the St. Louis, Peoria & Northern Railway Company.

2110 EXHIBIT

Chicago and Alton R. R. Co. and Chicago and Alton Ry. Co.

	December 31, 1898.	December 31, 1899.	June 30, 1901.
Assets.			
Cost of Road and Equipment	$34,153,927	$49,032,143	$94,269,534
Funded Interest Account	.....	.....	593,912
Lands Owned	53,445	53,445	53,446
Stocks and Bonds Owned	4,237,053	4,233,393	4,214,149
Cash and Other Assets	1,491,462	7,552,972	8,027,950
U. S. Trust Co.—Trustee	.....	.....	986,424
Total Assets	$39,935,887	$60,871,953	$108,145,415
Liabilities.			
Capital Stock	$22,230,600*	$22,230,600*	$39,522,800*
Funded Debt	10,779,850	20,712,850	62,598,850
Const. Expenditures uncapitalized	.....	12,444,178	.....
Loans and Bills Payable	.....	.....	967,582
Bonds Redeemed and Canceled	2,978,903	.....	.....
Current and Other Liabilities	940,957	2,254,406	3,317,114
Profit and Loss	3,005,577	3,229,919	1,739,069
Total Liabilities	$39,935,887	$60,871,953	$108,145,415
Miles of Road	843.54	843.54	902.27
Equipment.			
Locomotives	232	208	201
Passenger Cars	148	153	153
Freight & Service Cars	6,377	7,006	9,549

* Does not include 34,722 shares preferred and 183,224 shares common stock of & Trust Company.

"A."

Combined General Balance Sheets, 1898 to 1906, Inclusive.

June 30, 1902.	June 30, 1903.	June 30, 1904.	June 30, 1905.	June 30, 1906.
$96,379,369	$104,043,908	$107,371,805	$110,341,794	$118,399,849
973,477	973,477	973,476	973,477	.....
53,446	42,246	30,779	371,223	261,980
4,196,733	6,514,533	4,975,733	4,963,813	1,000,001
6,928,369	7,306,067	2,130,845	2,772,454	2,919,656
1,081,874	407,232	369,649	330,832	290,842
$109,613,268	$119,287,463	$115,852,288	$119,753,593	$122,872,328
39,522,800*	39,522,800*	39,522,800*	39,522,300*	39,986,100*
62,421,850	72,660,350	70,750,500	74,788,700	79,060,118
.....	.....	.....	.....	.....
3,420,000	2,510,000	1,140,000	343,244	580,244
.....	.....	.....	.....	.....
2,504,959	2,917,764	2,717,843	2,596,911	2,984,475
1,743,659	1,686,549	1,721,143	2,501,938	261,391
$109,713,268	$119,207,463	$115,852,288	$119,753,593	$122,872,328
902.27	898.04	897.86	897.86	946.66
204	213	226	221	250
No data.	181	230	210	217
No data.	10,073	10,007	9,734	10,107

old R. R. Co., deposited under C. & A. Ry. Co. mortgage, with Farmers' Loan

2111 EXHIBIT B.

Chicago & Alton Railroad Company and Chicago & Alton Railway Company.

Statement Showing Details of Increase in Funded Debt (Including Guaranteed Stocks) from 1898 to 1906, Inclusive.

Funded Debt, December 31, 1898		$10,779,850
Funded Debt, December 31, 1898		20,712,850
Increase		$9,933,000
Issue of 3% Refunding Bonds	$9,986,000	
Retirement of Miss. Riv. Bridge 6's	21,000	
Retirement of Sinking Fund Gold 6's	32,000	
Net increase	$9,933,000	
Funded Debt, December 31, 1899		$20,712,850
Funded Debt, June 30, 1901		62,598,850
Increase		$41,886,000
Issue of R. R. Co. 3% Refunding Bonds	$22,014,000	
Issue of Ry. Co. 3½% First Lien Bonds	22,000,000	
Called Bonds Outstanding	2,000	
Retirement of Sinking Fd. Gold 6's	17,000	
Retirement of La. & Mo. Riv. 1st Mtg. 7's	1,780,000	
Retirement of La. & Mo. Riv. 2nd Mtg. 7's	300,000	
Retirement of Miss. Riv. Bridge Co. 6's	33,000	
Net increase	$41,886,000	

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Funded debt, June 30, 1901		$62,598,850
Funded Debt, June 30, 1902		62,421,850
Decrease		177,000
Retirement of Sinking Fund Gold 6's	74,000	
Retirement of La. & Mo. Riv. R. R. 1st Mtg. 7's	3,000	
Retirement of Miss. Riv. Bridge Co. 6's	98,000	
Retirement of Called Bonds outstanding	2,000	
Net decrease	$177,000	
Funded Debt, June 30, 1902		$62,421,850
Funded Debt, June 30, 1903		72,660,350
Increase		$10,238,500

Issue of R. R. Co. 3% Refunding Bonds..	$8,000,000	
Issue of Ry. Co. 4% Coll. Notes.....	3,635,000	
Issue of Joint Equip. Notes.....	180,500	
Retirement of Sinking Fund Gold 6's....	1,547,000	
Retirement of La. & Mo. R. R. R. 1st 7's..	1,000	
Retirement of Miss. Riv. Bridge Co. 6's...	29,000	
Net increase	$10,238,500	
Funded Debt, June 30, 1903.....		$72,660,350
Funded Debt, June 30, 1904.....		70,750,500
Decrease		$1,909,850
Issue of Ry. Co. 4% Coll. Notes.....	$1,365,000	
Issue of Equipment Notes.....	1,159,000	
Called Bonds outstanding.....	2,000	
Retirement of Consol. Mtg. 6's....	4,379,850	
2113 Retirement of Sinking Fund Gold 6's.	25,000	
Retirement of Miss. Riv. Bridge Co. 6's...	31,000	
Net decrease	$1,909,850	
Funded Debt, June 30, 1904.....		$70,750,500
Funded Debt, June 30, 1905.....		74,788,700
Increase.....		$4,038,200
Issue of R. R. Co. 3% Refunding Bonds..	$2,350,000	
Taking up on books of K. C. St. L. & C. Ry. Prfd. Stk.....	1,750,000	
Taking up on books of K. C. St. L. & C. Ry. Com. Stk.....	114,200	
Retirement of Miss. Riv. Bridge Co. 6's...	33,000	
Retirement of Equip. Notes.....	143,000	
Net increase	$4,038,200	
Funded Debt, June 30, 1905.....		$74,788,700
Funded Debt, June 30, 1906.....		79,060,118
Increase		$4,271,418
Issue of R. R. Co. Refunding 3's.....	$3,000,000	
Issue of Equipment Notes (net).....	1,820,418	
Retirement of La. & Mo. R. R. R. 1st 7's.	1,000	
Retirement of called Bonds outstanding..	2,000	
Retirement of Mis. Riv. Bridge Co. 6's...	246,000	
Writing off of Miss. Riv. Bridge Co. stock.	300,000	
Net increase	$4,271,418	

2114 *Summary.*

Funded Debt, December 31, 1898	$8,650,850	
Guaranteed Stocks, December 31, 1898	2,129,000	
		$10,779,850
Funded Debt, June 30, 1906	$75,366,918	
Less held in treasury	8,000,000	
	$67,366,918	
Guaranteed Stocks	3,693,200	
		$71,060,118
Increase		$60,280,268
Increase in Funded Debt	$58,716,068	
Increase in Guaranteed Stocks	1,564,200	
Total increase	$60,280,268	
Issue of R. R. Co. Ref. 3% Bonds	$45,350,000	
Less held in treasury	8,000,000	
		$37,350,000
Issue of Ry. Co. 1st Lien 3½% Bonds		22,000,000
Issue of Equipment Notes (net)		3,016,918
Issue of Ry. Co. 4% Collateral Notes		5,000,000
		$67,366,918
Less Retirement of		
Miss. River Bridge Co. 6% Bonds	$491,000	
Sinking Fund Mtg. 6% Bonds	1,695,000	
La. & Mo. Riv. R. R. 1st Mtg. 7's	1,785,000	
La. & Mo. Riv. R. R. 2nd Mtg. 7's	300,000	
Consol. Mtg. 6% Bonds	4,379,850	
		8,650,850
Net Increase		$58,716,068

2115 Increase in Guaranteed Stocks due to taking up on books of K. C. St. L. & C. Guaranteed—

Preferred stock	$1,750,000
Common Stock K. C. St. L. & C. Guaranteed	114,200
	$1,864,200
Less Miss. River Bridge Co. Stock, written off	300,000
Net Increase	$1,564,200
Total Increase in both Funded Debt and Guaranteed Stocks	$60,280,268

N. Y. Jan. 28, 1907.

Exhibit "C" is the Chicago and Alton Railroad Co. Refunding Mortgage and is not printed.

2116 EXHIBIT "D."

Extract of Minutes of Meeting of Board of Directors Chicago and Alton Railroad Company Held September 7, 1899.

"The Treasurer presented a statement as to the subscriptions received to the bonds of the Company under the circular issued to the stockholders, dated June 27, 1899, to wit:"

Names	No. of Shares	Amount of New Bonds.
Chas. Armbrecht	200	$36,000
Isaac Beers	10	1,800
Isaac Beers, Estate	15	2,700
Chas. P. Bowditch and Francis C. Welch, Trustees under Will of Lysander A. Ellis.	5	900
Mary Chandler Bullock	10	1,800
Ellen T. W. Bard	51	9,180
Mary G. B. Caldwell	120	21,600
Robert C. Clowry	100	18,000
C. H. Chappell	100	18,000
Fellows Davis & Co	200	36,000
Chas. C. Drew	37	6,660
John W. Doane	100	18,000
Feuchtwanger & Co.	100	18,000
George J. Gould	54,534	9,816,120
Groesbeck & Sterling	700	126,000
E. H. Harriman	54,535	9,816,300
James C. Hutchins	100	18,000
Wm. H. Henkle	100	18,000
Sophie R. Horton, Assigned to Kuhn, Loeb & Co. Sep. 2, 1899	10	1,800
Eleanor B. Haven	1	180
2117 Illinois Trust & Savings Bank, Trustees under Will of Chas. H. Foster.	100	18,000
Chas. Edward Johnston, Octavius Bradshaw and William Graham Bradshaw, Surviving Trustees	20	3,600
Alvin W. Krech	100	18,000
Eugenie K. Lecocq and Eliza Radcliff, Trustees	90	16,200
Laidlaw & Co.	100	18,000
Henry D. Laughlin	54	9,720
Wm. Starr Miller	500	90,000
H. R. Miller	150	27,000
Henry Mills	10	1,800
Jacob H. Schiff	100	18,000
Mortimer L. Schiff	54,534	9,816,120
James Stillman	54,535	9,816,300
Edward Sweet & Co.	100	18,000

Names	No. of Shares	Amount of New Bonds.
Horace H. Stevens	127	$22,860
E. S. Steinan	200	36,000
S. Siegman	100	18,000
W. A. Simonson	100	18,000
Ellen T. Williams	20	3,600
Francis C. Welch and William Minot, Jr., Trustees under Will of George H. Gray	14	2,520
Francis C. Welch, Trustee under Will of Frederick S. Lewis for the benefit of Mrs. Anne L. Renton	3	540
Clarence W. Barron	2	360
Kate B. De Lano, Sole Executrix of Fred De Lano, deceased	114	20,520
Alphonse J. Stephen	1	180
	222,102	$39,978,360

2118 EXHIBIT "E."

The Chicago & Alton Railroad Company.

Special Preferred Stock Dividend—Paid May 7, 1900.

Name	Amount	
Barron, Clarence W.	30	
Welch, Francis C. or Chas. P. Bowditch, Trustees u/w of Lysander A. Ellis	150	
Bullock, Mary Chandler	300	
Kuhn, Loeb & Co., Syndicate Managers	1,041,660	
Green, Marquis	450	
Kimball, Edith H.	180	
De Lano, Kate B. Excx. of Fredk. De Lano.	480	
Williams, Ellen T.	600	
		$1,043,850

Special Common Stock Dividend.

Jackson, Thomas	750
Andrews, Robert E.	360
Ambrecht, Charles	6,000
Bard, Ellen T. W.	1,530
Barron, Clarence W.	30
Beers, C. Trustee or A. Warner, Trustee	300
Beers, C. Trustee, or A. Warner, Trustee	450
Rhode Island Hospital Trust Co.	30
Caldwell, Mary G. B.	3,600
Kuhn, Loeb & Co. Syndicate Managers	5,562,900
Davis, Fellows & Co.	6,000

	Drew, Charles C.	1,100	
	Ensign, Susan T.	810	
	Feuchtwanger & Co.	3,000	
2119	Giesy, Sarah L.	30	
	Ham, Edgar B.	420	
	Haskins, Juliette B.	90	
	Bullard, Henry W., or Richard W. Hale, Agents	30	
	Hodges, Beverly C.	60	
	Muller, Schall & Co.	600	
	Kimball, Edith H.	30	
	Laidlaw & Co.	3,000	
	Langdon, Francis E.	60	
	Laughlin, Henry D.	1,500	
	McGregor, R. C.	60	
	Meyer, John P.	120	
	Miller, H. Ray	4,500	
	Miller, Wm. Starr	15,000	
	Mills, Henry	300	
	De Lano, Kate B., Exex. Fredk. De Lano	2,940	
	Murray, George	60	
	Norton, Chauncey Williams	300	
	Nail, Henry T.	30	
	Osgood, F. L.	210	
	Redfield, Constance Co.	1,650	
	Stevens, Horace H.	3,810	
	Sweet, Edward & Co.	3,000	
	Van Schoolhaven, Catherine	150	
	Welch, Francis C. & Wm. Minet, Sr., Trustees	420	
	Welch, Francis C. Trustee	90	
			$5,625,330
	Total Preferred and Common		$6,669,180

2120 EXHIBIT "F."

(1) *Statement Showing Proceeds from the Sale of Chicago & Alton Railroad Co. 3% Refunding Mortgage Bonds, and Disposition Made of Such Proceeds.*

Receipts.

$9,996,120.00	Face value in bonds sold	$6,504,979.65
21,991,464.00	" " " " "	14,360,438.96
12,416.00	" " " " "	10,385.40
8,000,000.00	" " " " "	6,460,000.00
$40,000,000.00	" " " " "	$27,335,804.01
Interest on balances allowed by Kuhn, Loeb & Co.		90,915.64
Total proceeds from sale		$27,426,719.65

Disbursements.

Paid to United States Trust Co....	$10,350,000.00	
Paid for betterments and improvements prior to April 1, 1900....	2,525,169.39	
Paid L. & M. coupons, February, 1900	61,250.00	
Paid past due coupons and called bonds	4,420.00	
Paid expenses account Refunding bonds	49,792.08	
Cash on hand April 30, 1900.....	20,016.40	
Remitted to Chicago office.....	89,386.46	
		$13,100,033.33

2121 Special dividends on stock of Chicago & Alton R. R. Co.

Preferred stock	$1,043,850.00	
Common "	5,625,330.00	
		6,669,180.00
Accrued interest on $8,000,000.00 in Refunding Mortgage 3% Bonds, from April 1, to June 30, 1902		60,000.00
40 shares Louisiana & Missouri Preferred stock	1,180.00	
116 shares Louisiana & Missouri common stock	1,160.00	
10 shares Joliet & Chicago stock...	2,000.00	
		4,340.00
Expenses in connection with listing and certifying refunding bonds		5,470.00
Balances of receipts applied to payments for betterments and additions		7,587,696.32
		$27,426,719.65

Funds Available for the Payment of Betterments and Additions.

Balance from proceeds of sale of bonds, as shown above		$7,587,696.32
Proceeds from sale of property:		
Pawnee R. R. Co. bonds, sold at face value	25,000.00	
Chicago Real Estate	263,080.00	
Grundy Co. coal lands.....	11,200.00	
		299,280.00
2122 Cash received from the United States Trust Co., Trustee, not required for the redemption of principal and interest of underlying mortgages		$1,797,892.92
Total		$9,684,869.24

March 15, 1904.

(This statement submitted to Board of Directors of Chicago & Alton Railway Company June 7, 1904, and approved by them.)

Exhibit "G" is the articles of Incorporation of the Chicago and Alton Railway Co. and is not printed.

Exhibit H is the First Lien 3½ per cent. mortgage of the Chicago and Alton Railway Co. and is not printed.

2123 EXHIBIT "I."

Chicago & Alton Railroad Co. (Consolidated). General Balance Sheet. March 14, 1906.

ASSETS.

Capital Assets.

Cost of Road, franchises and securities March 14, 1906	$117,200,585.15

Current Assets.

Agents and conductors	77,883.64
Cash	2,401,863.02
Individuals and Companies	210,641.17
U. S. Government Transportation	53,683.20
Material, fuel and supplies	854,166.88
C. & A. R. R. Co. 3% Refunding Bonds	800,000.00
Accrued Interest on Bonds owned or pledged	108,666.67
	4,506,904.58

Deferred Assets.

Equipment purchased	15,728.77
Grundy County Coal Lands	24,979.50
Real Estate, Chicago	237,000.00
Unadjusted Accounts	26,016.64
United States Trust Co., Trustee	311,231.73
Stocks and Bonds Owned	200,001.00
	814,957.64

Contingent Assets.

Unadjusted accounts	30,101.86
Total	$122,552,549.23

2124 LIABILITIES.

Capital Liabilities.

C. & A. R. R. Co. (Consol.) Capital Stocks.

Cumulative 4% Prior Lien & Participating Stock	$899,300.00	
Non-commulative 4% Preferred Stock	19,544,000.00	
Common Stock	19,542,800.00	
		$39,986,100.00

Guaranteed Stocks.

J. & C. R. R. Co. 7% Guaranteed Capital Stock	1,500,000.00	
K. C. St. L. & C. R. R. 7% Guaranteed Preferred Stock	1,750,000.00	
K. C., St. L. & C. R. R. Co. Guaranteed Common Stock	114,200.00	
L. & M. R. R. Co. 7% Guaranteed Preferred Stock	329,000.00	
		3,693,200.00

Funded Debt.

C. & A. R. R. Co. Three Per Cent. Refunding Bonds	45,350,000.00*	
C. & A. Ry. Co. Three & One-half Per Cent. First Lien Bonds	22,000,000.00	
C. & A. Ry. Co. Four Per Cent. Collateral Trust Notes	5,000,000.00	
		72,350,000.00

2125 *C. & A. R. R. Co. Equipment Trusts.*

Joint Equipment Notes	133,000.00	
Equipment Lease & Contract, Series A	225,000.00	
Equipment Lease & Contract, Series B	705,000.00	
Equipment Lease & Contract, Series C	1,960,000.00	
Pullman Co. Equipment Lease & Contract	107,756.71	
		3,130,756.71
		$119,160,056.71

* See note at end of this Exhibit.

Current Liabilities.

Traffic Balances	47,050.61
Coupons matured but not presented	10,625.00
Dividends due and unpaid	10,392.08
Interest accrued on bonds and notes, not due	841,776.22
Dividends accrued on stocks, not due	36,312.69
Vouchers and pay-rolls	825,599.88
Called bonds outstanding	2,000.00
Bills Payable	580,243.67
	$2,354,000.15

Deferred Liabilities.

Taxes assessed but not due	69,067.50
Mississippi River Bridge Co. bonds	311,231.73
	$380,299.23

Contingent Liabilities.

Renewal and Replacement funds	118,650.82
Profit and loss	559,542.32
Total	$122,552,549.25

2126 NOTE: Of this amount of 3% Refunding Bonds, $7,000,000 par value are pledged as collateral to the $5,000,000 of 4% collateral notes; $1,000,000 are still in the treasury reducing the total outstanding capital liabilities from $119,160,056.71 to $111,160,-056.71.

Exhibit "J" is the Articles of Consolidation of the Chicago & Alton Railroad Co. and the Chicago & Alton Railway Co. and is not printed.

EXHIBIT "K."

Board of Directors. C. & A. Railroad Co.

DECEMBER 22, 1899.

Present: Messrs. Felton, Clowry, Chappell, Henkle, Hutchins.

Capitalization of Expenditures Upon Construction and Betterment Account, Etc.

The following communication from the President to the Board of Directors was read:

"To the Board of Directors, Chicago & Alton Railroad Company, New York.

GENTLEMEN: Upon assuming general supervision of the management and affairs of the Company, I caused a careful examination to be made of the system of bookkeeping and the practice in the past in respect of entries relating to capital expenditures, such as betterments, purchases of additional property, payments to sinking fund, payments of indebtedness, etc. This examination was particularly necessary at the present time in connection with the large capital expenditures which are contemplated by the present management and
2127 board of directors, and to be provided for out of the proceeds of the Refunding Bonds.

The system of bookkeeping in the past ought, in my opinion, to be discontinued. The balance sheet does correctly show the true condition and assets of the Company. Capital expenditures which should have been capitalized and carried as such in the books and in all balance sheets have been for many years paid out of income and charged to cost of operation. Whatever may have been the reason or policy of the past management in this regard, it seems to me that it cannot be continued in the future if it is the desire of the stockholders and directors of the Company that the books shall truly show the value, cost, and condition of the Company. Moreover, I am advised by counsel that this policy of paying these capital expenditures out of income and thus lessening the showing of true cost and value is not just to the stockholders and does not in Illinois tend to diminish taxation, and that if at any time in the future there should be attempts by the legislature to reduce the charges of the Company, such as was involved in the so-called Nebraska rate case, reported as Smyth *vs.* Ames, 169, U. S. 466, the Company would be greatly prejudiced if its books show a cost and valuation much lower than the true cost and value of the property. As Mr. Greene well says, in his work on Corporation Finance, discussing the practice of paying for improvements and betterments out of income: 'The objection of this course lies in the fact that the sums thus expended are lost sight of; and to the extent to which those items are hidden the real amount of money spent upon the plant is understated. This is not a mere bookkeeping objection. The railways have found that

the real cost of their property is a factor in dealing with legislatures. Laws may be passed in order to reduce freight rates and passenger fares to a point which shall yield the companies a return on cost.

Although quite concurring in the view of conservative rail-
2128 road management that all current replacements or repairs to road bed, rolling stock, etc., should be charged against operating expenses, I think that it is incorrect and improper to charge to operating expenses what are essentially and distinctively capital expenditures, such as the purchase of property and improvements which increases the facilities and add to the earnings capacity as well as the intrinsic and permanent value of the property. In case of the large expenditures which have been contracted for and are contemplated by the present Board of Directors, and are to be paid for out of the proceeds of the Refunding Bonds, if such expenditures which add to the value and earning capacity of the property are not to be capitalized, the Company would find itself shortly embarrassed by reason of an increased funded debt without any corresponding entry to show increased assets. Therefore, it seems to me absolutely necessary that the Company shall now adopt a consistent and systematic method of bookkeeping which shall show the true cost and value of the property, which shall capitalize what should be properly charged to capital instead of against current income, and which shall correctly show the surplus applicable to dividends.

A brief review of the policy of the Company in the past may be interesting. I find that in the annual report of December 31, 1888, issued on behalf of the Board by Mr. Blackstone, as president it was reported to the stockholders that the Company had never issued a share of stock or an obligation of any kind that did not represent at its par value an equal amount of cash or its full equivalent in property at the time actually received, and that the actual cost of the property was $11,750,000 in excess of the capitalization at that time. The following was then added:

2129 *The Chicago & Alton R. R. Co. Balance Sheet, Dec.* 31, 1888.

To Cost of Road & Equipment.....	$32,177,068.33	By Capital Stock.	
To Bonds & Stocks owned.....	3,868,078.63	C. & A. R. R.....	$17,594,100.00
To Lands Owned.....	75,000.00	Joliet & Chicago.....	1,500,000.00
To Cash & Current Assets.....	1,670,188.81	Miss. Riv. B. Co.....	300,000.00
To Other Assets Material & Supplies.....	325,794.75		19,394,100.00
To K. C. St. L. & C. R. R. Construction..	7,406.16	By Funded Debt.....	10,565,850.00
To Ill. Trust & Saving Bank Trustee....	1,900.00	By Sinking Fund Gold Bonds.....	2,331,000.00
		By Bonds Redeemed and cancelled.....	1,825,000.00
		By Louisiana Mo. Riv. R. R. Bond Account.....	439,100.00
		By current liabilities.....	679,333.99
		By Rentals Accrued.....	108,924.00
		By Miss. Riv. B. Co. Sinking Fund.....	565.00
		By new Common Stock unissued.....	1,900.00
		By Unexpended Appropr. for improvements.....	184,889.65
		By Income Account.....	2,595,689.04
	$38,125,436.68		$38,125,436.68

2130 In the report of 1894 Mr Blackstone, on behalf of the Board of Directors, again reported to the stockholders, as follows:

"At all times during the last thirty years, when it has been practicable, the total capitalization by which your system of roads is represented has been reduced. At the end of the year 1894, the total capitalization, including all obligations assumed by your company, is less than sixty per cent. of the actual cost of the property in its present improved condition. A dividend of 8 per cent. is therefore the equivalent of about 4¾ per cent. upon such a number of shares as would, together with the funded debt, represent the actual cost of the property."

The books of account show that since the report of 1888, and down to the close of 1898, the following expenditures have been made and paid out of income, which are properly capital expenditures and should have been entered as such on the books:

For additions to the property, Jan. 1, 188– to Dec. 1, 1898, charged to operating expenses	$407,165.94
For addition to the property in the same period charged to income account	1,047,133.57
Total	$1,454,299.51

It must be clear that such large capital expenditures ought not to be made out of income, and that they constitute a diversion from the stockholders of profits to which they are entitled.

I recommend that the accounts of the company should now be revised and started upon a modern and consistent system of bookkeeping, and that all expenditures for betterments and additional property should be capitalized. The amount to be added to the past cost of the road should be fully $12,444,177.66, in addition to the present nominal cost, and there should be also added to the present capitalization for stock and funded debt the same
2131 amount $12,444,177.66, representing the expenditure before mentioned, and, in addition, the amount of the suspense accounts of bonds, redeemed and cancelled, which accounts stood on the general balance sheet of December 31, 1898, at $2,978,903.00, and to this last amount should also be added the bonds redeemed and paid out of income during the year 1899, viz:

24 Sinking Fund Gold Bonds	$24,000.00
21 Mississippi River Bridge Bonds	21,000.00
Total	$45,000.00

The effect of such entries would be to raise the cost of road and equipment from $34,153,927.16 as stated in the last published balance sheet, to $46,598,104.82; and on the other side of the balance sheet the capitalization for capital stock and funded debt, which stood on the last published balance sheet at $31,315,450.00 will be raised to $46,783,530.66.

Hereafter such betterments and additions as are extensions of the present property, or permanently increase value and earning capacity, should, from time to time, be similarly capitalized, including also such amounts as have yet to be paid out for redemption of outstanding Sinking Fund Gold Bonds.

Respectfully submitted,

S. M. FELTON,
President."

On motion, duly made and seconded, it was unanimously

Resolved, that the report of the President as to the actual cost of the property of the Company be approved and ordered to be filed among the record- of the company, and that the Auditor of the company be instructed to make such proper entries as may be necessary to conform the books of account of this company to the statements contained in such report, and so that the balance sheet of the company shall truly show the cost and condition of the company.

2132 "EXHIBIT L."

The Chicago & Alton Railway Company.

Statement of Construction Expenditures Uncapitalized, December, 1899.

For cost of Sundry Construction work, additions, improvements to the property charged to Income a/c or to Operating Expenses in former years, now transferred to cost of road and equipment by authority of Board of Directors, as per Minute of December 22, 1899, viz:

December 31, 1888, the President's Report, page 17, states the excess of original cost over the then capitalization as being	$10,989,878.15

The expenditures since then, viz.: From Jan. 1, 1889, to Dec. 31, 1898, charged to Operating Expenses and to Income a/c as follows:

Charge to Operating:

1889 Change of line between Nebo and Drake	$267,363.51
Side tracks & second track	10,189.79
1890 New Grading, Chicago	6,195.75
1891, New Station, Dwight	9,756.34
1892 New Station, Dwight, completion	11,243.66
Straightening 6 mi. creek and change of line at Lemont	3,321.38
1893 Change of Line at Lemont, completing	13,782.13
1895 New Station, Springfield	36,000.00

2133

1898	New Highway Crossing, East Independence	6,480.00	
1898	Track Elevation at Chicago..	42,533.38	
			407,165.94

Additions to property charged to Income:

1889	As per published report, page 54	$39,809.54	
1890	As per published report, page 29	184,270.73	
1891	As per published report, page 17	200,220.08	
1892	As per published report, page 17	238,841.42	
1893	As per published report, page 17	217,833.38	
1894	As per published report, page 19	26,217.71	
1895	As per published report, page 25	18,764.71	
1896	As per published report, page 17	52,378.25	
1897	As per published report, page 17	36,488.26	
1898	As per published report, page 25	32,309.49	
			1,047,133.57
			$12,444,177.66

2134 HILLARD EXHIBIT No. 2.

Form S. O. S.

The Chicago and Alton Railroad Company.

Journal Voucher.

New York, N. Y., June 30, 1900. Journal A, Page 35.

	Debit.	Credit.
Sundries:		
Dr. to Sundries.....		
For amounts standing charged to the following accounts now credited thereto and charged against construction expenditures uncapitalized and income account, viz:		

Credits.

Special Preferred Stock Dividend, amount paid to holders of 34,795 shares of the Preferred Capital Stock as a special dividend of $30 per share, payable May 7, 1900		1,043,850.00
Special Common Stock Dividend, amount paid to holders of 187,511 shares of the Common Capital stock as a special dividend of $30 per share, payable May 7, 1900		5,625,330.00
Discount on bonds:		
Amount standing charged to this account representing discount on Refunding 3 % 50 year Gold Bonds		8,155,751.40
Construction expenditures uncapitalized:		
2135 For amount of sundry construction work, and additions and improvements to property uncapitalized up to and including Dec. 31, 1898, detail of which is shown in entry on this Journal, page 11, April 20, 1900, now charged off	12,444,177.66	
Income account:		
For amount transferred from Income Account, representing the difference between the following accounts, viz:		
Special Preferred Stock Dividend	1,043,850.00	
Special Common Stock Dividend	5,625,330.00	
Discount on Bonds	8,155,751.40	
	14,824,931.40	
Less: Construction expenditures, Uncapitalized	12,444,177.66	
		2,380,753.74

Approved: ALEX. MILLAR, *Secretary.*

Entered. W. H. SPARSHOTT, *Book-keeper.*

(Endorsed.)

Journal Voucher.
No. 53.
June 30, 1900.
The Chicago and Alton Railroad Company.
Construction Expenditures Uncapitalized,
$12,444,177.66
2,380,753.74.

2136 HILLARD EXHIBIT No. 3.

CHICAGO, *April* 3, 1900—p. m. 1:45.

The adjourned meeting of the stockholders of The Chicago and Alton Railway Company was duly held at the public office of the Company at the Monadnock Building in the City of Chicago, on the third day of April, 1900, at 1:45 o'clock, in the afternoon, pursuant to adjournment.

At such meeting were present all the stockholders of the Company.

The meeting was called to order by the Chairman of the Executive Committee, and the Secretary acted as secretary of the meeting.

The Secretary presented and read to the meeting the minutes of the adjourned meeting of the Board of Directors held at 1:30 o'clock this day.

On motion, regularly made and seconded, it was unanimously

Resolved that the action of the Directors in purchasing the shares of stock of the Chicago and Alton Railroad Company from Louis L. Stanton upon the terms stated in the minutes of the said meeting of the Board of Directors held this day, be ratified, approved and adopted; and, further

Resolved that all the acts and proceedings of the Directors at said meeting heretofore held this day be likewise ratified, approved and adopted.

The Secretary thereupon presented to the meeting the original agreement between Louis L. Stanton and this Company for the purchase and sale of said shares of the preferred stock and of the common stock of the Chicago and Alton Railway Company.

2137 On motion, regularly made and seconded, it was unanimously

Resolved that the stockholders present, being all the stockholders of this Company, further signify their approval of said agreement and of the purchase of the shares of stock therein provided, by executing the following consent:

"The Chicago and Alton Railway Company.

"The undersigned subscribers, being stockholders owning the entire capital stock of the Chicago and Alton Railway Company, hereby consent to, concur in and approve of the acquisition by said Company of the railroad, etc., of the Chicago and Alton Railroad Company, by way of consolidation, merger or purchase, and to pay therefor not to exceed about $10,000,000 in cash, and about 200,000 shares of the non-cumulative preferred stock and 200,000 shares of the common stock of this Company, and to that end and to effectuate that purpose, authorize and concur in and approve the present purchase of thirty-four thousand seven hundred and twenty-two (34,722) shares of the preferred capital stock of the Chicago and Alton Railroad Company for the sum or consideration of ten million dollars ($10,000,000), payable in cash, and one hundred

and eighty-three thousand two hundred and twenty-four (183,224) shares of the common capital stock of the Chicago and Alton Railroad Company for the consideration of nineteen million four hundred and eighty-nine thousand dollars ($19,489,000) par value of non-cumulative four per cent. preferred stock and nineteen million five hundred and forty-two thousand eight hundred dollars (19,542,800) par value of common stock of this Company, and do hereby consent to, concur in, and approve of, the issue of the said 194,890 shares of non-cumulative preferred stock and 195,428 shares of common stock of this Company, in payment for
2138 the said 183,224 shares of the common capital stock of the Chicago and Alton Railroad Company, to be acquired for the purpose aforesaid.

Dated, April 3, 1900.

CLARENCE H. WOOSTER.
THEODORE OEHNE.
FREDERICK P. VOORHEES.
JOHN A. SPOOR.
WM. W. TRACY.
AMERICUS F. CALLAHAN.
BERTRAM M. WINSTON.
W. S. McCREA.
PETER DUDLEY.
B. F. HAUGHTON.
JOHN A. ORB.
RUDOLPH BRAND.

All the stockholders of the Company did thereupon duly execute the said consent.

On motion regularly made and seconded, it was duly

Resolved, that the said original consent be filed and preserved among the archives of the Company.

On motion, regularly made and seconded, it was duly

Resolved that the meeting adjourn to reconvene on April 16, 1900, at eleven o'clock in the forenoon, at the same place.

JAMES MILES, *Secretary.*

HILLARD EXHIBIT No. 4.

An agreement entered into at the City of Chicago the third day of April, A. D. nineteen hundred, by and between Louis L. Stanton, of the City of New York, party of the first part, and The Chicago and Alton Railway Company, a corporation duly organized and existing under the laws of the State of Illinois, party of the second part:

2139 Whereas the party of the first part is the owner of 34,722 shares of the preferred stock and 183,224 shares of the common stock of the Chicago and Alton Railroad Company, hereinafter mentioned, and the party of the second part has agreed to purchase the same, exclusive of all dividends declared thereon at any time

within two years from the date hereof in respect or payable out of earnings and profits heretofore made or accumulated.

Now, therefore, this Agreement Witnesseth, that the parties hereto, for and in consideration of the premises and of the sum of one dollar, lawful money of the United States, to each in hand paid by the other, the receipt whereof is hereby acknowledged, have covenanted and agreed, and hereby do covenant and agree, as follows:

First. The party of the first part agrees to sell and the party of the second part agrees to so purchase the said thirty-four thousand seven hundred and twenty-two (34,722) shares of the preferred stock of The Chicago and Alton Railroad Company for the consideration of Ten Million Dollars in cash.

Second. The party of the first part agrees to sell, and the party of the second part agrees to so purchase, the said one hundred eighty-three thousand two hundred and twenty-four (183,224) shares of the common stock of The Chicago and Alton Railroad Company, for the consideration of Nineteen Million four hundred eighty-nine thousand — ($19,489,000) par value of its full paid and non-assessable non-cumulative four per cent. preferred stock, and Nineteen Million five hundred forty-two thousand eight hundred dollars ($19,542,800) par value of its full paid and non-assessable common stock; and the party of the second part agrees to deliver certificates for the said shares of its stock to the party of the first part, his nominees or assigns.

In witness whereof the party of the first part has hereunto set his hand and seal, and the party of the second part has caused
2140 these presents to be executed in its corporate name by its president, and its corporate seal to be hereunto affixed and attested by its Secretary, the day and year first above written.

THE CHICAGO AND ALTON
RAILWAY COMPANY,
By PETER DUDLEY, *President.*

[CORPORATE SEAL.]
Attest:
JAMES MILES, *Secretary.*

In presence of:
LOUIS L. STANTON. [L. S.]

MAHL FEBRUARY 28 EXHIBIT NO. 1.

W. M. No. 7.

Northern Securities Co. Stock.

824,918.71	shares, cost	$79,459,691.36
100,000.00	" sold for	16,880,019.46
724,918.71	Balance, exchanged for:	
	216,520.8949 shares Great Northern.	
	281,828.8215 " Northern Pacific.	
	7,249.1871 " Northern Securities stubs.	

Northern Pacific Stock.

281,828.8215 shares received in exchange for Northern Securities Stock.
240,300.8215 " sold for..... $50,166,357.97

41,528 " unsold.

2141 *Great Northern Stock.*

216,520.8949 shares received in exchange for Northern Securities stock.
37,444 " acquired under rights, costing.. $3,744,400.00

253,964.8949 Total.
163,600.8949 shares sold for..... $49,801,576.47

90,364 " unsold.

Northern Securities Stubs.

7,249.1871 shares received in exchange for Northern Securities stock.
.1871 " sold for..... $56.13

7,249. " unsold.

Great Northern Ore Certificates.

90,364 shares received on account of Great Northern stock. February 15, 1907.

WM. MAHL.

W. M. No. 13.

MAHL FEBRUARY 28 EXHIBIT NO. 2.

Oregon Short Line R. R. Co.

Northern Pacific Purchase Money Certificates.

Under an agreement dated May 28, 1901, the Union Pacific R. R. Co. sold to the Oregon Short Line R. R. Co. $37,023,000 face
2142 value Northern Pacific Ry. Co. common and $41,085,000 face value Northern Pacific Ry. Co. preferred stock for the sum of $88,334,545.01. The Union Pacific R. R. Co. was to receive in payment therefor:

$61,000,000.00 face value Northern Pacific Purchase Money Certificates bearing interest at rate of 4% per annum, from July 1, 1901;
27,334,545.01 in cash.

In June, 1901, the Oregon Short Line R. R. Co. assumed, in payment of the above cash indebtedness, loans to the amount of $27,-

500,000 which has been made by the Union Pacific R. R. Co. for account of the purchase of these stocks. The difference between the amount of cash to be paid and the amount of loans assumed was credited by the Union Pacific to the Oregon Short Line in its account.

WM. MAHL.

February 23, 1907.

MAHL FEBRUARY 28 EXHIBIT NO. 3.

Union Pacific Railroad Company.

BOARD OF DIRECTORS, *January* 31, 1901.

Provision for Financial Requirements.

The general subject of making financial provision for contemplated acquisitions of securities of other companies, and for branches and extensions of this Company's system, and the subject of protecting the properties of the separate companies embraced in the system and of unifying the operation of the several lines consti-
2143 tuting the system, were considered and discussed at length, and, upon motion duly made and seconded, it was

Resolved:

1. That reference be and it is hereby made to the Executive Committee, with full power, of the subject of making immediate provision for present and future financial requirements of the Company, including provisions for financing acquisitions, now or hereafter contemplated in the interest of this Company, of securities of any other company or companies, and including full power to conduct and provide for all measures, proceedings, and actions to carry out such acquisitions, and among the measures which may be so taken for said purpose, or for any of the purposes expressed in these resolutions, the Executive Committee is hereby authorized to provide for the issue and negotiation of bonds and obligations of this Company, in an amount not exceeding $100,000,000. Said Committee may determine the terms and period, or periods, of said bonds and the rate of interest, not to exceed four per cent. which the same shall bear; and for the purpose of securing the payment of the principal and interest of said bonds, as the same shall mature, the Executive Committee may authorize the making, execution and delivery by this Company of the mortgage, deed of trust or pledge, upon such terms, conditions, and trusts as said Committee may determine, of lines of railroad, franchises, stocks, bonds, assets and properties of any kind belonging or which may belong to this Company.

2. That any such new bonds which may be issued by this Company may be made convertible at any time, at the option of the holders, into the common stock of this Company, and the Executive Committee may take any and all steps necessary or considered by it proper to provide for such increase of the authorized issue of this Company's common stock as will enable such conversion of all such

new bonds as may be authorized from issue and negotiation by this Company.

2144 3. That, pending such final and complete action as may be determined by the Executive Committee and taken by this Company in the premises, temporary provision for any of the purposes herein expressed may be made by the Chairman of the Executive Committee, in the name and on behalf of this Company, through the issue of any obligations or certificates of indebtedness of this Company, or by the sale or by the pledge or other temporary disposition of such property and assets of this Company as may in his judgment be required for such purposes.

4. That all matters touching the financial and operating relations between this Company and any and all other companies of the system are hereby referred to the Executive Committee, with full power; and said Committee is hereby authorized to provide in its discretion for settlement of accounts between said companies and the acquisition of any property and any assets of said other companies that said Committee may deem advisable, and upon such terms, conditions, and guarantees as said Committee may determine or approve.

MAHL FEBRUARY 28 EXHIBIT NO. 4.

Union Pacific Railroad Company.

EXECUTIVE COMMITTEE, *March* 19, 1903.

Amounts Loaned and Amounts Borrowed.

The Chairman submitted a memorandum showing the amounts borrowed by the Company, and also the amounts loaned by the Company to the Southern Pacific Company, the Chicago & Alton Railway Company, the Kansas City Southern Railway Company, and the Union Depot & Railway Company of Denver;

Whereupon, on motion duly seconded, the amounts bor-
2145 rowed and also the loans made by the Company were approved, and the action of the Chairman in arranging for the same was ratified and confirmed.

Union Pacific and Auxiliary Companies.

Loans.

Due to National City Bank	$2,000,000.00
Due to Other Banks	3,750,000.00
Total	$5,750,000.00

Cash Requirements.

Estimated payments for operating office for remainder of month	$233,500.00
Unpaid interest and dividend requirements	127,900.00
Total	$361,400.00

Cash Available.

Cash in Bank	$68,655.93
Estimated remittances for balance of March	321,000.00
Total	$389,655.93

General.

The Union Pacific has advanced to the Southern Pacific Company	$9,000,000.00
Chicago & Alton	250,000.00
Kansas City Southern	430,000.00
Denver Union Depot Co. for redemption of bonds	300,000.00
Total	$9,980,000.00

New York, March 18, 1903.

WM. MAHL.

2146 MAHL FEBRUARY 28 EXHIBIT No. 5.

W. M. No. 2.
W. D. C. No. 5.

Union Pacific R. R. Co. First Lien Convertible Four Per Cent. Gold Bonds.

(Mortgage Dated April 15, 1901.)

Statement Showing Dates and Amounts Received from Sale of Bonds.

Bonds Sold to Subscribers for the Purpose of Providing for the Payment for Shares of Stock of the Southern Pacific Company Purchased as Per Advertisement of February 13, 1901.

Month of March, 1901.

1	$17,500
2	7,500
4	16,250
5	23,750
6	55,750
7	98,000
8	54,500
9	63,250
11	81,000
12	64,000
13	78,000
14	179,250
15	115,250

16		$198,000
18		567,750
19		1,616,250
20		8,272,500
21		384,250
22		55,250
	23	7,500
2147	25	500
	26	10,250
27		1,500
28		1,500
29		6,000
30		19,500
Total, March		$11,994,750

Month of April, 1901.

1	$20,000
2	52,500
3	1,126,500
4	38,500
5	35,000
6	23,500
8	150,500
9	663,750
10	8,024,000
11	196,750
12	129,250
13	26,250
15	22,250
16	73,500
17	14,250
18	20,000
19	12,250
20	5,750
22	16,250
23	98,750
24	18,000
25	15,000
26	15,250
27	1,750
29	8,500
30	27,750
Total, April	$10,835,750

2148 Month of May, 1901.

1	$5,250
2	38,250
3	4,250
4	6,500
6	2,750
7	9,500
8	12,750
9	9,000
10	22,250
11	3,250
13	222,250
14	38,000
15	65,000
16	147,250
17	337,500
18	716,500
20	7,143,500
21	89,250
22	43,250
23	19,500
24	2,250
25	13,500
27	24,750
28	9,250
29	12,750
31	2,000
Total, May	$9,000,250

Month of June, 1901.

1	$1,000
3	26,000
4	18,750
5	155,500
6	147,250
7	445,250
8	298,750
10	6,904,000
11	98,500
2149 12	16,750
13	6,750
14	29,000
17	12,750
18	500
19	3,750
20	2,250

21	$1,000		
26	250		
Total, June		$8,168,000	
On July 26, 1901		500	
On September 12, 1901		750	
Total bonds sold to subscribers			$40,000,000
Bonds sold to Kuhn, Loeb & Co.:			
April 24, 1901		$35,000,000	
" 30, 1901		25,000,000	
Total bonds sold to Kuhn, Loeb & Co			$60,000,000
Total			$100,000,000

January 5, 1907.

WM. MAHL.

Union Pacific R. R. Co. First Lien Convertible Four Per Cent. Gold Bonds.

(Mortgage Dated April 15, 1901.)

Statement Showing Amount of Bonds Exchanged for Union Pacific R. R. Co. Common Stock Annually for Each Fiscal Year.

$6,043,000	year	ending	June 30, 1901.
2,005,000	"	"	June 30, 1902.
4,695,000	"	"	June 30, 1903.
56,071,000	"	"	June 30, 1905.
30,605,000	"	"	June 30, 1906.
12,000	month	of	July, 1906.
19,000	"	"	August, 1906.
$99,450,000	Total.		

2150 Cash to retire the remaining outstanding $550,000 face value bonds has been deposited with the Mercantile Trust Co., Trustee, for their retirement, and the mortgage is about to be discharged.

January 5, 1907.

WM. MAHL.

MAHL FEBRUARY 28 EXHIBIT NO. 6.

Union Pacific System.

Condensed Statement of Operations, Five Months Ending November 30, 1901.

Average miles of road operated	5,739.09
Gross transportation receipts	$21,548,858.85
Operating expenses and taxes	10,890,118.73
Receipts over operating expenses and taxes	$10,658,740.12
Income from investments	2,910,540.60
Total income	$13,569,280.72
Fixed charges	5,790,306.75
Balance, surplus	$7,778,973.97

New York, January 9, 1902.

WM. MAHL.

2151 W. M. No. 9.

MAHL FEBRUARY 28 EXHIBIT NO. 7.

Oregon Short Line R. R. Co. Four Per Cent. Refunding Twenty-five Year Gold Bonds.

Statement of Stocks Deposited on March 9, 1905, with Equitable Trust Co., Trustee, as Collateral under Oregon Short Line Railroad Company's Four Per Cent. Refunding Twenty-five Year Gold Bonds.

900,000 shares Southern Pacific Company Common Stock,
180,000 shares Southern Pacific Company Preferred Stock,
200,000 shares Oregon Railroad & Navigation Co. Common Stock,
100,000 shares Oregon Railroad & Navigation Co. Preferred Stock,
50,000 shares Northern Securities Company Capital Stock.

January 5, 1907.

WM. MAHL.

W. M. No. 12.

MAHL FEBRUARY 28 EXHIBIT No. 8.

Oregon Short Line Railroad Co.

Condensed Statement of Operations from July 1, 1897, to June 30, 1906.

Gross transportation receipts	$94,675,501.21
Operating expenses and taxes	44,700,006.12
Receipts over operating expenses and taxes	$49,975,495.09
Income from investments	25,965,301.45
Total income	$75,940,796.54
Fixed charges	49,989,301.36
Surplus	$25,951,495.18
Appropriation from income	11,235,106.17
Surplus	$14,716,389.01
Dividend	13,675,350.00
Balance—Surplus	$1,041,039.01

WM. MAHL.

February 8, 1907.

W. M. No. 11.

MAHL EXHIBIT FEBRUARY 28 No. 9.

Oregon Short Line Railroad Co.

Statement Showing Issue and Sale of Four Per Cent. and Participating Bonds.

$82,491,000 face value, issued as of July 17, 1902.

July 18, 1902....	$31,000,000 face value sold to subscribers under circular of this date for	$27,900,000
Jan. 23, 1903....	5,000,000 face value sold to Kuhn, Loeb & Co. for	4,500,000
June 8, 1904....	500,000 face value sold to Kuhn, Loeb & Co. for	474,375
June 22, 1905...	45,991,000 face value exchanged for a like amount of Oregon Short Line R. R. Co. Four per cent. Refunding Bonds	
	$82,491,000 Total	

February 8, 1907.

WM. MAHL.

2153 W. M. No. 10.

MAHL EXHIBIT FEBRUARY 28 No. 10.

Oregon Short Line Railroad Co.

Statement Showing Sale of Four Per Cent. Refunding Bonds.

Jan. 31, 1905....	$40,000,000	face value sold to Kuhn, Loeb & Co. for.....	$38,400,000
June 22, "	45,991,000	face value sold to Union Pacific R. R. Co. in exchange for a like amount of four per cent. and Participating Bonds	45,991,000
" 23, "	14,009,000	face value sold to Union Pacific R. R. Co. for.....	13,168,460
	100,000,000	Total.....	$97,559,460

$5,000,000 face value of the bonds sold to the Union Pacific R. R. Co. were subsequently sold by them to Kuhn, Loeb & Co. for $4,785,625. The remaining $55,000,000, face value of bonds are in the Treasury of the Union Pacific R. R. Co.

February 8, 1907.

WM. MAHL.

2154 MAHL FEBRUARY 28 EXHIBIT NO. 11.

W. D. C. No. 2.

Union Pacific Railroad Co.

Operating Surplus at the Time the $100,000,000 Stock Issue Was Authorized, Showing Resources from February 28, 1901 (When Stock Issue Was Authorized) to June 30, 1901, and How Applied.

Receipts.

First Lien Convertible Bonds Issued.	$100,000,000.00	
Convertible into common stock.....	6,043,000.00	
		$93,957,000.00
Common stock issued in exchange for Convertible Bonds.....	$6,043,000.00	
Common stock issued in exchange for O. S. L. and O. R. & N. Stocks..	23,200.00	
		6,066,200.00
Preferred stock issued in exchange for O. S. L. Income "B" Bonds....	$30,000.00	
Preferred stock in exchange for O. R. & N. Preferred stock.....	13,300.00	
		43,300.00
Total receipts from securities issued.....		$100,066,500.00
Decrease in cash on hand.....	$25,254,762.58	
Less: Increase in other assets	1,763,585.21	
		23,491,177.37
Total receipts		$123,557,677.37

2155 Disbursements.

$61,000,000 face value, Northern Pacific purchase money certificates		$61,000,000.00
$75,000,000 S. P. Co. Common stock		41,866,627.48
$1,000 par value O. S. L. Capital stock		1,000.00
$22,200 O. R. & N. common stock		22,200.00
$13,300 " preferred "		13,300.00
$30,000 O. S. L. Income "B." Bonds		30,000.00
Adjustment in cost of securities acquired from receivers		16,381.50
Total		$102,949,508.98
Less: Green River Water Works Co. Bonds sold		2,000.00
Total payment for securities		$102,947,508.98
Capital expenditures		668,325.25
Decrease in Liabilities:		
Loans paid off	$25,254,762.58	
Less: Increase in current liabilities	11,088,810.17	
		14,165,952.41
		$117,781,786.64
Decrease in Profit and Loss, viz:		
February 28, 1901	$10,182,234.19	
June 30, 1901	4,406,343.46	
		5,775,890.73
Total disbursements		$123,557,677.37

2156 *Memo. of Profit and Loss.*

	Dr.	Cr.
Balance February 28, 1901		$10,182,234.19
Gross transportation receipts, 4 months		8,042,632.63
Other income		1,890,900.39
Expenses and taxes, 4 months	$5,020,116.41	
Interest on Funded Debt, 4 months	1,959,713.34	
Dividends 4 months	2,714,004.00	
Appropriation 4 months	250,000.00	
Dividends prior to Mar. 1, 1901	5,265,590.00	
Appropriation prior to Mar. 1, 1901	500,000.00	
	$15,709,423.75	
Balance June 30, 1901	4,406,343.46	
Total	$20,115,767.21	$20,115,767.21

WM. MAHL.

January 5, 1907.

2157 W. D. C. No. 1.

Union Pacific Railroad Company.

Statements of Assets and Liabilities—June 30, 1901, *and Feb.* 28, 1901.

Assets.	June 30, 1901.	Feb. 28, 1901.	
Cost of road.....	$224,269,446.18	$223,458,202.20+	$831,243.98
Cost of equipment	11,180,039.74	11,342,958.47—	162,918.73
Stocks owned.....	88,258,238.48	46,338,729.50+	41,919,508.98
Bonds owned.....	23,617,862.72	23,589,862.72—	28,000.00
Northern Pacific Purchase money Certificates.....	61,000,000.00	.....+	61,000,000.00
Miscellaneous Investments.....	631,943.52	586,775.04+	45,168.48
Cash on deposit with Kuhn, Loeb & Co.....	.....	25,264,762.58—	25,264,762.58
Cash.....	1,870,594.14	1,727,806.27+	142,787.87
Current Assets....	3,707,579.55	2,206,238.61+	1,501,340.94
Omaha Office.....	2,231,662.05	2,157,374.13+	74,287.92
Land assets.....	1,955,302.55	3,204,149.06—	1,248,846.51
	$418,742,668.93	$339,866,858.58+	$78,875,810.35
Liabilities.			
Capital stock.....	$201,538,900.00	$195,429,400.00+	$6,109,500.00
Funded debt.....	193,957,000.00	100,000,000.00+	93,957,000.00
Loans payable....	.....	25,254,762.58—	25,254,762.58
Current liabilities	11,932,612.51	4,576,707.15+	7,355,905.36
Accrued Interest on Funded debt.	626,380.00	666,666.66—	40,286.66
Dividends Payable, October 1, 1901.....	4,071,006.00	.....+	4,071,006.00
Improvement and Equipment Fund.....	70,056.53	367,871.06—	297,814.53
Landed liabilities	2,140,370.43	3,389,216.94—	1,248,846.51
Profit and Loss...	4,406,343.46	10,182,234.19—	5,775,890.73
	$418,742,668.93	$339,866,858.58+	$78,875,810.35

January 5, 1907.

WM. MAHL.

2158 MAHL FEBRUARY 28, EXHIBIT No. 12.

Southern Pacific Company.

Certified Copy.

The following resolution was submitted to the Board, and, on motion of Mr. Thomas H. Hubbard, seconded by Mr. H. E. Huntington, was unanimously adopted, viz:

Resolved, That the President of this company, or the Vice-President thereof, be, and he is hereby authorized and empowered to borrow from time to time, from such persons or corporations, and for such times and on such terms, as in his judgment may be for the best interests of the company, such sums of money as he may deem necessary to carry on its business, and, to that end, to execute, in the name and on behalf of the company, promissory notes or other evidence of indebtedness, and to secure the same, to pledge or hypothecate securities, stocks, bonds, or other personal property, or mortgage any real property of this company; and that the Assistant Treasurer of this company be, and he is hereby authorized to withdraw any securities now or hereafter held to secure such promissory notes or other indebtedness of this company and replace the same by others whenever such change shall in his judgment be advisable, and said Assistant Treasurer is hereby authorized to receive and receipt for matured or maturing coupons appertaining to any such hypothecated bonds.

2159 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

Application for an Order Requiring Respondents to Answer Certain Questions Propounded by Petitioner.

Frank B. Kellogg, Cordenio A. Severance, Henry L. Stimson, U. S. Attorney; Felix Frankfurter, Asst. U. S. Attorney, for Interstate Commerce Commission.

Robert S. Lovett, John G. Milburn, and John C. Spooner, for respondent Harriman.

Paul D. Cravath and Walker D. Hines, for respondent Kahn.

HOUGH, *D. J.*:

On November 15th, 1906, an order was passed by the petitioner as follows:

2160 "Whereas it appears to the Commission that consolidations and combinations of carriers subject to the Act, and the relations now and heretofore existing between such carriers, in-

cluding community of interests therein, *and the practices and methods of such carriers affecting the movement of interstate commerce,* the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, *relations, community of interests, practices* or *methods* result in violation of said Act or tend to defeat its purposes, it is

Ordered: That a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same hereby is instituted," etc.

The "Act" referred to in the order quoted is the "Act to regulate Commerce" of 1887 as amended by sundry statutes to and including that commonly known as the "Hepburn Bill" of June 29th, 1906.

Pursuant to the order quoted testimony was taken in many parts of the country, and at certain sessions held within this district Messrs. Harriman and Kahn were summoned as witnesses. The testimony shows that from 1897 or thereabouts to and including the period of investigation Mr. Harriman was an officer of importance in the Union Pacific Railroad Company, a corporation of the State of Utah. During a portion of the time mentioned he was the President of the company, and during all the time a director and member of the Executive Committee, the powers of that Committee being

"to manage and direct all the business and affairs of the Company in such manner as such Committee shall deem best for the
2161 Company's interests in all cases in which specific directions shall not have been given by the Board" of directors.

Mr. Kahn is a member of the firm of Kuhn, Loeb & Company, which firm has had many financial dealings with the Union Pacific Company, and until 1906 he was himself a director and member of the Executive Committee. In 1901 the Union Pacific issued its convertible bonds in the sum of $100,000,000. par, and caused one of its controlled Companies, the Oregon Short Line, to issue bonds amounting to $45,000,000. par. With the proceeds of the sale of these bonds, and afterwards with the profits resulting from the sale of securities allotted to it in the distribution of assets of the Northern Securities Company, the Union Pacific purchased large quantities of the stock of other railway corporations; and it also acquired a great if not controlling interest, in the capital stock of the Southern Pacific Company, a "holding" corporation of Kentucky. By purchase the Union Pacific obtained many millions par value of the stocks of the Chicago & Alton, Atchison, Topeka & Santa Fe, Illinois Central, St. Joseph & Grand Island, and New York Central & Hudson River Railroads.

The Chicago & Alton stock was purchased at a price fixed by a committee of three, of whom Mr. Harriman was one, and Messrs. Kuhn, Loeb & Company acted as stock depositary for the purpose of facilitating the sale. These facts having appeared Mr. Har-
2162 riman was asked "Did you own any (stock) that was so deposited"? and this question he declined to answer. Mr.

Kahn was asked whether the directors or any of them of the Union Pacific were owners of any part of the Chicago & Alton stock so sold through his firm, and the series of questions embodying this inquiry he declined to answer.

The Illinois Central stock was acquired by the Union Pacific in part directly from Mr. Harriman and two other directors of the Union Pacific Company, and the rest from Messrs. Kuhn, Loeb & Company acting for individual clients. These facts having appeared Mr. Harriman was asked whether he had acquired any portion of the Illinois Central stock sold by him, with a view of selling it to the Union Pacific; also whether he had procured it at a lower price than that paid him by the Union Pacific; and further whether he had any interest in that portion of the stock sold the Union Pacific by Messrs. Kuhn, Loeb & Company; and these questions he declined to answer. Mr. Kahn was asked with respect to the Illinois Central transaction how much if any of the stock of that company was held and sold by his firm in the interest or for the benefit of any or all directors of the Union Pacific Company, and this question in divers forms he declined to answer.

2163 As to the Atchison, Topeka & Santa Fe stock, some evidence was adduced tending to show that Mr. Harriman and certain other directors of the Union Pacific had personally acquired large quantities thereof. Inquiry was then addressed to Mr. Harriman as to whether the Atchison stock purchased by the Union Pacific was a part of the block held by himself and his fellow directors, and this question he declined to answer.

The St. Joseph & Grand Island stock purchased by the Union Pacific was admittedly bought from Mr. Harriman, who was then President of the St. Joseph road. When asked when and at what price he had obtained the stock so sold by him to the Union Pacific he declined to answer.

It having appeared with respect to the New York Central & Hudson River stock that a large quantity had been purchased by the Union Pacific at prices testified to, Mr. Harriman was asked whether any of the directors of the Union Pacific Railroad were interested directly or indirectly in this stock at the time it was bought, and he declined to answer.

And lastly, it appeared that in August, 1906 the Union Pacific largely increased its dividend rate and that announcement of the fact of increase was delayed for two days by the Executive Committee of which Mr. Harriman was then Chairman. On being asked

2164 whether he or any other director had bought Union Pacific stock in anticipation of this increased dividend, he declined to answer.

The questions under consideration may be divided as follows:

1st. The numerous interrogatories relating to stock bought by the Union Pacific. The evident object of all these questions is to confirm or dissipate the suspicion that Mr. Harriman and other directors of the Union Pacific, expended the funds of their company in purchasing stocks at prices higher than should have been paid,—

or in buying stocks that should not have been purchased,—being moved thereto by the private profits arising from the transactions.

2nd. The question relating to purchases of Union Pacific stock, the obvious purpose of which is to ascertain whether Mr. Harriman or his fellow directors used their knowledge of an intended dividend increase,—to speculate in the stock of their own company; the market price of which sharply appreciated when the increase became publicly known.

The grounds assigned by the witnesses for the several refusals to answer may be summarized as follows:

I. The questions propounded are not pertinent, relevant or material to any inquiry stated or defined by the resolution of the Interstate Commerce Commission first above quoted.

2165 II. Said resolution or order, was an improper method of originating inquiry by the Commission; as the only procedure properly bringing the powers of the Commission into operation, is a complain- by some person, firm or corporation duly presented to the Commission and heard after notice to the party concerning whom the complaint is made.

III. If, however, it be not necessary to base an investigation upon a complaint, and if the resolution or order be broad enough in its language to cover the questions propounded, then the Commission is not empowered either to pass the resolution or make the order or ask the questions by any statutory grant of power, the only existing grant being the Interstate Commerce Act and no language of that Act justifies the resolution.

IV. If, however, Congress has assumed to grant statutory power authorizing such procedure as well as the questions under consideration, then such congressional grant is unconstitutionel, inasmuch as Congress itself could not press these questions,—because they do not relate to commerce among the several states, nor to any transactions in such commerce, and *a fortiorari* Congress cannot delegate to the Commission a power not possessed by itself.

2166 In these objections both respondents join, but Mr. Kahn further urges,—

V. That having testified truthfully to all transactions either of his own or of his firm, he is protected from divulging the identity or private affairs of his firm's "clients," *i. e.* those customers who deposited with Kuhn, Loeb & Company certain stock to be sold.

Whether the language of the petitioners' resolution is broad enough to justify the questions, depends upon the view taken of the purposes of the Interstate Commerce Law. It is clearly stated that what (*inter alia*) the Commission wishes to ascertain, is whether the "relations" existing between carriers subject to the Act, and "community of interests" if any, existing among them,—"tend to defeat" the purposes of the Act.

That the ownership by one such Company of very large blocks of the capital stock of other Companies, creates a relation between the corporations involved, and also a community of interest in quite a peculiar sense, is not open to doubt. And if such relations is produced, and community of interest created, by expenditure of assets

at inflated prices, or primarily for the benefit of those directors who both buy and sell the stocks purchased such unwise, im-
2167 moral and perhaps unlawful investment of trust funds, does most effectually tend to defeat the purposes of the Act, unless such purpose*d* b*y* quite different from those generally supposed to have been asserted by Congress in enacting the statute.

The purpose of this legislation is to compel interstate carriers to perform their commercial functions adequately, and that word includes the idea of economy, while among the powers specifically given the Commission is that of ascertain-g the "cost and value of the carrier's property." It is not possible to fulfil the duties thus conferred, without investigating not only the existence of certain items of property, their lawfulness in the owner's hands, and the price at which they are carried on the books, but also the motives actuating the purchase as affecting either the truth of the price alleged or its propriety. Mr. Harriman by counsel asserted before the Commission that the Union Pacific Company could mortgage its interstate railway for any thing it pleased, and invest the proceeds of the hypothecation in anything permitted by the laws of Utah, at prices and from vendors not open to investigation or criticism by the Commission. From this premise it must follow that any interstate carrying company created by state law, may ruin itself through
2168 improvident investments, and thereby become wholly unable to fulfil its carrying functions, and yet do nothing which (in the language of the resolution) will tend to defeat the purposes of the Act.

I believe this to be a fair statement of respondents' position, and such statement is its own confutation.

All the questions relating to the purchase of stock are therefore in my opinion within the purview of the resolution.

The question relating to possible speculation in Union Pacific shares seems to me to stand in quite a different light.

The dividend had been declared, its amount or rate is not in question, presumably it had been earned, but whether advisedly declared or not, the deed had been done; and the corporate act completed.

Whatever the moral aspect of the alleged or suggested action of the Executive Committee or of all the directors, I do not see how the withholding of information from the public after dividend declared tended to defeat the purposes of the Act or impair the ability of the Union Pacific to perform its duties as an interstate carrier.

2169 II and III. The contentions that an inquiry instigated or originated by the Commission itself, is not within the statutory grant of power, and that a complainant is necessary to set in motion whatever powers the Commission possesses, are clearly opposed to the practice of many years and to the necessary result of some decisions by the highest tribunal. The matter of the *Enterprise Steamship Co.* (11 I. C. C. Rep. 587) is an important case of an investigation begun by an "informal complaint" into a matter over which the Commission had no power. Such investigation was

purely for information as a groundwork for recommendation. It also appears that the "Northern Securities" case grew out of a resolution of inquiry worded almost exactly like the one first above quoted, while it is expressly recited in *Interstate Commerce Commission vs. Brimson* (154 U. S. at 465) that Mr. Brimson was summoned to testify in a matter which "the Commission of its own motion decided to investigate."

The same judgment expressly recognizes (page 472) that Congress has by the Act in question given the Commission power to "investigate the whole subject of Interstate Commerce and in that way to obtain full and accurate information of all matters involved in the enforcement of" the Act; and the Commission is also
2170 "endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts and their methods of dealing." *Texas & Pacific Ry. vs. Abilene Cotton Oil Co.*, 204 U. S., at 430.

There is therefore a congressional grant of power as ample as the subject in all its ramifications demands, and especially extending to the accumulation of information on matters, knowledge of which is material to the full enforcement of the statute; and such grant of power covers original investigation as well as enquiry into the truth or falsity of definite statements of fact made by parties in quasi judicial proceedings begun by complaint or petition.

IV. This objection suggests several inquiries, all argued with great ability, of surpassing interest and deserving the prompt attention of the highest court.

(A) Could congress itself legislate upon the subjects reasonably suggested by the questions under consideration?

(B) If congress could not so legislate, are the matters so reasonably suggested, within the congressional power of investigation, assuming that the powers of legislation and investigation are not coterminus, and that the power of investigation is the larger?

2171 (C) Would congressional action, either in forcing answers to the questions in hand, or legislating on any matter suggested by them, trench upon the powers of the States, by assuming to regulate, govern or visit a state corporation in matters not relating to commerce as that word is used in the Federal Constitution?

IV. A. This query as put and answered by respondents, assumes that should the answers show certain directors of the Union Pacific to have sold property of their own to that corporation at prices *aliunde* proven to be inflated, or giving abnormal or even unlawful profits to the vendors,—or to have so sold property of a kind unwise or illegal for their corporation to possess,—yet Congress could not punish the act of either director or corporation by the application of any existing statute or the passing of any constitutional law. From this premise it is argued that what federal power cannot cure or punish,—that it cannot inquire into.

I think it is true that if any director or directors of a state corporation engaged even wholly in interstate or foreign commerce, are guilty of malfeasance in office, in effect make away with corporate funds, or are privy to the waste or devastavit thereof,—congress

can afford no direct remedy for that particular kind of wrong
2172 doing under the authority of the commerce clause of the constitution.

This is but a statement of conditions adverted to in both prevailing and dissenting opinions in the recent Employers' Liability cases (Howard *vs.* Illinois Central R. R. Co. S. C. U. S., January 6, 1908.) Justice White remarked that it was contended

"that because one engages in interstate commerce he thereby submits all his business concerns to the regulating power of congress. To state the proposition is to refute it."

And Justice Moody observed that

"Of course the power to regulate commerce does not authorize congress to control the general conduct of persons engaged therein."

But respondent's statement of the problem, while laying down a correct legal rule, does not give all the problem conditions.

The matters under investigation by the Commission and to which these questions relate, are the relations, practices and methods of interstate carriers tending to defeat the purposes of valid federal legislation.

No person or company can engage in any commercial occupation without capital, and the management and investment thereof is as much a commercial instrumentality as is a locomotive or an engineer; and that the power of congress extends over all instru-
2173 mentalities of commerce is no longer doubtful. (Hopkins *vs.* U. S., 171 U. S., 597; Northern Securities Company *vs.* U. S., 193 U. S., at 344.) The method of exercising such power is always open to discussion under the infinitely varied circumstances of commercial activity; but to me it seems clear that financial regulation of corporations in interstate commerce is a regulation of that commerce by regulating its most potent instrumentality.

Again, as was observed in Crutcher *vs.* Kentucky, 141 U. S., at 57,

"To carry on interstate commerce is not a franchise or privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the constitution and laws of the United States and the accession of mere corporate facilities"

neither deprives the corporate aggregation of that right nor confers upon it any especial privilege not already possessed in respect of interstate operations. But if a corporation duly chartered does engage in interstate commerce

"congress would undoubtedly have the right to exact from associations of that kind any guarantees it might think necessary for the public security and for the faithful transaction of business." (*Idem,* 57.)

If, therefore, congress does possess the powers above indicated, it is within those powers to legislate,—not directly against par-
2174 ticular officers, nor by way of conferring causes of action on stockholders or the corporation itself, nor by creating new

crimes;—but by limiting the interstate operation of corporations not complying with federal safeguards against the recurrence of obnoxious practices, and licensing those affording the public security against methods calculated to diminish solvency and therefore efficiency and economy in interstate transportation.

This is the larger subject reasonably suggested by the question propounded, and on that subject I think the power of congress is ample, though as yet not fruitful in results.

IV. B. In considering this branch of the discussion it is assumed as heretofore indicated, that Sections 12 and 20 of the "Act to Regulate Commerce," by authorizing the Commission to "inquire into the management of the business" of companies subject to the act, and then specifying "cost and value of the carrier's property" as one of the items carriers are bound to state, have granted full power to investigate the matters suggested by the questions under consideration.

Quite plainly, subjects interesting and important in the regulation of interstate or foreign transportation facilities, might be inquired into within the language of the sections referred to; yet such
2175 matters might be wholly beyond the power of congressional regulation. A familiar instance is the cab service of the large railways having terminals in this city, a subject which received consideration in Pennsylvania R. R. Co. *vs.* Knight, 192 U. S., 21. These cabs are engaged in no interstate transaction, yet they may and do play a most important part in the acquisition and enjoyment of interstate passenger traffic; and under easily conceivable circumstances might become the subject (in connection with larger matters) of investigation by the Commission, and information regarding their number, use and cost would be necessary to a full comprehension of the conditions under which wholly interstate operations were taking place.

If such an investigation were to occur, I do not doubt that neither the cab drivers nor the directors of the corporation owning the vehicles could shelter themselves behind the proposition that their cabs were not engaged in interstate traffic; and this because, although not actually engaged therein, they are an adjunct thereto, as might also be a terminal hotel or other local convenience or attraction for the travelling public belonging to the carrying corporation. It is certainly no longer open to discussion that within its constitutional limitations congress has all the powers of a national parliament or legislature. There is no presumption in favor of any congres-
2176 sional assumption of power, but once the subject of legislation is established as within the constitutional grant, then in respect of that subject the power is as unlimited as any possessed by any legislative assembly.

In the light of Kilbourn *vs.* Thompson, 103 U. S., 68, *In re* Chapman, 166 U. S., 661, was decided, and in my judgment that case is ample authority for the proposition that once the subject under investigation be found to be within the powers of congress, then even collateral and incidental inquiries, however unpleasant to particular individuals, may be pressed home, congress itself being in

the first instance the judge of what questions are pertinent to the subject matter in hand. As already indicated, I consider the questions under consideration extremely pertinent to the matter under investigation by the Commission.

People *ex rel.* McDonald *vs.* Keeler, 99 N. Y., 464, was also decided after Kilbourn *vs.* Thompson, *supra;* and there Rapallo, J., observed that

"the power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is one which has from time immemorial been deemed necessary, and has been exercised by legislative bodies."

It is not necessary in order to discover this power in congress to indicate exact constitutional language creating it. It is necessary to point out in the constitution that which authorizes Congress
2177 to legislate, but once that be shown and the subject of investigation be reasonably included within the subject of legislation, even though collateral or incidental thereto, I think the so-called inquisitorial power of Congress is in that regard entirely clear.

It results that the powers of investigation and legislation are not absolutely identical and that that of investigation is the wider, though even that must necessarily be confined to matters reasonably calculated to afford information useful and material in the framing of constitutional legislation.

IV. C. Whether the powers above found to inhere in Congress, and by that body lawfully entrusted to the Commission, violate any of the reserved powers of the States, is a question really answered, when existence of the federal power is proved.

It has been ably argued that matters of investment, questions of price and propriety, and points of official morals, are as to State corporations, all within the visitatorial powers of the States creating the corporations concerned.

That in all civil corporations that power resides in the sovereign (Black. Bk. 1, cap. 18), and that it essentially consists in a "power to control and arrest abuse" (*Allen vs. McKean*, 1 Sumn.,
2178 276), is not doubted, and a "general visitatorial power over state corporations" has been expressly disclaimed in *Hale vs. Henkel*, 201 U. S. at 75.

But if a corporation engaged in occupations as to which its *fundator efficiens* or *perficiens* is wholly without authority,—occupations which such founder cannot control or regulate, for which he cannot license and from which he cannot prevent the child of his creation, the visitatorial power of controlling or arresting abuses in respect of such occupations becomes wholly inefficient, and either that power or its equivalent must be lodged with the sovereign that can control the occupation so entered upon.

That such power in respect of interstate and foreign commerce is lodged in the Federal Government I believe to be the declaration of the case last cited (at p. 75).

V. It would be a singular extension of the rule concerning priv-

ileged communications, that permitted the identity of one depositing securities with a banker to be concealed by that merchant. The principle if acknowledged would screen one who had stolen what he so deposited.

I believe *In re Chapman, supra,* to be conclusive authority against the contention.

2179 The privacy of papers, the private nature of a witness's knowledge, or the fact that disclosures may injure a third person, are not reasons for withholding facts pertinent and material to an investigation judicial or legislative once the power to conduct the investigation be established. *Interstate Commerce Commission vs. Baird,* 194 U. S. 25; *Burnham vs. Morrissey,* 14 Gray, 226.

Mr. Kahn is directed to answer all the questions propounded, and Mr. Harriman all except those relating to purchase of Union & Southern Pacific stock in connection with the dividends of August, 1906.

Jan. 15, 1908.

U. S. Circuit Court, Southern District of N. Y., Filed Jan. 16, 1908, John A. Shields, Clerk.

2180 United States Circuit Court, Southern District of New York.

INTERSTATE COMMERCE COMMISSION
vs.
HARRIMAN.

On Settlement of Final Order.

It does not seem to me proper to insert in the final order any words not found in the petition and also in the record of proceedings before the Interstate Commerce Commission.

No form of words can be drawn up by counsel with the intent of identifying or explaining the questions asked that will not be subjected to criticism by one side or the other, and such attempts at description or identification should be avoided.

The ordering part of the final order will therefore begin as follows: "That the respondent Harriman be and he hereby is directed to appear as aforesaid and to make true answer to the following questions, to wit:

"1. Mr. KELLOGG: Did you own any that was so deposited?"

(Such question being the question set forth on page — of the petition herein, and on page — of the printed stenographer's minutes of proceedings before the Interstate Commerce Commisison.)

Let the order be re-drawn in accordance with this suggestion. All matters sought to be embodied in this order that are not ques-
2181 tions addressed to the witnesses will be excluded from the order. This covers the ruling of the Chairman (Petition, p. 34), and the remarks of Mr. Severance at page 49.

Feb. 8, 1908.

C. M. HOUGH, *D. J.*

Endorsed: United States Circuit Court, Southern District of New York. Interstate Commerce Commission, *vs.* Harriman. Memorandum on settlement of final order. Hough, D. J. Feb. 8, 1908. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 10, 1908, John A. Shields, Clerk.

2182 At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held at the United States Court House and Post Office Building, in the Borough of Manhattan, City of New York on the 13th day of February, 1908.

Present: Hon. Charles M. Hough, U. S. Judge.

INTERSTATE COMMERCE COMMISSION, Petitioner,
vs.
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

The Interstate Commerce Commission having duly filed a petition to the judges of the Circuit Court of the United States for the Southern District of New York for an order or orders requiring Edward H. Harriman and Otto H. Kahn to appear before said Commission and to make full answer to questions theretofore refused to be answered by said persons as set forth at length in said petition;

And an order having been duly made by the Hon. Charles M. Hough, United States Judge, dated August 10, 1907, on motion of Henry L. Stimson, United States Attorney for the Southern District of New York, upon said petition requiring each of said per-
2183 sons to appear before the Circuit Court of the United States for the Southern District of New York at a session of said Court to be held in Room 100 in the Post Office Building in the Borough of Manhattan, City of New York, on the 21st day of October, 1907, at 11 o'clock in the forenoon and to show cause why said petition should not be in all respects granted and why said order or orders should not be made;

And the hearing upon said order to show cause having been duly adjourned to a term of said Court held in Room 43 in the Post Office Building in the Borough of Manhattan, City of New York, on the 13th day of November, 1907, at 11 o'clock in the forenoon;

And at the time and place aforesaid, each of said persons having duly made answer and appeared by counsel in opposition to the granting of said petition and the questions involved in said petition having been fully argued by the attorneys of the respective parties thereto and the Court having been fully advised in the premises;

Now, on reading and filing said petition, the answers thereto, and the record of proceedings before the Interstate Commerce Commission at the several hearings, it is

Ordered, adjudged and decreed, that Edward H. Harriman and

Otto H. Kahn, and each of them, be and they hereby are directed to appear before the Interstate Commerce Commission upon due notice by said Commission at a time and place to be designated therein and make full, true and complete answer to the following questions and each and all of them heretofore propounded at a session held
2184 by the Interstate Commerce Commission at the City of New York, February 25th, to 28th, 1907, and refused to be answered by said persons respectively at said hearing, namely; that the respondent Harriman be, and he hereby is, directed to appear, as aforesaid, and to make true answer to the following questions, to wit:

1. "Mr. KELLOGG: Did you own any that was so deposited?"

(Such question being the question set forth on page 13 of the Petition herein, and on page 25 of the printed stenographer's minutes of the proceedings in New York, February 25th to 28th, before the Interstate Commerce Commission.)

2. "Mr. KELLOGG: I now renew the question, if you owned any of that stock which was so deposited and sold to the Union Pacific?"

(Such question being the question set forth on page 33 of the Petition herein, and on page 113 of the printed stenographer's minutes of the proceedings in New York, February 25th to 28th, before the Interstate Commerce Commission.)

3. "Mr. KELLOGG: How much, if any, of the preferred stock which was sold to the Union Pacific Company and valued by your judgment, did you own?"

(Such question being the question set forth on page 35 of the Petition herein, and on page 117 of the printed stenographer's minutes of the proceedings in New York, February 25th to 28th, before the Interstate Commerce Commission.)

4. "Mr. KELLOGG: Well, had these parties acquired from $25,000,000 to $30,000,000?"

(Such question being the question set forth on page 36
2185 of the Petition herein, and on page 164 of the printed stenographer's minutes of the proceedings in New York, February 25th to 28th, before the Interstate Commerce Commission.)

5. "Mr. KELLOGG: Was that a part of the stock which had been previously acquired by you, Mr. Rogers, and Mr. Frick?"

(Such question being the question set forth on page 36 of the Petition herein, and on page 164 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th, before the Interstate Commerce Commission.)

6. "Mr. KELLOGG: Was it, or any part of it, at that time owned by any of you three gentlemen?"

(Such question being the question set forth on page 37 of the Petition herein, and on page 165 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th, before the Interstate Commerce Commission.)

7. "Mr. KELLOGG: * * * Mr. Harriman was that stock acquired by a pool of you three gentlemen?"

(Such question being the question set forth on page 38 of the Petition herein, and on page 193 of the printed stenographer's min-

utes of the proceedings in New York February 25th to 28th, before the Interstate Commerce Commission.)

8. "Mr. KELLOGG: Was it acquired with the view of selling it to the Union Pacific?"

(Such question being the question set forth on page 39 of the Petition herein, and on page 194 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th, before
2186 the Interstate Commerce Commission.)

9. "Mr. KELLOGG: Was that stock purchased by you, or any part of it, at a much lower price than $175 a share, with the intention of turning it over to the Union Pacific?"

(Such question being the question set forth on page 39 of the Petition herein, and on page 194 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th, before the Interstate Commerce Commission.)

10. "Mr. KELLOGG: * * * Did you have any interest in the 105,000 shares which were sold at the same time by Kuhn, Loeb & Co. to the Union Pacific?"

(Such question being the question set forth on page 40 of the Petition herein, and on page 195 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

11. "Mr. KELLOGG: Was that acquired by a syndicate or pool for the purpose of selling it to the Union Pacific?"

(Such question being the question set forth on page 40 of the Petition herein, and on page 195 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

12. "Mr. KELLOGG: When did you acquire those stocks?"

(Such question being the question set forth on page 44
2187 of the Petition herein, and on page 275 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

13. "Mr. KELLOGG: What did you pay for those stocks?"

(Such question being the question set forth on page 44 of the Petition herein, and on page 276 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

14. "Mr. KELLOGG: Were any of the directors of the Union Pacific interested, directly or indirectly, in the New York Central stocks at the time they were sold?"

(Such question being the question set forth on page 45 of the Petition herein, and on page 277 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

And the respondent Kahn be, and he hereby is, directed to appear, as aforesaid, and to make true answer to the following questions, to wit:

1. "Mr. SEVERANCE: Now, will you state whether any of the directors of the Union Pacific Railway Company were the real owners

of the shares so deposited with you and sold to the Union Pacific Railroad Company?"

(Such question being the question set forth on pages 46 and 47 of the Petition herein, and on page 342 of the printed stenographer's minutes of the proceedings in New York February 25th to
2188 28th before the Interstate Commerce Commission.)

2. "Com'r LANE: The question I asked you was whether any of your fellow directors were owners of any of that stock?"

(Such question being the question set forth on page 47 of the Petition herein, and on page 343 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

3. "Mr. SEVERANCE: * * * Then I will ask you the direct question, Mr. Kahn: Of the 105,000 shares of stock which you sold—of Illinois Central stock which you sold on the 9th of August, 1906, to the Union Pacific Railroad Company, and for which you were paid $175 a share—will you please state how much, if any, of that stock was held by you in the interest of or for the benefit of any or all of the directors of the Union Pacific Railroad Company?"

(Such question being the question set forth on page 48 of the Petition herein, and on page 358 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

4. "Mr. SEVERANCE: You decline to state in whose interest you held that stock or who owned the stock which you offered to sell?"

(Such question being the question set forth on page 50 of the Petition herein, and on page 360 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

2189 5. "Mr. SEVERANCE: And you decline to state whether that 105,000 shares of stock, or any part of that stock which you sold to the Union Pacific for $175 a share, really, equitably belonged to or was held by you for any persons or any number of persons who were at that time directors of the Union Pacific Railroad Company?"

(Such question being the question set forth on page 50 of the Petition herein, and on page 360 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

6. "Mr. SEVERANCE: Did you also buy at the same time for Messrs. Harriman, Rogers, and Stillman the stocks they sold at the same time you sold yours?"

(Such question being the question set forth on page 51 of the Petition herein, and on page 369 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

7. "Mr. SEVERANCE: Was this 105,000 shares of Illinois Central stock and the 90,000 shares turned in by Stillman, Rogers and Harriman all of it bought through your instrumentality for a pool of which these gentlemen and yourself were members, who were operat-

ing in Illinois Central stocks during the period of several months at least prior to July, 1906?"

(Such question being the question set forth on page 51 of the Petition herein, and on page 369 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

2190 And it is further ordered, adjudged and decreed that the said petition be, and the same hereby is, denied, in so far as it prays that the respondent Harriman be directed to answer the following questions heretofore propounded and refused to be answered at the said hearing of the Interstate Commerce Commission, towit:

1. "Com'r LANE: Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the 17th of August that appreciated?"

(Such question being the question set forth on page 42 of the Petition herein, and on page 248 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

2. "Mr. KELLOGG: Did you or any director buy any Union and Southern Pacific stock in anticipation of that dividend?"

(Such question being the question set forth on page 42 of the Petition herein, and on page 252 of the printed stenographer's minutes of the proceedings in New York February 25th to 28th before the Interstate Commerce Commission.)

C. M. HOUGH,
U. S. Judge.

Endorsed: Form No. 336. U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission, Petitioner, against Edward H. Harriman and Otto H. Kahn, Respondents. Order and notice of settlement. Henry L. Stimson, United States Attor-
2191 ney. Service of a copy of the within is hereby admitted. New York, February 11, 1908. R. S. Lovett, Attorney for E. H. Harriman. Cravath, Henderson & de Gersdorff, attorneys for Resp't Kahn. Received a copy of this paper on Feb. 11, 1908, Carter, Ledyard & Milburn. Copy received Feb. 11, 1908, Cravath, Henderson & de Gersdorff, Attorneys for Resp't Kahn. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 14, 1908, John A. Shields, Clerk.

2192 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Complainant,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for a Final Order and Decree Directing Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Now comes the above named Edward H. Harriman, by his attorney Robert S. Lovett, and prays for the allowance of an appeal herein to the Supreme Court of the United States from the final order or decree of this Court herein entered the 14th day of February, 1908, and from each and every part thereof so far as the same relates to said Harriman and requires said Harriman to appear before the Interstate Commerce Commission and to answer the questions which he is in and by said order or decree directed to answer; and that a transcript of the record, proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to the said Supreme Court of the United States; and that said appeal operate as a supersedeas; and that the amount of security which said Harriman shall give and furnish on said appeal may be fixed, and that all further proceedings under said final order and decree so far as the same relates to said Harriman be suspended and stayed pending said appeal.

Dated New York City, the 17 day of February, 1908.

ROBERT S. LOVETT,
Attorney for Edward H. Harriman.

Allowed 2/17/1908.
C. M. HOUGH, *U. S. J.*

2193 [Endorsed:] U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission, Complainant, *vs.* Edward H. Harriman and Otto H. Kahn, Respondents. In the Matter of the Petition of the Interstate Commerce Commission for a final order and decree directing Edward H. Harriman and Otto H. Kahn to answer certain questions propounded by the Interstate Commerce Commission. Petition for Allowance of Appeal Robert S. Lovett, Attorney for E. H. Harriman, 120 Broadway, Borough of Manhattan, New York City. Service of a copy of within is hereby admitted. Feb. 17-08. Henry L. Stimson U. S. Att'y. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17, 1908.

2194 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Complainant,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for a Final Order and Decree Directing Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

The above named Edward H. Harriman having prayed for the allowance of an appeal herein to the Supreme Court of the United States from the final order or decree of this Court herein entered the 14th day of February, 1908, and from each and every part thereof so far as the same relates to said Harriman and requires said Harriman to appear before the Interstate Commerce Commission and to answer the questions which he is in and by said order or decree directed to answer; and that a transcript of the record, proceedings and papers upon which said order or decree was made, duly authenticated, may be sent to the said Surpeme Court of the United States; and that said appeal operate as a supersedeas; and that the amount of security which said Harriman shall give and furnish on said appeal may be fixed, and that all further proceedings under said final order and decree, so far as the same relates to said Harriman and requires said Harriman to appear before the Inter-
2195 state Commerce Commission and to answer the questions which in and by said order or decree he is directed to answer, be suspended and stayed pending said appeal; and said Harriman having filed a bond with surety satisfactory to this Court in the penalty of One thousand five hundred dollars, conditioned on the prosecution of said appeal to effect by said Harriman, and to answer all damages and costs if said appellant fail to make said appeal good,

It is now, therefore, ordered that said appeal of said Harriman be and the same hereby is allowed and shall operate as a supersedeas; that said bond be and the same hereby is approved; and that further proceedings under said final order or decree, as far as the same relates to said Harriman and requires him to appear before the Interstate Commerce Commission or to answer the questions which in and by said order or decree he is directed to answer, be, and the same hereby are suspended and stayed pending said appeal.

C. M. HOUGH,
United States District Judge, Presiding in the Circuit Court.

2196 [Endorsed:] U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission, Complainant, *vs.* Edward H. Harriman and Otto H. Kahn, Respondents. In the Matter of the Petition of the Interstate Commerce Commission for a final order and decree directing Edward H. Harriman and Otto H. Kahn to answer certain questions propounded by the Interstate

Commerce Commission. Order allowing Appeal. Robert S. Lovett, Attorney for E. H. Harriman, 120 Broadway, Borough of Manhattan, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17 1908—John A. Shields Clerk.

2197 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Petitioner,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Now comes the above named Edward H. Harriman, by Robert S. Lovett, his attorney, and files the following assignments of error upon which he will rely upon his appeal from the order or decree made by this Court on the 14th day of February in the above entitled proceeding:

First. The Court erred in ordering and directing said Edward H. Harriman to appear before said Interstate Commerce Commission and to answer the questions which in and by said order or decree he is directed to answer.

Second. As to each and every of the questions which said Edward H. Harriman is in and by said order or decree directed to answer, the Court erred in ordering and directing him to answer the same.

Third. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 1 in said order or decree, and is as follows:

"Did you own any that was so deposited?"

2198 Fourth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 2 in said order or decree, and is as follows:

"I now renew the question, if you owned any of that stock which was so deposited and sold to the Union Pacific?"

Fifth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 3 in said order or decree and is as follows:

"How much, if any, of the preferred stock which was sold to the Union Pacific Company and valued by your judgment, did you own?"

Sixth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 4 in said order or decree and is as follows:

"Well, had these parties acquired from $25,000,000 to $30,000,000?"

Seventh. The Court erred in ordering and directing the said Ed-

ward H. Harriman to answer the question which is numbered 5 in said order or decree and is as follows:

"Was that a part of the stock which had been previously acquired by you, Mr. Rogers and Mr. Frick?"

Eighth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 6 in said order or decree and is as follows:

"Was it, or any part of it, at that time owned by any of you three gentlemen?"

2199 Ninth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 7 in said order or decree and is as follows:

"* * * Mr. Harriman, was that stock acquired by pool of you three gentlemen?"

Tenth. The court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 8 in said order or decree and is as follows:

"Was it acquired with the view of selling it to the Union Pacific?"

Eleventh. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 9 in said order or decree and is as follows:

"Was that stock purchased by you, or any part of it, at a much lower price than $175 a share, with the intention of turning it over to the Union Pacific."

Twelfth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 10 in said order or decree and is as follows:

"* * * Did you have any interest in the 105,000 shares which were sold at the same time by Kuhn, Loeb & Co. to the Union Pacific?"

Thirteenth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 11 in said order or decree and is as follows:

"Was that acquired by a syndicate or pool for the purpose of selling it to the Union Pacific."

2200 Fourteenth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 12 in said order or decree and is as follows:

"When did you acquire those stocks?"

Fifteenth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 13 in said order or decree and is as follows:

"What did you pay for those stocks?"

Sixteenth. The Court erred in ordering and directing the said Edward H. Harriman to answer the question which is numbered 14 in said order or decree and is as follows:

"Were any of the directors of the Union Pacific interested, directly or indirectly, in the New York Central stocks at the time they were sold?"

Wherefore the said Edward H. Harriman prays that the said final order or decree of said Circuit Court of the United States for

the Southern District of New York in the above-entitled matter, for the errors aforesaid and for other errors in the record and proceedings in said matter and in the final order or decree aforesaid may be reversed and that said Court may be directed to enter a final order or decree dismissing the petition of the Interstate Commerce Commission in said matter.

Dated, New York, February 17, 1908.

ROBERT S. LOVETT,
Attorney for Edward H. Harriman.

2201 [Endorsed]: Circuit Court of the United States, Southern District of New York. Interstate Commerce Commission, Petitioner, against Edward H. Harriman and Otto H. Kahn, Respondents. In the Matter of the Petition of the Interstate Commerce Commission for an order requiring Edward H. Harriman and Otto H. Kahn to answer certain questions propounded by the Interstate Commerce Commission. Assignments of Error. Robert S. Lovett, Attorney for Edward H. Harriman, 120 Broadway, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17th, 1908. John A. Shields, Clerk.

2202 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Complainant,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

Know all men by these presents, That we, Edward H. Harriman, as principal, and The United States Fidelity and Guaranty Company, are held and firmly bound unto the Interstate Commerce Commission in the sum of One thousand five hundred dollars ($1,500.), to be paid to the Interstate Commerce Commission, to which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and successors, jointly and severally firmly by these presents.

Sealed with our seals and dated this 17th day of February, 1908.

Whereas, lately at a term of the Circuit Court of the United States, for the Southern District of New York in a suit pending in said Court, between the Interstate Commerce Commission, as complainant, and Edward H. Harriman and Otto H. Kahn, as respondents, a decree was rendered against the said respondents; and the said Edward H. Harriman and Otto H. Kahn each having obtained from said Court an order allowing an appeal to be taken to the Supreme Court of the United States to reverse the decree aforesaid:

2203 Now therefore, the condition of the above obligation is such that if the said Edward H. Harriman shall prosecute his appeal to effect, and shall answer all damages and costs,

if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

EDWARD H. HARRIMAN. [SEAL.]
THE UNITED STATES FIDELITY AND GUARANTY CO.,
By SYLVESTER J. O'SULLIVAN,
Manager.

Attest:
GEORGE F. HAYES,
Attorney in Fact.

UNITED STATES OF AMERICA,
State of New York, County of New York, ss:

On this 17th day of February, 1908, before me personally appeared Edward H. Harriman, to me known and known to me to be one of the persons described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

[SEAL.] CHARLES FRANKLIN,
Notary Public, County of New York.

Commission expires March 30, 1908.

2204 *Affidavit, Acknowledgment and Justification by the United States Fidelity and Guaranty Company.*

We Will Bond You.

[Vignette.]

Contract, Fidelity, Judicial, Burglary.

STATE OF NEW YORK, *County of New York, ss:*

Before me personally came Sylvester J. O'Sullivan, known to me to be the Manager of The United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Edward H. Harriman as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the manager of said The United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Edward H. Harriman is the corporate seal of said The United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Manager of said Company; and that he is acquainted with George E. Hayes, and knows him to be Attorney in

Fact of said Company; and that the signature of said George E. Hayes, subscribed to said bond is the genuine handwriting of said George E. Hayes, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution, exceeds its claims, debts and liabilities, of every nature whatsoever, by more than the sum of one million dollars ($1,000,000.00).

SYLVESTER J. O'SULLIVAN.

Sworn to, acknowledged before me, and subscribed in my presence this 17th day of Feb. 1908.

[SEAL.]

DANIEL C. DEASY,
Notary Public, New York County. [SEAL.]

2205 Endorsed: United States Circuit Court, Southern District of New York. Interstate Commerce Commission, Complainant, against Edward H. Harriman and Otto H. Kahn, Respondents. Bond on Appeal. Robert S. Lovett, Attorney for Edward H. Harriman, 120 Broadway, Borough of Manhattan, New York City U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17, 1908, John A. Shields, Clerk.

2206 By the Honorable Charles M. Hough, United States District Judge for the Southern District of New York, Presiding in the Circuit Court of the United States for the Southern District of New York.

To the Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden in the City of Washington, District of Columbia, on the 16th day of March, 1908, pursuant to an appeal duly allowed and filed in the office of the Clerk of the Circuit Court of the United States for the Southern District of New York on the 17th day of February, A. D. 1908, in a cause wherein Edward H. Harriman is appellant, and you are appellee, to show cause, if any there be, why the order or decree rendered in the said cause against the said appellant on the 14th day of February, 1908, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York in the District and Circuit above named this 17 day of February in the your of Our Lord one thousand nine hundred and eight.

C. M. HOUGH,
United States District Judge, Presiding in the Circuit Court.

Service of a copy of the above citation is hereby admitted this 17 day of Feb'y, 1908.

HENRY L. STIMSON,
U. S. Att'y.

2207 [Endorsed:] U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission, Complainant, *vs.* Edward H. Harriman and Otto H. Kahn, Respondents. In the Matter of the Petition of the Interstate Commerce Commission for a final order and decree directing Edward H. Harriman and Otto H. Kahn to answer certain questions propounded by the Interstate Commerce Commission. Citation. Robert S. Lovett, Attorney for E. H. Harriman, 120 Broadway, Borough of Manhattan, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17, 1908. John A. Shields, Clerk.

2208 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Complainant,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Petition for Appeal.

Now comes the respondent, Otto H. Kahn by Cravath, Henderson & de Gersdorff, his attorneys, and prays for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of this court entered herein on the 14 day of February, 1908, granting said petition and ordering and directing said Kahn to answer certain questions therein specified, and from each and every part thereof, so far as said final order and decree relates to said Kahn; and that a transcript of the records, proceedings and papers upon which said final order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States; that said appeal operate as a supersedeas; that the amount of security which the said respondent Kahn shall give and furnish on said appeal may be fixed; and that all further proceedings under said final order and decree may be stayed pending the said appeal.

Dated New York, February 17th, 1908.

CRAVATH, HENDERSON & DE GERSDORFF,
Attorneys for Respondent, Otto H. Kahn.

2209 [Endorsed:] Circuit Court of the United States, Southern District of New York. Interstate Commerce Commission, Complainant, against Edward H. Harriman and Otto H. Kahn, Respondents. Petition for appeal. Cravath, Henderson & de Gersdorff, Attorneys for Respondent, No. 52 William Street, Borough of Manhattan, New York City. Service of a copy of the within petition is hereby admitted this 17th day of February, 1908. (Sgd.) Henry L. Stimson, United States Attorney. U. S. Circuit Court, Southern District of N. Y. Filed Feb'y 17, '08. John A. Shields, Clerk.

2210 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Complainant,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Order Allowing Appeal.

The above named respondent, Otto H. Kahn, having prayed for the allowance of an appeal to the Supreme Court of the United States from the final order and decree of this Court entered herein on the 14th day of February, 1908, granting said petition and ordering and directing said Kahn to answer certain questions therein specified so far as said final order and decree relates to said Kahn, and further praying that a transcript of the records, proceedings and papers upon which said final order and decree were made, duly authenticated, might be sent to the Supreme Court of the United States, that said appeal operate as a supersedeas and that the amount of security which the said respondent Kahn, shall give and furnish on said appeal may be fixed and that all further proceedings under said final order and decree may be stayed pending the said appeal,

and the said Kahn having filed a bond with surety satis-
2211 factory to this Court in the penalty of Fifteen hundred dollars ($1,500) conditioned upon the prosecution of said appeal to effect, said Kahn to answer all damages and costs if said appellant fail to make said appeal good:

It is now therefore ordered that said appeal of the respondent, Kahn, to the Supreme Court of the United States from the final order and decree of this Court entered herein on the 14th day of February, 1908, granting said petition and ordering and directing said Kahn to answer certain questions therein specified, so far as the said final order and decree relates to said Kahn, be and the same hereby is allowed; that said bond on appeal be and the same hereby is approved; that a transcript of the records, proceedings and papers upon which the said final order and decree was made, duly authenticated, be sent to the Supreme Court of the United States, that said appeal operate as a supersedeas; and that all further proceedings under said final order and decree be stayed pending the said appeal.

Dated New York, February 17, 1908.

C. M. HOUGH,
United States District Judge Presiding as Circuit Judge.

2212 [Endorsed:] Circuit Court of the United States, Southern District of New York. Interstate Commerce Commission, Complainant, against Edward H. Harriman and Otto H. Kahn, Respond-

ents. Order allowing appeal. Cravath, Henderson & de Gersdorff, Attorneys for Respondents, No. 52 William Street, Borough of Manhattan, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Feb'y 17, 1908. John A. Shields, Clerk.

2213 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Complainant,
against
EDWARD H. HARRIMAN and OTTO KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Assignments of Error.

Now comes the said respondent Otto H. Kahn, represented by Cravath, Henderson & de Gersdorff, his attorneys and presents these assignments of error in the above-entitled matter and says that in the final order and decree heretofore made and entered in said matter by the Court aforesaid there is error in the respects hereinafter set forth, that is to say:

1. The Court erred in ordering and directing this respondent to answer the question:

"Now will you state whether the directors of the Union Pacific Railroad Company were the real owners of the shares so deposited with you and sold to the Union Pacific Railroad Company?"

2214 2. The Court erred in ordering and directing this respondent to answer the question:

"The question I asked you was whether any of your fellow directors were owners of any of that stock."

3. The Court erred in ordering and directing this respondent to answer the question:

"Then I will ask you the direct question, Mr. Kahn, of the 105,000 shares of stock which you sold—of Illinois Central Stock which you sold on the 9th of August, 1906, to the Union Pacific Railroad Company and for which you were paid $175 a share—will you please state how much, if any; of that stock was held by you in the interest of or for the benefit of any or all of the directors of the Union Pacific Railroad Company?"

4. The Court erred in ordering and directing this respondent to answer the question:

"You decline to state in whose interest you held that stock or who owned the stock which you offered to sell?"

5. The Court erred in ordering and directing this respondent to answer the question:

"And you decline to state whether that 105,000 shares of stock or any part of that stock which you sold to the Union Pacific for $175

per share really equitably belonged to or was held by you for any person, or any number of persons who were at that time directors of the Union Pacific Railroad Company?"

6. The Court erred in ordering and directing this respondent to answer the question:

"Did you also buy at the same time for Messrs. Harriman, Rogers and Stillman the stocks they sold at the same time you sold yours?"

7. The Court erred in ordering and directing this respondent to answer the question:

"Was these 105,000 shares of Illinois Central stock and the 90,000 shares turned in by Stillman, Rogers and Harriman all of it bought through your instrumentality for a pool of which these gentlemen and yourself were members, who were operating in Illinois
2215 Central stocks during the period of several months at least prior to July 1, 1906?"

8. The Court erred in granting the petition of the Interstate Commerce Commission herein, and in ordering and directing the said Otto H. Kahn to answer each and every of the questions which he is in and by said order or decree directed to answer.

Wherefore the said Kahn prays that the said final order and decree of said Circuit Court of the United States for the Southern District of New York in the above-entitled matter, for the errors aforesaid and for other errors in the record and proceedings in said matter and in the final order and decree aforesaid may be reversed and that said Court may be directed to enter a final order and decree dismissing the petition of the Interstate Commerce Commission in said matter.

Dated, New York, February 17, 1908.

CRAVATH, HENDERSON & DE GERSDORFF,
Attorneys for Respondent, Otto H. Kahn.

2216 [Endorsed:] Circuit Court of the United States, Southern District of New York. Interstate Commerce Commission against Edward H. Harriman and Otto H. Kahn. Assignments of Error. Cravath, Henderson & de Gersdorff, Attorneys for Respondents, No. 52 William Street, Borough of Manhattan, New York City. U. S. Circuit Court, Southern District of N. Y. Filed Feb'y 17, 1908. John A. Shields, Clerk.

2217 United States Circuit Court, Southern District of New York.

INTERSTATE COMMERCE COMMISSION, Petitioner,
against
EDWARD H. HARRIMAN and OTTO H. KAHN, Respondents.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Know all men by these presents, that we, Otto H. Kahn, as principal, and the American Bonding Company of Baltimore, a corpora-

tion organized under the laws of the State of Maryland and lawfully transacting business in the State of New York, as surety, are held and firmly bound unto the Interstate Commerce Commission in the sum of One thousand five hundred ($1,500.) Dollars, to be paid to the Interstate Commerce Commission, to which payment well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 5th day of February, 1908.

Whereas, said Otto H. Kahn has taken and prosecuted his appeal to the Supreme Court of the United States to reverse the final order and decree heretofore made and filed in the above entitled
2218 matter by said Circuit Court of the United States for the Southern District of New York, so far as the same relates to said Kahn, or to any of the matters assigned by him as error in his assignment of errors in said matter.

Now, therefore, the condition of this obligation is such, that if the above named Otto H. Kahn shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him, if he shall fail to make good his appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

OTTO H. KAHN. [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE,
By HULBERT P. E. BEARDSLEY,
Resident Vice President.

Attest:
[SEAL.] CHARLES H. WORCESTER,
Resident Ass't Secretary.

Sealed and delivered in the presence of
GEO. H. SAVAGE.

2219 CITY AND COUNTY OF NEW YORK,
State of New York, ss:

On Feb. 5 1908 before me personally came Hulbert T. E. Beardsley, to me known, who being by me duly sworn, did depose and say that he resides in the City of New York, that he is the Resident Vice-President of the American Bonding Company of Baltimore, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so fixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said Company do not exceed its assets as ascertained in the manner provided by law. And the said Hulbert T. E. Beardsley, further said that he was acquainted with —— —— and knew him to be the Resident Assistant Secretary of said Company; that the signature of said Resi-

dent Assistant Secretary subscribed to the within instrument is the genuine handwriting of the said Resident Assistant Secretary and was subscribed thereto by like order of the Board of Directors, in the presence of him, the said Hulbert T. E. Beardsley.

[SEAL.] EDWARD F. HEALEY,
Notary Public, New York County.

American Bonding Company of Baltimore.

Extract from minutes of a meeting of the Board of Directors of American Bonding Company of Baltimore held at the Office of the Company, at Baltimore Maryland, on the 9th day of July, A. D., 1907.

At a regular meeting of the Board of Directors of the American Bonding Company of Baltimore, held in the office of the Company, at Baltimore, Maryland, on the 9th day of July, A. D., 1907, the following resolution was adopted:

"Resolved, that Hulbert T. E. Beardsley and Edward B. Southworth, Jr., of the City of New York, New York, be and hereby are appointed Resident Vice-Presidents of this Company at New York, New York, and are, and each of them is, hereby authorized and empowered to execute and deliver and attach the seal of the Company to any and all bonds and undertakings, for or on behalf of the Company in its business of guaranteeing the fidelity of persons holding places of public or private trust and guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed or required; such guarantee, bonds and undertakings, however, to be attested in every instance by one of the following named persons: Paul W. Arnold, Charles H. Worcester, Edward F. Healey or John D. Wareing, who are hereby appointed Resident Assistant Secretaries of this Company at New York City, New York."

I, —— ——, Resident Assistant Secretary of the American Bonding Company of Baltimore, do hereby certify that the foregoing is a true and correct copy of a resolution of the Board of Directors of the American Bonding Company of Baltimore, and is the whole of said resolution.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the American Bonding Company of Baltimore, at the City of New York, N. Y., Feb. 5, 1908.

[SEAL.] CHARLES H. WORCESTER,
Resident Assistant Secretary.

Statement of the Financial Condition of the American Bonding Company of Baltimore at the Close of Business June 30th, 1907.

Assets.		Liabilities.	
United States Government Bonds	$104,750.00	Capital Stock	$500,000.00
State and Municipal Bonds	607,572.00	Due for Re-Insurance	10,593.82
Railroad and Street Railway Bonds	451,812.50	Legal Reserve	428,852.20
Other Stocks and Bonds	118,750.00	Reserve for losses and Contingencies	222,856.32
Outstanding Premiums (less commissions)	148,218.17	Surplus and Undivided Profits	428,186 52
Accounts Receivable (Secured)	26,250.00		$1,590,488.86
Interest Accrued	8,422.02		
Real Estate	8,300.84		
Mortgage Loans	6,500.00		
Cash in Office and Depositories	109,913.33		
	$1,590,488.86		

CITY AND COUNTY OF NEW YORK, *State of New York, ss:*

I, Hulbert T. E. Beardsley, Resident Vice-President of the American Bonding Company of Baltimore, do hereby certify that the foregoing is a true statement of the Assets and Liabilities of said Company at the close of business, June 30th, 1907.

In testimony whereof, I hereunto set my hand and affix the seal of the Company Feb. 5, 1908.

[SEAL.] HULBERT T. E. BEARDSLEY,
Resident Vice-President.

Subscribed and sworn to before me Feb. 5, 1908.

[SEAL.] EDWARD F. HEALEY,
Notary Public, New York County.

2220 STATE OF NEW YORK, COUNTY OF NEW YORK,
Southern District of New York, ss:

On this 7th day of February, in the year one thousand nine hundred and eight, before me personally came Otto H. Kahn, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same.

GEO. H. SAVAGE,
[SEAL.] *Notary Public, New York County.*

Certificate filed in Kings County.

2221 Endorsed: United States Circuit Court, Southern District of New York. Interstate Commerce Commission, Petitioner, against Edward H. Harriman and Otto H. Kahn, Respondents. In the matter of the Petition of the Interstate Commerce Commis-

sion for an order requiring Edward H. Harriman and Otto H. Kahn to answer certain questions propounded by the Interstate Commerce Commission. Bond for costs on appeal. Cravath, Henderson & de Gersdorff, No. 52 William Street, New York City. The within undertaking is approved as to form and as to the sufficiency of the surety. C. M. Hough, U. S. J. 2/17/08. American Bonding Company of Baltimore, 34 Nassau St. Mutual Life Bldg., New York City, Surety. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17, 1908, John A. Shields, Clerk.

2222 By the Honorable Charles M. Hough, U. S. District Judge, Presiding in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To Interstate Commerce Commission, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden at Washington, District of Columbia, on the 16th day of March, 1908, pursuant to an order granting an appeal from a final order and decree filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein you are complainant appellee and Otto H. Kahn is respondent and appellant, to show cause, if any there be, why the final order and decree mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named this 17th day of February, in the year of our Lord One thousand, nine hundred and eight, and of the Independence of the United States the One hundred and thirty-third.

C. M. HOUGH,
U. S. District Judge, Presiding in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

Service of a copy of the within citation is hereby admitted this 17th day of February, 1908.

HENRY L. STIMSON,
United States Attorney.

2223 Endorsed: Interstate Commerce Commission against Edward H. Harriman and Otto H. Kahn. Citation. U. S. Circuit Court, Southern District of N. Y. Filed Feb. 17, 1908. John A. Shields, Clerk.

2224 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION
against
EDWARD H. HARRIMAN and OTTO H. KAHN.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Now comes the Interstate Commerce Commission, by Henry L. Stimson, United States Attorney for the Southern District of New York, representing the Interstate Commerce Commission pursuant to the statute in such case made and provided, and by direction of of the Hon. Charles J. Bonaparte, Attorney General of the United States, and prays for the allowance of an appeal to the Supreme Court of the United States from an order of the Court entered herein in so far as the same denied the petition herein praying that the respondent Harriman be directed to answer the following questions:

1. "Com'r LANE: Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the 17th of August that appreciated?"

(The said question being the question as set forth on page 42 of the Petition and on page 248 of the New York testimony, February 25th to 28th.)

2225 2. "Mr. KELLOGG: Did you or any director buy Union Pacific and Southern Pacific stock in anticipation of that dividend?"

(The said question being the question as set forth on page 42 of the Petition and page 252 of the New York testimony, February 25th to 28th.)

HENRY L. STIMSON,
U. S. Attorney for the Southern District of New York,
Attorney for Interstate Commerce Commission.

The aforesaid appeal is hereby allowed.

C. M. HOUGH,
U. S. Judge.

Dated, New York March 9th, 1908.

2226 [Endorsed]: Form No. 336. U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission *versus* Edward H. Harriman and Otto H. Kahn. Copy. Petition for an Allowance of Appeal. Henry L. Stimson, United States Attorney, Attorney for —— ——. Due service of a copy of the within is hereby admitted. New York March 9, 1908. Robert S. Lovett Attorney for Edward H. Harriman. U. S. Circuit Court, Southern District of N. Y. Filed Mar. 9, 1908. John A. Shields, Clerk.

2227 Circuit Court of the United States, Southern District of New York.

INTERSTATE COMMERCE COMMISSION
against
EDWARD H. HARRIMAN and OTTO H. KAHN.

Assignment of Errors.

In the Matter of the Petition of the Interstate Commerce Commission for an Order Requiring Edward H. Harriman and Otto H. Kahn to Answer Certain Questions Propounded by the Interstate Commerce Commission.

Now comes the Interstate Commerce Commission, represented by Henry L. Stimson, United States Attorney for the Southern District of New York, and presents this Assignment of Errors in the above-entitled matter and says that in the final order and decree heretofore made and entered in said matter by the Court aforesaid, there is error in the respects hereinafter set forth, that is to say:

First. The Court erred in denying the petition herein of the Interstate Commerce Commission in so far as it prayed that the respondent Harriman be directed to answer the following question:

"Com'r LANE: Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the 17th of August that appreciated?"

(The said question being the question as set forth on page 42 of the Petition and on page 248 of the New York testimony, February 25th to 28th.)

2228 Second. The Court erred in denying the petition herein of the Interstate Commerce Commission in so far as it prayed that the respondent Harriman be directed to answer the following question:

"Mr. KELLOGG: Did you or any director buy Union Pacific and Southern Pacific stock in anticipation of that dividend?"

(The said question being the question as set forth on page 42 of the Petition and page 252 of the New York testimony, February 25th to 28th.)

Third. The Court erred in refusing to grant the petition herein of the Interstate Commerce Commission for an order directing Edward H. Harriman to appear before said Interstate Commerce Commission and to answer the following question:

"Com'r LANE: Were you directly or indirectly interested in any stocks that were bought between the 19th of July and the 17th of August that appreciated?"

(The said question being the question as set forth on page 42 of the Petition and on page 248 of the New York testimony, February 25th to 28th.)

Fourth. The Court erred in refusing to grant the petition herein of the Interstate Commerce Commission for an order directing Ed-

ward H. Harriman to appear before said Interstate Commerce Commission and to answer the following question:

"Mr. KELLOGG: Did you or any director buy Union Pacific and Southern Pacific stock in anticipation of that dividend?"

(The said question being the question as set forth on page 42 of the Petition and on page 252 of the New York testimony, February 25th to 28th.)

Wherefore the said Interstate Commerce Commission prays that the said final order and decree of the said Circuit Court of the United States for the Southern District of New York in the above-
2229 entitled matter for the errors aforesaid in the record and proceedings in said matter and in the final order and decree aforesaid, may be reversed in so far as the same refused to grant the petition of the Interstate Commerce Commission to compel the said Edward H. Harriman to answer the questions aforesaid and that said Court may be directed to enter a final order and decere granting the petition of the Interstate Commerce Commission herein in all respects.

HENRY L. STIMSON,
U. S. Attorney for the Southern District of New York,
Attorney for the Interstate Commerce Commission.

2230 [Endorsed:] Form No. 336. U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission *versus* Edward H. Harriman and Otto H. Kahn. Copy. Assignment of Errors. Henry L. Stimson, United States Attorney, Attorney for —— ——. Due service of a copy of the within is hereby admitted. New York, March 9, 1908. Robert S. Lovett, Attorney for Edward H. Harriman. To —— ——, Attorney for —— ——. U. S. Circuit Court, Southern District of N. Y. Filed March 9, 1908. John A. Shields, Clerk.

2231 By the Honorable Charles M. Hough, United States District Judge for the Southern District of New York, Presiding in the Circuit Court of the United States for the Southern District of New York.

To Edward H. Harriman, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States to be holden in the City of Washington, District of Columbia, on the 16th day of March, 1908, pursuant to an appeal duly allowed and filed in the office of the Clerk of the Circuit Court of the United States for the Southern District of New York on the 9th day of March, A. D. 1908, in a cause wherein the Interstate Commerce Commission is appellant, and you are appellee, to show cause, if any there be, why the order or decree rendered in the said cause against the said appellant on the 14th day of February, 1908, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York in the District and Circuit above named this 9 day of March in the year of Our Lord one thousand nine hundred and eight.

C. M. HOUGH,
U. S. Judge.

Service of a copy of the above citation is hereby admitted this 9th day of March, 1908.

ROBERT S. LOVETT,
Attorney for E. H. Harriman.

2232 [Endorsed:] Form No. 336. U. S. Circuit Court, Southern District of New York. Interstate Commerce Commission *versus* Edward H. Harriman and Otto H. Kahn. Copy. Citation. Henry L. Stimson, United States Attorney, Attorney for —— ——. Due service of a copy of the within is hereby admitted. New York, —— —, 190–. —— ——, Attorney for —— ——. To —— ——, Attorney for —— ——. U. S. Circuit Court, Southern District of N. Y. Filed March 9, 1908. John A. Shields, Clerk.

2233 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from — to — inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Interstate Commerce Commission, Petitioner, against Edward H. Harriman and Otto H. Kahn, Respondents, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 11 day of March, in the year of our Lord One Thousand Nine Hundred and eight and of the Independence of the said United States the One Hundred and thirty-second.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, *Clerk.*

2234 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. Interstate Commerce Commission, Petitioner, *vs.* Edward H. Harriman and Otto H. Kahn, Respondents. Transcript of Record from the Circiut Court of the United States for the Southern District of New York.

2235 Supreme Court of the United States.

INTERSTATE COMMERCE COMMISSION, Appellant,
v.
EDWARD H. HARRIMAN and OTTO H. KAHN, Appellees.

EDWARD H. HARRIMAN and OTTO H. KAHN, Appellants,
v.
INTERSTATE COMMERCE COMMISSION, Appellee.

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein, that the Clerk of the United States Supreme Court be, and hereby is, authorized and requested to insert, directly after the second paragraph and immediately preceding the series of questions on page 36 of the Petition filed in the Circuit Court for the Southern District of New York, a slip bearing the following question and answer, to wit:

"Mr. KELLOGG: Well, had these parties acquired from $25,000,000 to $30,000,000?

"Mr. HARRIMAN: I don't know that you can inquire into that."

2236 It is further stipulated and agreed that such slip be deemed to be and be in all respects a part of the record herein certified by the Clerk of the Circuit Court for the Southern District of New York.

ROBERT S. LOVETT,
Attorney for Edward H. Harriman, Appellant and Appellee.
PAUL D. CRAVATH,
Attorney for Otto H. Kahn, Appellant and Appellee.
FRANK B. KELLOGG,
C. A. SEVERANCE,
HENRY L. STIMSON,
United States Attorney for the Southern District of New York,
Attorney- for Interstate Commerce Commission.

2237 [Endorsed:] File Nos. 21,065-6 & 7. Supreme Court U. S. October Term, 1907. Term Nos. 662-3 & 4. Edward H. Harriman, appellant, *v.* Interstate Commerce Commission. Otto H. Kahn, appellant, *v.* Interstate Commerce Commission. Interstate Commerce Commission, appellant, *v.* Edward H. Harriman. Stipulation of counsel & addition to record. Filed May 14th, 1908.

Endorsed on cover: File No. 21,065. S. New York C. C. U. S. Term No. 662. Edward H. Harriman, appellant, *vs.* The Interstate Commerce Commission. File No. 21,066. Term No. 663. Otto H. Kahn, appellant, *vs.* The Interstate Commerce Commission. File No. 21,067. Term No. 664. The Interstate Commerce Commission, appellant, *vs.* Edward H. Harriman. Filed March 14th, 1908. File Nos. 21,065, 21,066, & 21,067.

Supreme Court of the United States.

OCTOBER TERM, 1908.

EDWARD H. HARRIMAN, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, APPELLEE. } No. 315

OTTO H. KAHN, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, APPELLEE. } No. 316

INTERSTATE COMMERCE COMMISSION, APPELLANT,
v.
EDWARD H. HARRIMAN, APPELLEE. } No. 317

MOTION TO ADVANCE.

Supreme Court of the United States.

OCTOBER TERM, 1908.

EDWARD H. HARRIMAN, APPELLANT, *v.* INTERSTATE COMMERCE COMMISSION, APPELLEE,	No. 662.
OTTO H. KAHN, APPELLANT, *v.* INTERSTATE COMMERCE COMMISSION, APPELLEE,	No. 663.
INTERSTATE COMMERCE COMMISSION, APPELLANT, *v.* EDWARD H. HARRIMAN, APPELLEE.	No. 664.

And now comes the Interstate Commerce Commission, by Frank B. Kellogg and C. A. Severance, its solicitors and counsel, and moves the Court to advance the above entitled cases for hearing at an early date convenient to the Court.

On the 13th day of February, 1908, the Circuit Court of the United States for the Southern District of New York entered its decree, directing that Edward H. Harriman and Otto H. Kahn answer all questions propounded to them by the Interstate

Commerce Commission in an investigation under the Act of Congress, except those certain questions relating to the purchase of stock by Harriman in anticipation of the Union Pacific dividend. The appeals of Mr. Harriman and Mr. Kahn involved substantially the same questions.

On November 15, 1906, the Commission made an order for the purpose of inquiring into the consolidation and combination of carriers subject to the Act, and the relations existing between such carriers, including community of interest therein and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor, to the end that the Commission might be fully informed with respect thereof, and to the further end that it might be ascertained whether such consolidations, combinations, relations, community of interest, practices or methods result in violation of said Act or tend to defeat its purposes.

Upon the hearing it appeared that at the time of the purchase and acquisition of the stocks hereinafter referred to, Edward H. Harriman was President of the Union Pacific Railroad Company, Southern Pacific Company, and allied corporations, a director, and Chairman of the Executive Committee, which committee had all the powers of the Board of Directors, and in the absence of the committee these powers were vested in its Chairman, Mr Harriman. That Mr. Kahn was a member of the firm of Kuhn, Loeb & Co., the financial agent of the Union Pacific, and at the time of the trans-

actions inquired into was also a director of the Union Pacific. That the Union Pacific had acquired a large amount of stock in competing lines of road, including the Southern Pacific, the St. Joseph & Grand Island, the Atchinson, Topeka & Santa Fe, the Northern Pacific, and the Great Northern, as well as a large amount of stock in other railroads, including the Illinois Central, the Chicago & Northwestern, the Chicago, Milwaukee & St. Paul, the Chicago & Alton, the Baltimore & Ohio, and the New York Central.

It appeared that the stock of the Chicago & Alton was purchased by the Union Pacific at a price fixed by a committee of three, of which Mr. Harriman was one, and that Messrs. Kuhn, Loeb & Co, acted as depositary for the purpose of facilitating the sale. Mr. Harriman was asked if he owned any of the stock so deposited, and he declined to answer.

It appeared that the stock of the Illinois Central was acquired by the Union Pacific, in part directly from Edward H. Harriman, Henry H. Rogers and James Stillman, who were directors of the Union Pacific. Mr. Harriman was asked if this stock was acquired by a pool of these three gentlemen with a view of selling it to the Union Pacific; if it was purchased at a price much below $175.00 a share—the price paid by the Union Pacific—with the intention of turning it over to the Union Pacific; which he refused to answer.

He was asked at what price he had obtained the stock of the St. Joseph & Grand Island, which he had sold to the Union Pacific; and whether the di-

rectors were directly or indirectly interested in the New York Central stock acquired by the Union Pacific; which he declined to answer.

Mr. Kahn was asked how much, if any, stock of the Illinois Central was held and sold by his firm in the interest or for the benefit of directors of the Union Pacific, which he declined to answer.

It appeared that the Union Pacific owned $10,000,000, par value, stock of the Atchison, Topeka & Santa Fe Railway Company, and that certain directors of the Union Pacific, to-wit, Edward H. Harriman, Henry C. Frick and Henry H. Rogers, had acquired a large interest in the stock of the Santa Fe company and on this account had demanded that two Union Pacific directors be made directors of the Santa Fe, which demand had been acceded to by the Santa Fe company The Commission undertook to find out how much stock the directors of the Union Pacific held in the Santa Fe, and Mr. Harriman was asked if these directors had acquired about $25,000,000 or $30,000,000, which he refused to answer. He was also asked if the $10,000,000 owned by the Union Pacific was a part of the stock held by himself and his co-directors, which he refused to answer.

From the judgment directing each of the defendants to answer the questions propounded to him, an appeal was taken to this Court, and the questions involved and decided by the opinion of the court below, among others, were as follows:

(1) Was the order of the Commission sufficiently broad to cover the questions asked?

(2) Was the resolution or order a proper method of originating the inquiry, or could the witnesses only be compelled to answer where a complaint had been filed with the Commission by some person, firm or corporation?

(3) Did the interstate commerce law grant power to the Commission to pass such a resolution or make the order?

(4) If such grant was given by the interstate commerce act, is the act constitutional?

It was claimed that the act was unconstitutional because the questions did not relate to any investigation into the management, business, affairs or organization of a corporation engaged in interstate commerce which Congress could confer upon the Commission to make,—in other words, did not relate to commerce among the States,—and that Congress could not delegate to the Commission a power not possessed by itself.

The appeal of the Commission, while involving some of the same questions, is a little different. It appeared that the Union Pacific Railroad Company and the Southern Pacific Company had increased the rates of their dividends; that this had been done at meetings of the directors held on the same day, the announcements of which were deferred and left to the Executive Committee, of which Mr. Harriman was Chairman and a dominating member. Mr. Harriman was asked whether he purchased stock in the Union Pacific in anticipation of this dividend; the court declined to compel

him to answer, and from this judgment the Commission appealed.

The questions involved are very important and of great public interest. The power of the Commission to inquire into the cost and value of the property, the good faith of its acquisition, and the integrity of the management of railways engaged in interstate commerce, is here involved. The interstate commerce act requires the railroads to report to the Commission the cost and value of their property, the dividends declared, and authorizes the Commission to inquire into the details of the management and business of interstate carriers. The ownership by one company, or its directors, of a large block of stock in a competing company, creates a relation between the corporations involved and a community of interest. It is important for the Commission to know whether it has a right to inquire into such ownership, in order that it may determine the effect of such relation and community of interest upon competition. It is also important, on account of other investigations, that the duties of the Commission should be defined. It is also important to the public that the Commission should know at as early a date as possible whether it has power to inquire into the financial management and business of railway companies, the dealings between such companies and their officers and directors, whether their assets have been expended in purchasing stock at inflated prices from their directors who both buy and sell the same, whether dividends have been paid in good faith based upon

the earnings of the company or for speculative purposes for the benefit of its officers and directors, and whether such transactions tend to defeat the purposes of the Act to Regulate Commerce, to the end that the Commission may report to Congress its recommendations as to additional legislation as provided by Section 21 of said Act.

Your petitioners therefore pray that this Honorable Court will advance said cause and set it down for an early hearing during the October Term, 1908.

FRANK B. KELLOGG,
C. A. SEVERANCE,
JOHN H. MARBLE,
Solicitors and Counsel for petitioner, Interstate Commerce Commission.

Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 616.

EDWARD H. HARRIMAN,

Appellant,

vs.

INTERSTATE COMMERCE COMMISSION.

No. 617.

INTERSTATE COMMERCE COMMISSION,

Appellant,

vs.

EDWARD H. HARRIMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT, EDWARD H. HARRIMAN.

JOHN C. SPOONER,
JOHN G. MILBURN,
ROBERT S. LOVETT,
Of Counsel.

Supreme Court of the United States,

OCTOBER TERM, 1908.

No. 315.

EDWARD H. HARRIMAN,

APPELLANT,

vs.

INTERSTATE COMMERCE COMMISSION.

No. 317.

INTERSTATE COMMERCE COMMISSION,

APPELLANT,

vs.

EDWARD H. HARRIMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT EDWARD H. HARRIMAN.

STATEMENT.

The Interstate Commerce Commission, on the 15th day of November, 1906, without any peti-

tion, complaint or charge in any form, and apparently upon its own motion, made the following order, viz. (Record, pp. 2–3) :

" In the Matter of Consolidations and Combinations of Carriers, Relations between such Carriers, and Community of Interests therein, their Rates, Facilities, and Practices :

> " WHEREAS the act to regulate commerce provides that the Commission ' shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and also requires the Commission ' to execute and enforce the provisions ' of said act ;
>
> " AND WHEREAS it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof,

and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practices, or methods result in violations of said act or tend to defeat its purposes;

"It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby, instituted, and that the same be set for hearing at United States court rooms in the city of New York, N. Y., on the 28th day of December, 1906, at 11 o'clock a. m., the further hearing to be continued at such times and places as may be required."

Thereupon, and from time to time thereafter, subpœnas were issued to numerous persons requiring them to appear at times and places therein named, and testify before the Commission in the matter entitled as above. While the inquiry purported to be general it soon became evident that it was directed only against Appellant and the railroad companies of which he was an officer, and as a matter of fact it was thus limited. No notice was given to any of said companies, and none to Appellant, except the subpœna commanding him to appear and testify.

The Commission took testimony in New York, Chicago, Seattle, Portland, San Francisco and Los Angeles; and the testimony thus taken (which was made an exhibit to the petition herein), occupies 1383 of the 1468 pages of the record upon these appeals.

In advance of the hearing access to the minutes and other records of the railroad companies was, upon request, freely accorded to special counsel employed by the Commission, and copies of all such records as were requested were furnished. The Secretary of the Union Pacific Railroad Company, Southern Pacific Company and Oregon Short Line Railroad Company was the first witness examined (R., p. 53), and the Comptroller of the same companies was the second (R., p. 81); and the copies of the records which had been furnished from the minutes and the statements prepared at the request of counsel for the Commission were introduced (R., pp. 1286–1434). By the testimony of these witnesses such records and statements a complete disclosure of the financial operations and condition of the companies mentioned was made at the outset. No question was raised at any stage of the proceed-

ing, on behalf of any of the corporations, respecting the power or authority of the Commission to inquire into their affairs, but the interest and action of each corporation in every transaction inquired about was promptly and fully disclosed. It was only when the inquiry proceeded beyond transactions of the corporations and extended into the affairs or transactions of individuals that objection was made.

None of the corporations concerned was incorporated under the laws of the United States, but each is a State corporation. While the Union Pacific Railroad Company owns and operates lines of railroad extending from the Missouri River at Kansas City and Omaha to Ogden, Utah, constructed under the Act of Congress, approved July 2nd, 1862, and acts amendatory thereof, it is not one of the corporations formed under or referred to in those Acts of Congress, but was incorporated solely under the laws of the State of Utah (R., p. 4), and acquired such lines of railroad at the sale thereof in 1897 upon foreclosure of the lien of the United States existing under said Acts of Congress, and of mortgages executed by the corporations which constructed the railroads. The Oregon Short Line Railroad

Company was also incorporated under the laws of the State of Utah; The Oregon Railroad & Navigation Company under the laws of the State of Oregon; and the Southern Pacific Company by special acts of the legislature of the State of Kentucky.

Near the close of the inquiry the Appellant was called as a witness and interrogated at great length (R., pp. 972–1154). All questions relating to transactions of the corporations with which he was connected were promptly answered so far as the witness could answer them. But when the questions involved here were propounded upon advice of counsel, he declined to answer. The questions asked were as follows:

1. About September 29, 1904, the Union Pacific Railroad Company purchased from Kuhn, Loeb & Co. 103,431 shares of the preferred stock of the Chicago & Alton Railway Company, at $84 per share, plus a commission of $2.50 per share to Kuhn, Loeb & Co. The stock had been previously deposited by numerous persons, whose names are unknown, with Kuhn, Loeb & Co.,

in response to a circular issued by that firm requesting the deposit of such stock, to be held for sale at a price to be approved by John A. Stewart, John J. Mitchell and E. H. Harriman (R., p. 1380). The Appellant was at the time president and chairman of the executive committee of the Union Pacific Railroad Company, and was also chairman of the executive committee of the Chicago & Alton Railway Company. The resolution of the executive committee which showed the price paid by the Union Pacific for the stock, and all the terms of the sale, was in evidence before the Commission, and at no time has there been any question or dispute as to what the stock cost the company (R., pp. 128, 1314). Mr. Kahn testified that Appellant did not act with Stewart and Mitchell in approving the price at which Kuhn, Loeb & Co. sold the stock (R., p. 1192). After these facts were fully shown the Appellant was asked, with reference to such preferred stock of the Chicago & Alton so purchased, the following questions which are numbered 1, 2 and 3 in the decree of the Circuit Court (R., p. 1445) :

"1. MR. KELLOGG: Did you own any that was so deposited?" (R., p. 987).

"2. MR. KELLOGG: I now renew the question, if you owned any of that stock which was so deposited and sold to the Union Pacific?" (R., p. 1045).

"3. MR. KELLOGG: How much, if any, of the preferred stock which was sold to the Union Pacific Company, and valued by your judgment, did you own?" (R., p. 1047).

to which questions objection was made, argued (R., pp. 8–18, 987–997) and overruled, whereupon Appellant, upon advice of counsel, declined to answer them. It did appear, however, by the testimony of Mr. Kahn that no individual had deposited more than 3,000 shares or 3 per cent. of the shares sold (R., p. 1194).

2. It appeared that in July, 1906, the Oregon Short Line Railroad Company purchased 100,000 shares of the preferred stock of The Atchison, Topeka & Santa Fe Railway Company from Kuhn, Loeb & Co. at $103.95 per share (R., p. 1375). President Ripley of the latter company had testified that

on some occasion the Appellant had told him that he and some of his friends had acquired 250,000 or 300,000 shares of the stock of that company and desired representation on the board of directors. While upon the stand Appellant testified to the purchase by the Oregon Short Line Railroad Co. of the 100,000 shares of the preferred stock of the Atchison, and the price paid therefor, and also that prior to such purchase H. C. Frick, H. H. Rogers and himself had separately acquired large interests in the stock of the Atchison (R., p. 1078). Among other questions Appellant was asked the following in reference to stock of The Atchison, Topeka & Santa Fe Railway Co., and which are numbered 4, 5 and 6 in the decree of the Circuit Court (R., p. 1445):

> "4. MR. KELLOGG: Well, had these parties acquired from $25,000,000 to $30,000,000?" (R., p. 1078).
>
> "5. MR. KELLOGG: Was that a part of the stock which had been previously acquired by you, Mr. Rogers and Mr. Frick?" (R., p. 1078).
>
> "6. MR. KELLOGG: Was it, or any part of it, at that time owned by any of you three gentlemen?" (R., p. 1079).

which questions Appellant, upon advice of counsel, declined to answer.

In this instance also the price paid for the stock by the Oregon Short Line Railroad Co., and all the terms of the sale, had been shown by the company's own records, and at no time has there been any question or dispute as to what the stock cost the company.

3. On July 19, 1906, the directors of the Union Pacific Railroad Company adopted a resolution (R., p. 118) appointing a special committee composed of directors H. C. Frick, David Willcox and P. A. Valentine to inquire into and consider the expediency of purchasing stock of the Illinois Central Railroad Company, with power to contract for its purchase, or for an option to purchase it, and report their actions or conclusions to the board. The interest of directors Harriman, Rogers and Stillman in such stock was disclosed, and they were excused from voting (R., p. 118). The special committee on July 25th, 1906, reported to a full meeting of the board recommending the purchase (for reasons set forth in the report), and stating that in order to give the board an opportunity to consider it they had secured an option for fifteen days upon

105,000 shares held by Kuhn, Loeb & Co. and upon 30,000 shares held by Appellant, 30,000 held by Rogers and 30,000 held by Stillman, at $175 per share (R., pp. 119–120). The report was considered by the board and adopted, and the purchase was authorized by resolutions duly passed—directors Harriman, Rogers and Stillman not voting (R., p. 120). The resolutions of the board and the report of the special committee and the action thereon, the price paid by the Union Pacific for the stock, and all the terms of the sale, were in evidence before the Commission, and at no time was there any question or dispute as to what the stock cost the company. Appellant was interrogated about the transaction and among other questions propounded to him were the following, which are numbered 7, 8, 9, 10 and 11 in the decree of the Circuit Court (R., pp. 1445–1446):

> "7. MR. KELLOGG: * * * Mr. Harriman, was that stock acquired by a pool of you three gentlemen?" (R., p. 1097).
>
> "8. MR. KELLOGG: Was it acquired with the view to selling it to the Union Pacific?" (R., p. 1098).

"9. MR. KELLOGG: Was that stock purchased by you or any part of it, at a much lower price than $175 a share, with the intention of turning it over to the Union Pacific?" (R., p. 1098).

"10. MR. KELLOGG: Did you have any interest in the 105,000 shares which were sold at the same time by Kuhn, Loeb & Co. to the Union Pacific?" (R., p. 1098).

"11. MR. KELLOGG: Was that acquired by a syndicate or pool for the purpose of selling it to the Union Pacific?" (R., p. 1098).

which questions Appellant, upon advice of counsel, declined to answer.

4. On the 29th day May, 1906, a committee of the board of directors of the Union Pacific Railroad Co., composed of directors Marvin Hughitt and H. C. Frick, reported to the executive committee recommending, for reasons set forth at length in the report (R., pp. 1370–1373), the purchase of stock of the St. Joseph & Grand Island Railway Company owned by the Appellant at prices named in the report. The report was adopted and the purchase authorized; and thereupon 29,000 shares of the common, 9,322

shares of the first preferred and 12,500 shares of the second preferred stock were purchased from Appellant (R., p. 1373). The Appellant was interrogated in reference to this transaction (R., p. 1151), and among other questions he was asked the following, which are numbered 12 and 13 in the decree of the Circuit Court (R., p. 1446):

> "12. MR. KELLOGG: When did you acquire those stocks?" (R., p. 1151).
>
> "13. MR. KELLOGG: What did you pay for those stocks?" (R., p. 1151).

which questions Appellant, upon advice of counsel, declined to answer.

5. It was shown that the Oregon Short Line Railroad Co. had, from time to time, purchased stock of the New York Central & Hudson River Railroad Co. aggregating 142,857 shares. The price paid by the company for the stock, and all the terms of the sale were in evidence, and there was no question or dispute as to what the stock cost the company. Nevertheless the Appellant was asked the following question with reference to such stock (R., p. 1446):

> "14. MR. KELLOGG: Were any of the directors of the Union Pacific interested directly or indirectly in the New York Central stocks at the time they were sold?" (R., p. 1152).

which question Appellant, upon advice of counsel, declined to answer.

6. The evidence showed that on August 15th, 1906, the directors of the Union Pacific Railroad Co. voted to increase the dividends upon the common stock of the company from 6 to 10 per cent. per annum; and that on the same day the directors of the Southern Pacific Co. declared a dividend at the rate of five per cent. per annum upon the common stock of the company, and that announcement of such action was not made for reasons testified to by Appellant (R., pp. 1126, 1130) until about 10 o'clock A. M. on August 17th, 1906. After testifying in reference to this action Appellant was asked by Commissioner Lane the following question:

> "Were you, directly or indirectly interested in any stocks that were bought be-

> tween the 19th of July and the 17th of August that appreciated?" (R., p. 1134).

and by counsel for the Commission the following question:

> "MR. KELLOGG: Did you or any director buy any Union and Southern Pacific stock in anticipation of that dividend?" (R., p. 1136).

which questions Appellant, upon advice of counsel, declined to answer.

The questions were asked, and the refusal to answer occurred, on the 25th and 26th days of February, 1907. The taking of testimony was closed and the inquiry ended on the 27th of February, 1907. The Report of the Commission apparently disposing of the whole proceeding was filed, or promulgated, on the 17th day of July, 1907. (*12 Interstate Com. Rep.* 277.) The Commission, nevertheless, on the 10th day of August, 1907, filed in the Circuit Court of the United States for the Southern District of New York its petition against Appellant and Otto H. Kahn, who had also refused to answer certain questions propounded in the same proceeding, praying for an

order compelling them to answer the questions (R. pp. 1–32). In due time Appellant filed his answer to the petition (R. pp. 33–45) and the said Kahn also filed his answer to the same (R. pp. 45–51). The case was heard upon the petition and answers. Judge HOUGH, for the reasons set forth in an opinion filed by him (R. pp. 1434–1443), directed the Appellant to answer all the questions which he had refused to answer, above set forth, except the two last mentioned with reference to the purchase of stock in anticipation, or before the announcement, of the dividends in August, 1906, and directing the respondent Kahn to answer all the questions which he had refused to answer (R. p. 1443).

Both Respondents in due time appealed from the decree of the Circuit Court, and the Interstate Commerce Commission appealed from so much of the decree as refused to require the Appellant Harriman to answer the two questions with reference to the purchase of stock in connection with the declaration of dividends; and the three appeals are before this Court upon one record, being docketed as No. 662, No. 663 and No. 664, October Term, 1907.

The Assignment of Errors filed by this Appellant is contained in the record at pages 1451–1453.

Specification of Errors.

Appellant Edward H. Harriman respectfully submits that the Circuit Court erred in decreeing that he should answer the questions specified in its decree, because

FIRST: The subject matter of the questions propounded is not interstate commerce, nor so related to interstate commerce as to be subject to regulation by Congress under the commerce clause of the Constitution.

SECOND: None of the grounds upon which the Commission based its right to ask the questions is tenable.

THIRD: Congress is without power under the Constitution to compel testimony in aid of its legislative functions and consequently could not delegate such power to the Commission.

FOURTH: The Fifth Amendment of the Constitution protects the citizen against such an intrusion into his affairs.

FIFTH: If Congress has power to compel testimony in aid of its legislative functions the

power is legislative in its character and may not be delegated to an administrative body under a general grant of power.

SIXTH: Congress has conferred upon the Commission authority to investigate, and in connection therewith compel the testimony of witnesses, only in aid of its duty to execute and enforce the provisions of the Act to Regulate Commerce.

BRIEF OF ARGUMENT.

The Appellant Harriman was not bound to answer the questions in dispute if they did not relate to any "particular matter under investigation," or "*to any matter which the Commission is entitled under the Constitution or laws to investigate.*"

It was said in *Interstate Commerce Commission v. Brimson* (154 U. S., 447), at page 479:

> "Suffice it in the present case to say that as the Interstate Commerce Commission, by petition in the Circuit Court of the United States, seeks, upon grounds distinctly set forth, an order to compel appellees to answer particular questions and to produce certain books, papers, etc., in their possession, it was open to each of them to contend before that court that he was protected by the Constitution from making answer to the questions propounded to him; or that he was not legally bound to produce the books, papers, etc., ordered to be produced; *or that neither the questions propounded nor the books, papers, etc., called for relate to the*

particular matter under investigation, nor to any matter which the Commission is entitled under the Constitution or laws to investigate."

It was also said in the same case (at page 476):

"As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon any one, summoned by that body to appear and testify, the duty of appearing and testifying, and upon any one required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, *if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and* if the witness is not excused, on some personal ground, from doing what the Commission requires at his hands."

Again at page 478, the Court said:

"We do not overlook these constitutional limitations which, for the protection of per-

sonal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen (*Kilbourn vs. Thompson*, 103 U. S., 168, 190). We said in *Boyd vs. United States*, 116 U. S., 616, 630 —and it cannot be too often repeated—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employees of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice FIELD *In re Pacific Railway Commission*, 32 Fed. Rep., 241, 250, 'of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value.'"

The Appellant contends that the questions propounded, which he refused to answer, did not relate to any "particular matter under investigation, nor to any matter which the Commission is entitled, under the constitution or laws, to investigate."

POINTS.

I.

The subject matter of the questions propounded is not interstate commerce nor so related to interstate commerce as to be subject to regulation by Congress under the Commerce Clause.

The questions which the Appellant declined to answer fall into four classes, viz :

(1) Was the Appellant interested in shares of stock of various railroad companies purchased by the Union Pacific or Oregon Short Line companies ?

(2) When and at what price the Appellant had acquired shares of stock subsequently sold to the companies, and whether he acquired such shares for the purpose of such sale ?

(3) Had the Appellant and other directors of the Union Pacific acquired as individuals shares of The Atchison, Topeka and Santa Fe Railway Company, a competing line.

(4) Had the Appellant or other directors of the Union Pacific and Southern Pacific

companies purchased shares of those companies in anticipation of the dividends of August, 1906.

The question is—are the matters involved in these inquiries subject to regulation by Congress under the commerce clause, bearing in mind that the Union Pacific and Oregon Short Line and all the companies concerned are State corporations? If they bear no such relation to interstate commerce as to be subject to regulation by Congress that is the end of this case, because it necessarily follows that any inquiry into them was beyond the jurisdiction of the Interstate Commerce Commission. Hence the primary question is, what constitutes such a relation?

(1) The power of Congress under the Commerce Clause is limited to matters in direct relation to interstate commerce, and does not extend to the acts, transactions and dealings of State corporations and their officers not in that relation.

The authority of a State corporation to issue stock and bonds and to use its funds in the pur-

chase of the shares of other railroad companies is derived from the State. The internal relations between the corporation and its officers, directors, stockholders and creditors are matters of State law and regulation. Whether an officer of the corporation may sell shares of other corporations to it or otherwise deal with it is a question to be determined by the laws of the State. If such a purchase by the corporation was in excess of its powers only the State or stockholders could question it. The right of visitation as to such a corporation belongs to the State and it is a right of supervision, inspection and control. As is said in *Angel & Ames on Corporations* (11th Edition), p. 19, Sec. 684:

> "To render the charters or constitutions, ordinances and by-laws, of corporations of perfect obligation, *and generally to maintain their peace and good government*, these bodies are subject to visitation; or, in other words, to the inspection and control of the tribunals recognized by the laws of the land. Civil corporations are visited by the government itself, *through the medium of the courts of justice;* but the

> internal affairs of ecclesiastical and eelemosynary corporations are, in general, inspected and controlled by a private visitor."
>
> (See also *Hale vs. Henkle*, 201 U. S., 75.)

Hence the authority which in many States is conferred on some public officer, usually the Attorney General, to institute proceedings by *mandamus* or *quo warranto* to prevent corporations from exceeding or misusing their franchises, to restrain their officers from committing waste, and generally to prevent misconduct on the part of the corporation and its officers in the exercise of its franchises. The relation of a State to a corporation of its creation is necessarily one to a very large extent of exclusive government and control; and this is particularly true as to the relations between the corporation and its officers, its charter powers, the capital it may raise through the issue of stock or bonds, the uses to which it may put it and how it may secure it.

A State corporation may engage in interstate commerce and to that extent it is subject to all valid laws of Congress enacted under the power

to regulate interstate commerce. The corporation does not derive its right to engage in interstate commerce from the National constitution. Chief Justice MARSHALL said, in *Gibbons v. Ogden*, 9 Wheat., at p. 211,

> "Pursuing this inquiry at the bar, it has been said that the Constitution does not confer the right of intercourse between State and State. That right derives its source from those laws whose authority is acknowledged by civilized men throughout the world. This is true. *The Constitution found an existing right and gave the power to Congress to regulate it.*"

Whatever valid law Congress may enact in the regulation of interstate commerce a State corporation must obey the same as anybody else. In other words, a State corporation is just as much subject to the laws of Congress regulating commerce as any other person or citizen. And no one questions, or can question, that the general government may enforce its own laws against all persons and corporations, including State corporations engaged in interstate commerce. That is

what was said in *Hale v. Henkel*, 201 U. S. (at p. 75), and no more.

Theories may be advanced in support of State laws which trench upon the power of Congress to regulate commerce or laws passed under that power, just as they may be advanced in support of national legislation under the power to regulate interstate commerce which trenches upon the powers of the State. Extreme positions do not help to the proper solution of questions concerning the just and true relations of those different powers and jurisdictions as they arise. What is necessary for their solution is their consideration along practical lines, to preserve on the one hand the paramount power and jurisdiction of Congress over interstate commerce, and on the other hand the paramount power and jurisdiction of the State over its own corporations and domestic affairs. In the recent case of *Galveston, &c., Ry. Co. v. Texas*, 210 U. S., page 225, it was said that both "regulation" and "commerce" "are practical rather than technical conceptions and naturally their limit must be fixed on practical lines." Not everything that affects commerce is a regulation of it, nor is commerce everything that has

any relation to it whatsoever. Hence State action may affect interstate commerce and not be a regulation of it, or a burden on it, and an Act of Congress may affect interstate commerce and yet be in excess of its power to regulate it.

State legislation which only affects interstate commerce incidentally or remotely does not invade the power of Congress to regulate it. This has been frequently held. In *Railroad Company vs. Maryland*, 21 Wall., 472, it is said:

> " It is often difficult to draw the line between the power of the State and the prohibitions of the Constitution. Whilst it is commonly said that the State has absolute control over the corporations of its own creation, and may impose upon them such conditions as it pleases; and like control over its own territory, highways, and bridges, and may impose such exactions for their use as it sees fit; on the other hand, it is conceded that it cannot regulate or impede interstate commerce, nor discriminate between its own citizens and those of other States prejudicially to the latter. The problem is to reconcile the two propositions; and as the latter arises from the provisions of the Constitution of the United States, and

> is, therefore, paramount, the question is practically reduced to this: What amounts to a regulation of commerce between the States, or to a discrimination against the citizens of other States? This is often difficult to determine. In view, however, of the very plenary powers which a State has always been conceded to have over its own territory, its highways, its franchises, and its corporations, we cannot regard the stipulation in question as amounting to either of these unconstitutional acts. It is not within the category of such acts. It may, incidentally, affect transportation, it is true; but so does every burden or tax imposed on corporations or persons engaged in that business."

The sphere of the paramount power of the State with respect to corporations of its creation engaged in interstate commerce is illustrated by many cases.

In *Louisville & Nashville Railroad v. Kentucky*, 161 U. S., pp. 677, 701, it was said:

> "But little need be said in answer to the final contention of the plaintiff in error, that the assumption of a right to forbid the con-

solidation of parallel and competing lines is an interference with the power of Congress over interstate commerce. The same remark may be made with respect to all police regulations of interstate railways. All such regulations interfere indirectly, more or less, with commerce between the states, in the fact that they impose a burden upon the instruments of such commerce, and add something to the cost of transportation, by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less, according to the policy of the State within which the roads are operated, but are still within the competency of the Legislature to impose. It is otherwise, however, with respect to taxes upon their franchises and receipts from interstate commerce, which are treated as a direct burden. There are certain intimations in some of our opinions, which might perhaps lead to an inference that the police power cannot be exercised over a subject confined exclusively to Congress by the Federal Constitution. *But while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce.* It was said in *Sherlock v. Alling*,

93 U. S., 99, 103, 104, and quoted with approbation in *Plumley v. Massachusetts*, 155 U. S. 461, that 'in conferring upon Congress the regulation of commerce, it was never intended to cut the State off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways may affect commerce and persons engaged in it without constituting a regulation of it, within the meaning of the constitution, * * * *and it may be said, generally, that the legislation of a State, not directed against commerce or any of its regulations, but relating to the rights, duties and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water, or engaged in commerce foreign or interstate, or in any other pursuit.*'

"It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce, so far as the legislation was within its ordinary police powers. Nearly

all the railways in the country have been constructed under State authority, and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. *In the division of authority with respect to interstate railways Congress reserves to itself the superior right to control their commerce and forbid interference therewith ; while to the States remains the power to create and to regulate the instruments of such commerce, so far as necessary to the conservation of the public interests.*

" If it be assumed that the States have no right to forbid the consolidation of competing lines, because the whole subject is within the control of Congress, *it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation—a proposition which only needs to be stated to demonstrate its unsoundness.* As we have already said, the power of one railroad corporation to purchase the stock and franchises of another must be conferred by express lan-

guage to that effect in the charter, and hence, if the charter of the L. & N. Co. had been silent upon that point, it will be conceded that it would have no power to make the proposed purchase in this case. *As the power to purchase, then, is derivable from the State, the State may accompany it with such limitations as it may choose to impose.*"

In *Ashley v. Ryan*, 153 U. S., 436, it was said:

> "The rights thus sought [the rights of railroads to consolidate] could only be acquired by the grant of the State of Ohio, and depended for their existence upon the provisions of its laws. Without that State's consent they could not have been procured."

In *Mobile, Jackson, &c., R. R. Co. v. Mississippi*, 210 U. S., 187, 202, it is said:

> "*Whether corporations shall remain separate or be permitted to consolidate is a matter of State regulation and provision.*"

In *Pennsylvania Railroad Company v. Knight*, 192 U. S., 21, the Court held that a cab

service in New York City operated by a trunk line railroad company in connection with its interstate passenger traffic was not interstate commerce, and was therefore subject to regulation and taxation by the State of New York.

The Court said at p. 28 (BREWER, J.):

> " As shown in the opinions from which we have just quoted many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate commerce, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses also engaged in interstate commerce? And where will the limit be placed? "

Conversely an Act of Congress passed under the power to regulate commerce is only valid and operative as a regulation if it directly affects interstate commerce, and to the extent that it does so. This is the clear doctrine of *United*

States v. E. C. Knight Company, 156 U. S. 1; *Hopkins v. United States*, 171 U. S. 578; *Adair v. United States*, 208 U. S. 161; and many other cases.

In the *Adair* case, section 10 of the Act of June 1st, 1898 (30 Stat., 434) prohibiting common carriers engaged in interstate commerce from, amongst other things, discriminating against any employe because of his membership in a labor organization, was held to be unconstitutional on this ground, which Mr. Justice HARLAN expressed as follows (page 178):

> "Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce among the states, must have some real or substantial relation to or connection with the commerce regulated."

In *County of Mobile v. Kimball*, 102 U. S. 691, at p. 702, it was said:

> "For the regulation of commerce as thus defined there can be only one system of rules applicable alike to the whole country; and the authority which can act for the whole country can alone adopt such a sys-

tem. Action upon it by separate states is not, therefore, permissible. Language affirming the exclusiveness of the grant of power over commerce as thus defined may not be inaccurate, *when it would be so if applied to legislation upon subjects which are merely auxiliary to commerce.*"

Hopkins v. U. S., 171 U. S., 578, 593, forcibly illustrates what are and what are not matters directly related to interstate commerce. There a live stock exchange was held not to be a combination in restraint of interstate trade though most of the cattle sold on the exchange were brought from other States for sale. The Court said that, conceding the cattle themselves, because brought from other States, were articles of interstate commerce, yet it would "not therefore follow that before their sale all persons performing services in any way connected with them are themselves engaged in that commerce" (p. 591). The opinion, after stating that cattle when transported long distances by rail require rest, food and water, and that to give them these accommodations it is necessary to take them from the cars and put them in pens or other places for safe keeping, says (PECKHAM, J.):

"Would an agreement among the landowners along the line not to lease their lands for less than a certain sum be a contract within the statute as being in restraint of interstate trade or commerce? Would it be such a contract even if the lands, or some of them, were necessary for use in furnishing the cattle with suitable accommodations? Would an agreement between the dealers in corn at some station along the line of the road not to sell it below a certain price be covered by the act, because the cattle must have corn for food? Or would an agreement among the men not to perform the service of watering the cattle for less than a certain compensation come within the restriction of the statute? Suppose the railroad company which transports the cattle itself furnishes the facilities, and that its charges for transportation are enhanced because of an agreement among the landowners along the line not to lease their lands to the company for such purposes for less than a named sum, could it be successfully contended that the agreement of the landowners among themselves would be a violation of the act as being in restraint of interstate trade or commerce? Would an agreement between

builders of cattle cars not to build them under a certain price be void because the effect might be to increase the price of transportation of cattle between the States? Would an agreement among dealers in horse blankets not to sell them for less than a certain price be open to the charge of a violation of the act because horse blankets are necessary to put on horses to be sent long journeys by rail, and by reason of the agreement the expense of sending the horses from one State to another for a market might be thereby enhanced? Would an agreement among cattle drivers not to drive the cattle after their arrival at the railroad depot at their place of destination to the cattle yard where sold, for less than a minimum sum, come within the statute? Would an agreement among themselves by locomotive engineers, firemen or trainmen, engaged in the service of an interstate railroad not to work for less than a certain named compensation be illegal because the cost of transporting interstate freight would be thereby enhanced?"

The Court said that all these questions should be answered in the negative, and continued as follows, at p. 594:

> " An agreement may in a variety of ways affect interstate commerce, *just as state legislation may*, and yet, like it, be entirely valid, because the interference produced by the agreement or by the legislation is not direct. *Sherlock v. Alling*, 93 U. S. 99–103; *United States v. E. C. Knight Company*, 156 U. S. 1, 16; *Pittsburg & Southern Coal Company v. Louisiana*, 156 U. S. 590, 597; *Transportation Company v. Parkersburg*, 107 U. S. 691; *Ficklen v. Shelby County, supra.*"

In *Field vs. Barber Asphalt Paving Co.*, 194 U. S. 618, 623, the same principle is stated as follows:

> "In this day of multiplied means of intercourse between the States there is scarcely any contract which cannot in a limited or remote degree be said to affect interstate commerce. But it is only direct interferences with the freedom of such commerce that bring the case within the exclusive domain of Federal legislation."

In *Addyston Pipe & Steel Co. v. U. S.*, 175 U. S. 211, 229, a combination of different corporations whereby they apportioned among

themselves the interstate territory in which they were to sell their products was held illegal under the Sherman Anti-Trust Act. The Court said (PECKHAM, J.):

> "The power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally and collaterally, regulate to a greater or less degree commerce among the States."

In *United States v. E. C. Knight Company*, 156 U. S. 1, 12, 13, the Court held that a combination of sugar refineries producing practically all the sugar of the country was not in violation of the Sherman Anti-Trust Act since the combination did not directly affect interstate commerce.

After quoting (p. 12) the language of Chief Justice MARSHALL in *Gibbons v. Ogden*, that

> "Commerce, undoubtedly, is traffic, but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and *is regulated by prescribing rules for carrying on that intercourse*,"

the Court added this:

> "That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police powers of the State."

In the same case the Court also said (pp. 12 and 13):

> "Doubtless the power to control the manufacture of a given thing involves in a certain sense the control of its disposition, but this is a secondary and not the primary sense; and although the exercise of that power may result in bringing the operation of commerce into play, it does not control it, and affects it only incidentally and indirectly. Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to *prescribe the rule* by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed or whenever the transaction is itself a monopoly of commerce.
>
> *It is vital that the independence of the commercial power and of the police power, and*

the delimitation between them, however, sometimes perplexing, should always be recognized and observed, for while the one furnishes the strongest bond of union, the other is essential to the preservation of the autonomy of the States as required by our dual form of government; and acknowledged evils, however grave and urgent they may appear to be, had better be borne, than the risk be run, in the effort to suppress them, of more serious consequences by resort to expedients of even doubtful constitutionality."

"It will be perceived how far-reaching the proposition is that the power of dealing with a monopoly directly may be exercised by the general government whenever interstate or international commerce may be ultimately affected. The regulation of commerce applies to the subjects of commerce and not to matters of internal police."

To condense these various statements and rulings we cannot do better than quote from a recent article by Mr. Morawetz, the author of a work of recognized authority on corporation law, as follows:

"Congress also may preserve and protect interstate commerce by prohibiting acts that

would operate as restrictions on the freedom of carrying on interstate commerce upon navigable waters, railways or other avenues of interstate commerce; but it was not the purpose of the Constitution to take away from the state and to confer upon Congress power to enact all laws relating in any way to any matter connected with interstate commerce. A law is not a regulation of interstate commerce among the several states within the meaning of the Constitution unless it regulates some subject that is connected with interstate commerce directly or proximately and not merely remotely; nor unless it regulates this subject in some particular bearing a direct relation to interstate commerce; nor unless it can fairly be said, upon considering the whole scope of the law, that it is a regulation of interstate commerce and not a regulation of some subject which Congress was not empowered to regulate. Thus to quote the limitation used by Mr. Justice HOLMES in the case of the *Northern Securities Company* 'Commerce depends upon population, but Congress could not on that ground undertake to regulate marriage and divorce.' Railroads are directly connected with interstate commerce and in fact are instruments of interstate commerce; but

that would not take away from the State and confer upon Congress the power to regulate the ownership of railroads or their contracts and their dealings except in direct relation to the transaction of interstate commerce. Partnerships or corporations engaged in interstate commerce and contracts for the sale of property to be shipped into other States are connected with interstate commerce; but Congress could not, on that ground, undertake to regulate such partnerships, corporations and contracts except in their direct relations to interstate commerce."

17 Harvard Law Review, 536, 537.

There is nothing in the *Northern Securities Case* (193 U. S., p. 197) restricting or overruling the doctrine of these cases, as appears by the following quotation from the opinion of Mr. Justice HARLAN at pp. 348–349:

> "The question of the relations of the general government with the States is again presented by the specific contention of each defendant that Congress did not intend 'to limit the power of the several States to *create* corporations, *define their purposes*, *fix the amount of their capital*, and determine *who* may *buy*, *own* and *sell* their stock.'

All that is true, generally speaking, but the contention falls far short of meeting the controlling questions in this case. To meet this contention we must repeat some things already said in this opinion. But if what we have said be sound, repetition will do no harm. So far as the *Constitution of the United States* is concerned, a State may, indeed, *create a corporation, define its powers, prescribe the amount of its stock and the mode in which it may be transferred. It may even authorize one of its corporations to engage in commerce of every kind domestic, interstate and international.* The regulation or control of purely domestic commerce of a State is, of course, with the State, and Congress has no direct power over it so long as what is done by the State does not interfere with the operations of the general government, or any legal enactment of Congress. A State, if it chooses so to do, may even submit to the existence of combinations within its limits that restrain its internal trade."

We submit therefore that only the action and operations of State corporations engaged in interstate commerce bearing directly on that commerce are subject to the regulation of Congress. Their action and operations as to *all* other

matters is exclusively subject to the regulation and visitatorial power of the State.

The power of investigation in aid of regulation exists merely as an incident to the power of regulation. *It cannot be that the limits of the incidental exceed the limits of the primary power.* It may be said that the incidental is an extension of the express or primary power, but more strictly the latter includes the former; and in any case their limits are coterminous.

(2) The subject matter of the questions propounded was not interstate commerce nor directly related to it.

(*a*) What are the actual facts of the transactions? The first was the purchase by a Utah corporation (Union Pacific Railroad Company) of certain shares of the capital stock of the Chicago & Alton Railway Company, an Illinois corporation. Was this transaction interstate commerce? What made it such? Was it because the corporation that issued the stock—the Chicago & Alton—owned and operated a railway and was a carrier engaged in interstate commerce? If so, every transaction by which one private individ-

ual sells to another a share of such stock must be interstate commerce. Or was it because the Union Pacific Railroad Company, which bought the stock, itself owned and operated lines of railroad and engaged, as a carrier upon such lines, in interstate commerce? If so, every other purchase by the Union Pacific is interstate commerce—the purchase of coal, engines, cars, storehouse supplies, rights of way; and every contract it makes for the employment of men, the borrowing of money, the receipt of freight for carriage, even though only between points in the same State, must necessarily be interstate commerce also. The purchase by it of stock of the Chicago & Alton obviously cannot be interstate commerce merely because of the quality of the thing bought. Whether the thing bought be corporate stock, bonds, cotton, wheat, coal or merchandise, cannot possibly have any bearing upon the question whether the transaction be interstate commerce.

The same is true of the purchase by another Utah corporation (the Oregon Short Line Railroad Company) of capital stock of The Atchison, Topeka & Santa Fe Railway Company, a Kansas corporation; of the purchase by the Union Pacific

Railroad Company of the capital stock of the Illinois Central Railroad Company, an Illinois corporation, and of the St. Joseph & Grand Island Railroad Company, a Missouri corporation; and of the purchase by the Oregon Short Line Railroad Company of the capital stock of the New York Central & Hudson River Railroad Company, a New York corporation.

Similarly with respect to the purchase of shares of the Santa Fe Company by the Appellant and other directors of the Union Pacific on their own account as individuals. What element is there in such a transaction to constitute it interstate commerce? And nothing could be more remote from a transaction in interstate commerce than the purchase by a director of the shares of his company in anticipation of a dividend about to be declared, or declared and not announced, which would likely raise the price of the shares.

(*b*) Assume the truth of every inference suggested by the Commission's questions—that such directors had purchased stocks for the purpose of selling them to their companies at a higher price; that directors were owners of the securities purchased from Kuhn, Loeb &

Co.; and that the directors also purchased shares in their own companies in anticipation of the increase in dividends—could such acts or transactions be prohibited by Congress? What law can Congress constitutionally enact that would regulate the relations between a State corporation and its directors? Presumably the Commission wished to show that the directors had profited by their dealings with their companies. But how can Congress be interested in such matters—matters which it is powerless to regulate or redress? Does the fiduciary relation of directors to a State corporation bring such transactions into direct relations to interstate commerce, or are not such matters entirely within the domain of the State? There is only one answer to these questions. They are matters of purely State jurisdiction; only the State can restrict or prohibit dealings between a corporation organized under its laws and its directors; and if directors can be controlled at all in the purchase of shares in their corporation in anticipation of dividends about to be declared, the control can only proceed from the State. The same is true with respect to purchases by directors as individuals of shares in other corporations. It would be difficult to conceive of any

matters having a more indirect or remote relation to interstate commerce; and their regulation by Congress under the commerce clause, thereby appropriating to itself exclusive control of matters so inherently of State cognizance in the case of corporations of its own creation, would be without the faintest shadow of authority, principle or reason to support it.

II.

None of the grounds urged on behalf of the Commission in support of the questions propounded is tenable.

These grounds are :

(1) That they have a bearing on the reasonableness of the rates of the Union Pacific.

(2) That when a State corporation engages in interstate commerce it thereby submits all its affairs to Federal control.

(3) That they concern the finances of the company and that the " financial regulation of corporations engaged in interstate com-

merce is a regulation of that commerce by regulating its most potent instrumentality" (HOUGH, J., R., p. 1440).

(4) That the Union Pacific Railroad Company as the successor in title of The Union Pacific Railway Company, a federal corporation, is peculiarly subject to regulation by Congress.

(5) That because The Atchison, Topeka and Santa Fe Railway Company is a competing road, stockholdings of Union Pacific directors in that company give them a "potential" share in its management affecting rates and distribution of traffic.

(6) That Congress may have such information for the purpose of determining whether it will require all corporations engaging in interstate commerce to obtain a federal license or reincorporate under federal law.

And in connection with the last mentioned ground it was claimed broadly that the Commission was entitled to answers to the questions as a basis for recommendations to Congress respecting future legislation—a proposition which we discuss at length under Points III. and IV. (*post*, pages 85 and 96).

(1) **The questions have no relation to the reasonableness of the rates of the Union Pacific.**

(*a*) The Act to Regulate Commerce authorizes the Commission to make or prescribe rates only on complaint. Here there was no complaint of any kind. The Commission never for itself at any time claimed that the object of the proceeding was to fix rates, or had any reference to the making of rates. Indeed, the order or resolution adopted by the Commission, November 15th, 1906, as the sole basis for the proceeding not only fails to show any purpose to prescribe rates, but quite plainly negatives any such object.

The record shows that the investigation was not concerned with the reasonableness of any specific rate or rates or schedule of rates in force on the Union Pacific. The principal inquiry was into the results of the acquisition by the Union Pacific of about forty-five per cent of the capital stock of the Southern Pacific Company. Testimony was given in an effort to show that this acquisition had affected competition between various points. In support of this claim tables were intro-

duced showing the average of the rates of freight per ton per mile on the Union Pacific system as compared with the averages of other railway systems reaching the Pacific Coast. But the intrinsic reasonableness of any particular rate or rates, or schedule of rates, was not a subject of inquiry, and the elements which enter into it were not under consideration, and no evidence was given with respect to them. To say that the questions propounded bore on the reasonableness of rates on the Union Pacific system is to say that they bore on a subject which was not at all under investigation.

(*b*) The price paid by the purchasing companies for the shares of stock in question, and the amount of money thus expended, had been shown and there was no question of any kind about it. Whether Appellant individually owned any of the stock thus bought, or what profit he had made by the sale of it, could not possibly be relevant to, or have any bearing upon, any question of rates to be prescribed for the transportation of interstate commerce upon the lines of railroads owned by the companies buying the stock. If they had paid the same price to a stranger as to Appellant their ability

to endure a reduction, or their right to enjoy an increase, of transportation rates would in no wise have been affected. What property acquired by a carrier corporation cost its vendor can never be a material inquiry with respect to rates. Because rolling stock, steel rails and supplies are property used in the business of transportation would that justify an inquiry into their cost to the manufacturer to show his profits, and that on the basis of his profits their cost to the company was excessive? If either were excessive the value of the property which may be an element in fixing rates is not thereby in any way affected.

(*c*) Would the fact that a loss had been sustained on these stocks justify an increase of the rates of the Union Pacific for transporting freight and passengers over its railroads, or be material as evidence in a suit against an order of the Interstate Commerce Commission directing a reduction of its rates for transporting interstate freight and passengers? Even suppose it should become bankrupt, would not receivers engaged in operating its railroad be entitled to charge the same rates which the company itself might charge if solvent and pros-

perous? Is not *the value of the property employed in transportation*—the property affected with the public use—and not the way in which the company has spent its money, the material inquiry in determining the reasonableness of transportation rates so far as that element in the problem is concerned? In arriving at the value of that property many circumstances are to be considered. Among them are the amount and value of the stock and bonds of the company. Even as to them the purposes for which they were issued may be considered, and if it appears that the corporation did not receive the proceeds or only a portion of them the weight and value of the evidence afforded by the amount of its securities is impaired accordingly. With a company like the Union Pacific which is authorized to acquire the stocks of other transportation companies and to engage in other businesses not part of, though connected with, the railroad business, and which has such a large amount of capital invested in other transportation companies, street railroads, etc., the amount and market value of the stock and bonds it has outstanding are circumstances necessarily of no value as evidence in any inquiry as to the

value of its railroads and their appurtenances employed in transportation.

(*d*) It is the value of the railroads and other property employed by the corporations of which Appellant is a director in the transportation of persons and property which bears upon the reasonableness of its transportation rates, and not its profits or losses in other lines of business, or in the purchase or sale of stock or bonds, or the amount invested in the securities of other corporations.

Smyth v. Ames, 169 U. S. 466.
San Diego Land Co. v. National City, 174 U. S. 739, 757.

In Smyth v. Ames, *supra*, this Court held that a local rate prescribed by a State was none the less confiscatory because the carrier earned sufficient from its interstate traffic to yield a fair return on its entire property. If a State may not consider the profits or losses from interstate business in fixing a local rate the converse of the proposition must necessarily be true, that Congress cannot in fixing an interstate rate take into consideration the profits or losses resulting from a carrier's local business.

If local rates cannot be considered in fixing interstate rates, *a fortiori*, if a State corporation is engaged in domestic or intrastate commerce distinct from that of a carrier, or owns property unconnected with its transportation business, those are matters having no bearing on the rates of its interstate traffic.

It was settled by the same case that *it is the fair value of the property being used by the carrier for the convenience of the public* which may be taken into account in determining the reasonableness of its rates. At page 546 it was said:

> " We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction *must be the fair value of the property being used by it for the convenience of the public.* And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount in market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum re-

quired to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

In *San Diego Land Company vs. National City*, 174 U. S. pp. 739, 757, it was said:

> " What the company is entitled to demand, in order that it may have just compensation, *is a fair return upon the reasonable value of the property at the time it is being used for the public.*"

(*e*) Upon a complaint filed before the Interstate Commerce Commission seeking a reduction of rates for the transportation of passengers or property, or in a suit by the Union Pacific Railroad Company challenging an order of the Commission reducing its transportation rates, the fact that it might have in its treasury millions of dollars in cash, or the fact that it had made a profit from the sale of the stocks it had received in exchange for the stock of the Northern Pacific Railway Company formerly owned by it, or the fact that it owned shares of other corporations, or the fact that it had made a very large profit in the purchase of such shares,

or had suffered a large loss from their sale, obviously could not be material considerations. Whether it was poor or rich as a result of these transactions could not be material in any such inquiry.

(2) A State corporation does not by engaging in interstate commerce subject all its affairs to the regulation and control of Congress.

It seems to be claimed that because the Union Pacific Railroad Company and the Oregon Short Line Railroad Company own railroads and engage as carriers of interstate commerce upon such railroads the entire business and affairs of such companies are open to regulation and inquiry by Congress, practically without any restriction.

This contention assumes that a corporation owning and operating railroads is, and of necessity must be, exclusively a *railroad corporation;* and that such a corporation can engage in no enterprise, carry on no business, and have no interests, except as a common carrier. The possibility of a corporation with power to own other properties and engage in other busi-

nesses, and at the same time own and operate an interstate railroad, is altogether excluded. It is quite true that in many and perhaps most States the creation of corporations for the exclusive purpose of constructing, owning and operating railroads is provided for, and their powers are conferred by statutes separate and distinct from statutes providing for and regulating other corporations. But this is merely a matter of legislative policy which each State determines for itself. Whether corporations with power to construct, own and operate railroads shall be restricted narrowly to that purpose, or be authorized to engage in other lines of business, and whether the operation of railroads, or coal mines, or steamships, shall be their principal, or minor and incidental, purpose, are matters to be determined wholly by the States that create such corporations. Some of the most important lines of interstate railroads in the country to-day were constructed, or are owned, by corporations originally created as canal, mining or banking corporations, and few of the corporations which now own and operate the most important interstate

railroads are restricted in their powers to the particular railroad they own.

The State of Utah has seen proper to confer upon corporations it creates to own and operate railroads many other important powers useful to the public. It has authorized them to operate steamships, construct or purchase interurban electric lines, and to purchase and hold stocks, bonds and other securities of various kinds of transportation corporations. It was entirely within its power as a State to do so. If a corporation of that State avails itself of this authority are its activities in the exercise of such powers subject to regulation by Congress under the commerce clause, regardless of whether they are concerned with interstate commerce or not? Some of the States have authorized corporations, owning and operating interstate railroads to engage in coal mining. May Congress regulate the operation of such mines because the funds of an interstate carrier has been invested in them, when no such power would exist if owned by other private corporations or by individuals? The power is not concurrent. True, in the absence of regulation by Congress the States may with certain limitations pass laws directly affect-

ing interstate commerce. But when Congress assumes to regulate its power is exclusive. If Congress may regulate all the investments, transactions and activities of State corporations simply because they are to some extent engaged in interstate transportation what becomes of the powers of the States over their own corporations?

But the proposition that whoever engages in interstate commerce thereby subjects all his or its affairs to the scrutiny and regulation of Congress was finally and conclusively condemned in the *Employers' Liability Cases* (207 U. S., 463). The contention of the Attorney-General was much the same in that case as that advanced here. The argument as summed up in the Government's brief and quoted by the Court is as follows (p. 499):

> "'It is the *carrier* and not its employes that the act seeks to regulate, and the carrier is subject to such regulations because it is engaged in interstate commerce.
>
> * * * * *
>
> 'By engaging in interstate commerce the carrier chooses to subject itself and its business to the control of Congress, and

cannot be heard to complain of such regulations.

'* * * It is submitted that Congress can make a common carrier engaged in interstate commerce liable to *any one* for its negligence who is affected by it; and if it can do that, necessarily it can make such carrier liable to all of its employes'"

This view found no favor with the Court, Mr. Justice WHITE saying (p. 502):

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely state concern. *It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the*

right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

It is true that the *Employers' Liability Cases* were decided by a divided Court; but with reference to the interpretation of the Act, and whether it was to be held applicable only to those employes who were actually engaged in interstate commerce or to all the employes of the carrier whether engaged in interstate commerce or not, Mr. Justice MOODY, in his dissenting opinion, said at p. 509:

"In answering this question it must not be forgotten that, if the latter interpretation

be adopted, in the opinion of the whole Court the Act is beyond the constitutional power of Congress."

The only logical and safe rule is the rule of the Constitution which limits the power of Congress to the *regulation* of *commerce* among the States—that is to say, the regulation of that commerce itself, and the regulation of the agencies engaged in such commerce only in their *direct relations to such commerce*, and not in all their other relations and internal affairs.

(3) Capital is not an "instrumentality" of interstate commerce in the sense that Congress may regulate the financial affairs of a State corporation and inquire into a possible devastavit of its funds.

The proposition that a State corporation by engaging in interstate commerce subjects itself to the control of Congress was adopted by the Circuit Court in its most unqualified form, as it held that thereby Congress acquires the power to regulate all the financial affairs of such corporation, including the right to inquire into a possible devastavit of its funds impairing its efficiency as common carrier.

We quote from the opinion (R. 1440):

> "No person or company can engage in any commercial occupation without capital, and the management and investment thereof is as much a commercial instrumentality as is a locomotive or an engineer; and that the power of Congress extends over all instrumentalities of commerce is no longer doubtful [citing cases]. The method of exercising such power is always open to discussion under the infinitely varied circumstances of commercial activity; but to me it seems clear that financial regulation of corporations engaged in interstate commerce is a regulation of that commerce by regulating its most potent instrumentality."

It is to be observed that if this be accepted as a correct exposition of the commerce clause the finances of every person, firm and corporation engaged to any extent in interstate commerce are subject to the regulation of Congress. In the light of the cases to which we have already referred such a doctrine as not now arguable.

We must assume that the argument in support of the questions as bearing on a possible devastavit of the funds or property of the Union

Pacific is seriously advanced, notwithstanding it appeared that these purchases of stock had materially increased the assets of the company, and that the policy pursued by its officers and directors in improving and developing its railway system compelled the Commission to say in the report which it made as a result of the investigation:

> "It has been, however, no part of the Harriman policy to permit the properties which were brought under the Union Pacific control to degenerate and decline; as railroads they are better properties to-day, with lower grades, straighter tracks, and more ample equipment than they were when they came under that control. Large sums have been generously expended in the carrying on of engineering works and betterments which make for the improvement of the service and the permanent value of the property."

But if there had been such a devastavit its relation to interstate commerce is obviously indirect and remote.

It is provided by Section 1 of the Interstate Commerce Act that it shall be the duty of

every carrier "to provide and furnish transportation upon reasonable request therefor". There was no claim or evidence of any non-performance of this duty; there was no inquiry into that subject whatsoever. But it is insisted that it is necessary in order to secure the performance of this duty that the power to regulate the funds and assets of corporations engaged in interstate commerce should rest in Congress and in particular the power to regulate the use of funds raised in whole or in part by a mortgage on a railroad partly used in interstate commerce, though so used, raised and secured with due authority of the state creating the corporation. To this we answer that if non-performance were claimed or shown in a proper proceeding the function of the Interstate Commerce Commission at most would be to make an order directing performance in the particulars specified, and in case of disobedience to cause proceedings to be instituted in enforcement of its order. That would exhaust the functions and powers of the National Government, excepting (1) to buy the properties and appoint its own managers; or (2) to incorporate companies under its

own laws to acquire and operate the properties under its control and direction, if it could find incorporators willing and able to undertake the business on such conditions.

If there has been waste of the funds of the company through dealings with its directors the National Government is without power to compel restitution or apply any other remedy, and an inquiry into such a waste by Congress or the Commission would be a fruitless and vain proceeding. Relief from such a state of things is judicial at the instance of stockholders or through the visitatorial power of the State in a case of a State corporation.

Though Congress may prescribe that an interstate carrier, so long as it engages in business as such, shall maintain a reasonable service, it is not thereby invested with the supervision or control of the finances of a State corporation owning the railroad. Could Congress forbid a corporation to declare a dividend, or in any manner regulate this subject, on the theory that the funds paid out in dividends were necessary for the maintenance of an interstate railroad ?

If one State corporation owns an interstate

railroad and sells it to another, under the authority of the State, Congress cannot interfere, unless the transaction is merely a device to suppress competition. On the theory advanced Congress could interfere if one State corporation owning an interstate road sold it to another less financially responsible. But the cases that have been cited show that the regulation of such matters belong to the States—not to Congress.

That purchases of property by a State corporation from its directors even if illegal or unlawful directly affect interstate commerce if the corporation happens to be engaged in interstate as well as domestic commerce, and are therefore subject to National cognizance to the exclusion of the State, is not a sound proposition. Moreover, that such matters are judicial in their nature and arise between the corporation and its stockholders on the one hand and the delinquent officials on the other to the exclusion of the Government is clearly shown by the case of *United States v. Union Pacific Railroad Company* 98 U. S. 569, which involved the following facts :

The Act of Congress making certain appro-

priations, approved March 3, 1873 (17 Stat. 509), contains the following provision :

> "The Attorney-General shall cause a suit in equity to be instituted, in the name of the United States against the Union Pacific Railroad Company, and against all persons who may, in their own names or through any agents, have subscribed for or receive capital stock in said road, which stock has not been paid for in full in money, or who may have received, as dividends or otherwise, portions of the capital stock of said road, or the proceeds or avails thereof, or other property of said road, unlawfully and contrary to equity, or who may have received as profits or proceeds of contracts for construction, or equipment of said road, or other contracts therewith, moneys or other property which ought, in equity, to belong to said railroad corporation, or who may, under pretence of having complied with the acts to which this is an addition, have wrongfully and unlawfully received from the United States bonds, moneys, or lands which ought, in equity, to be accounted for and paid to said railroad company or to the United States, and to compel payment of said stock, and the collection and payment

of such moneys, and the restoration of such property, or its value, either to said railroad corporation or to the United States, whichever shall in equity be held entitled thereto," etc.

The Attorney-General commenced suit accordingly against the Union Pacific Railroad Company, the Wyoming Coal Company, the Credit Mobilier Company, and a large number of individuals, including several directors of the Railroad Company. After disposing of certain preliminary questions, this Court stated the case made by the bill, as follows (98 U. S., 609):

"The substance of the charge is, that the *board of directors* of the railroad company made contracts for building the road, and for running the Pullman cars on it, and for mining its coal lands and purchasing the coal so mined, which were a *fraud upon the company;* that these contracts allowed exorbitant prices for work done and material furnished; that otherwise they were very advantageous to the other contracting parties and *injuries to the company;* that *in all of them* the *directors*, or a controlling majority of them, were *interested adversely* to the company; that in fact they were, in the

name of the company, making contracts with themselves as the other party. In short, it may be taken for granted that if these allegations are true, as they must be held to be on demurrer, *frauds more unmitigated than those set forth in this bill were never perpetrated on a helpless corporation by its managing directors.*"

and then the opinion (by Mr. Justice MILLER) proceeded as follows (p. 610):

"The first inquiry arising on these facts is, What relief can be given, and who is entitled to it?"

"The obvious reply to the first branch of the question is, that the parties who made this contract and received the pecuniary benefit of it can at law be made responsible in damages, or held in equity to compensation for the loss suffered. There would be no difficulty in adjudging in a proper suit that such contracts were void, and then ordering an accounting, on the basis of a fair compensation for what had been done in the way of construction, building, opening mines, furnishing coal, &c., and what had been received for such work and materials. The difficulty is, to whom shall this money

be paid when recovered, and can it be recovered in this suit? If the railroad company, falling into purer hands, had brought such a suit, the bill might be sustained."

"But the company is not the complainant here. It seeks no relief for these wrongs. * * * Can it be compelled in this mode to prosecute such a suit? So long as it exists in the possession and unrestrained exercise of all its corporate powers, its board of directors, unless under judicial prohibition or compulsion, is vested with the sole authority to decide whether it will assert its right of action for a supposed injury, or will condone it."

"The circumstances of the alleged fraud, the probability of success in the suit, the extent of the injury, the amount which may be recovered, the expense of the proceeding, and the danger of injury to the company itself, are all matters which address themselves to them as grounds for the exercise of the discretion of the directors. They have decided to have nothing to do with it. How, then, can a decree be rendered in their favor, or relief be given them which is not asked? With what hope of advantage can the court enter upon the inquiry touching the frauds alleged, and the amount of the injury sus-

tained, when the party aggrieved refuses to proceed."

"On the other hand, if the court does proceed, shall the decrees, if rendered against the defendants, be in favor of the company? If so, what good results would follow? Since the company resists any decree in its favor now, it would probably enter satisfaction or releases of the decrees as fast as they are rendered. If it did not do this, how would the moneys, if collected and paid into its treasury, be applied? It is alleged to be insolvent and in debt, but except the claim of the government, which will be presently considered, there is no allegation showing to what use the court can decree the application of these moneys. They must, therefore, go into the treasury of the company, to become subject to the control of its directors, who are now resisting this action. Not only this, but it is obvious that the amount recovered would come mainly out of the same men who now as directors or as stockholders would control the fund, and would probably order its redistribution to the parties who paid it, or give receipts or releases in advance." * * *

"We are of opinion, therefore, that no decree can be rendered in favor of the rail-

road company on account of these transactions, or for the value of the stock not paid for by those who received it. Although issuing it without payment may have been in violation of law, and an implied contract may exist on which the company could compel payment, the United States cannot in this suit recover it, and the company refuses to assert its right thereto." * * *

"We must now inquire whether the bill makes a case in which the United States, the complainant, is entitled under the terms of the statute to relief."

"The United States is not, and never has been, a stockholder in this company. It is a creditor."

"The government sustains two distinct relations to the railroad company, and, in considering her rights under this statute, it is important to keep them separate. The company is organized under, and owes its corporate existence to, an act of Congress. The government has all the rights which belong to any other government as a sovereign and legislative power over this creation of that power. That this power should not be too much crippled by the doctrine that a charter is a contract, the eighteenth section declares that Congress may at any time, hav-

ing due regard for the rights of the companies named therein, add to, alter, amend, or repeal the act. The power of Congress, therefore, in its sovereign and legislative capacity over this corporation is very great."

"The government, however, holds another very important relation, namely, that of contract. It has loaned to the company $27,000,000, and granted to it on certain terms many million acres of land. The government is paying all the time the semi-annual interest on its own bonds, loaned to the company. The company is bound by contract to pay them, principal and interest, at their maturity. The government by the contract has a lien on the road and its appurtenances to secure this payment. The company is also bound by the contract to perform for the government all the transportation and telegraphing that may be required of it, and to keep its road and line always in order and readiness to render these services. It may have other contract obligations to the government not here mentioned, but these are all that are important to our inquiry. The government has delivered its bonds to the company. The company has built the road, owns it, and

operates it. Does the bill allege anything which, growing out of this contract, entitles the United States to relief ? "

And the court held that neither as sovereign nor as creditor could the Government maintain such suit.

The Union Pacific Railroad Company dealt with in that case was the corporation created by the Act of Congress, approved July 1, 1862 (12 Stat. 489), whereas the present Union Pacific Railroad Company was incorporated under the laws of the State of Utah and owes its corporate existence only to that State. If the government of the United States is without power, as held in the case cited, to maintain an action, or otherwise redress the wrongs of a corporation created by it, arising from alleged malfeasance of the directors of such corporation, it would seem clearer still that it has no concern with, or right to inquire into, or regulate the dealings between a State corporation and its directors even if they result in a devastavit of its fnnds.

(4) There is no peculiar or special right to regulate the present Union Pacific Railroad Co. owing to the Federal grant of cor-

porate powers and franchises to its predecessor in title.

The original Union Pacific Railroad Company organized by Congress no longer exists. Federal incorporation and Federal regulation did not, in its case, avert demoralization and bankruptcy. The mortgages and liens on its property were foreclosed and its property and franchises sold at judicial sale (R. 34-36). The purchasers organized under the laws of the State of Utah the present Union Pacific Railroad Company, which owns and operates the property. It is an entirely separate and distinct corporation from the original Union Pacific Railroad Company, owning the property which it acquired by purchase and conveyance, subject, of course, to any conditions *running with the property.*

In *Union Pacific Railroad Company v. Mason City, &c., R. Co.*, 199 U. S., 160, it was simply held that the present Union Pacific Railroad Company must allow another railroad company to use a certain bridge over a navigable stream, for the reason that it was bound by the terms and conditions of the original franchise to con-

struct and maintain the bridge granted to its predecessor. There is not a word in the case to suggest that Congress possesses any further authority over the present Union Pacific Railroad Company than over any other State corporation engaged in interstate commerce.

All this is evident, and there is nothing to be gained by injecting into this case the fiction of a legal identity between the present company and the old, nor by the insistent quotation of the provision of the Act of Congress of March 3, 1873, (17 Stat. 509) relating to the Union Pacific Railway Company," that no director or officer of said road shall hereafter be interested, directly or indirectly, in any contract therewith, except for his lawful compensation as such officer " as it is not, and cannot be, claimed that the provision is applicable to the present company.

(5) Ownership of stock of The Atchison, Topeka & Santa Fe Railway Company by Union Pacific directors.

It appeared that Mr. Frick, Mr. Rogers and the Appellant had acquired a large block of shares of the Santa Fe Company prior to the

year 1906, and the Appellant was asked whether they had acquired from $25,000,000. to $30,000,000. of this stock. He answered, "I don't know that "you can inquire into that." The question was not pressed, and there was no definite refusal to answer. Had there been a definite refusal it would have been justified. The total voting capital of that company is $233,486,000., so no question of control could possibly be involved. (R., p. 1354). Moreover, the persons named were as free to buy the shares of the Santa Fe Company as any one else, though they were directors of the Union Pacific Railroad Company. (*Northern Securities Case*, 193 U. S. pp. 361–362; *Pearsall v. Great Northern Railway*, 161 U. S. 671, 672; *Louisville & Nashville Railroad v. Kentucky*, 161 U. S. p. 693; Justice FIELD *re Pacific Railway Commission*, 32 Fed Rep. 241 253). Their individual holdings were entirely separate from the $10,000,000 of the shares of the company acquired by the Union Pacific, and they were not different in their relations to interstate commerce from the holdings of any other individuals.

Something has been said about the relations of this question to the pooling of freights and

division of earnings prohibited by Section 5 of the Interstate Commerce Act. To that it is a sufficient answer that nothing of the kind appeared in the case, and if the contrary were true there can be no connection between that fact and the *legal* ownership of $25,000,000 or $30,000,000 of the shares of the Santa Fe Company by the individuals named out of a total of $233,486,000.

(6) The possibility that the Commission may consider whether Congress should require all corporations engaging in interstate commerce to reincorporate or take out a license under federal law does not warrant an inquiry into transactions of individuals or the relations between State corporations and their directors.

One of the grounds urged with apparent seriousness in support of the right of the Commission to propound the questions was that current political discussion involved the question whether Congress should enact a general corporation law or a law requiring all corporations and persons engaging in interstate commerce to incorporate, or take out a license, under federal law; and that as the information might assist the Commission in deter-

mining whether it would recommend such legislation it was entitled to compel persons, who were directors of State corporations, to testify without limit respecting their transactions with such corporations, and whether they had made any profits out of them.

This argument means that although Congress has not by resolution or otherwise directed its committees having these propositions under consideration or the Commission to make any inquiry into the expediency of such legislation, yet the Interstate Commerce Commission may in anticipation of its possible consideration by Congress inquire into the experiences of the States with their corporations, the workings of State corporations, the use of their funds, the relations of directors to State corporations, and the past transactions between these State corporations and their directors, and what, if any, profits the directors made out of them.

To state the proposition would seem to be to answer it. It is embraced, however, in the general proposition, urged on behalf of the Commission and sustained by the court below, that Congress may compel testimony of individual affairs and transactions beyond its

jurisdiction, in order to obtain information that may be useful in enacting legislation, and as we are discussing that proposition at length under Point III. (*post*, p. 85) and Point IV. (*post*, p. 96) we postpone further discussion of it here.

III.

Congress has not the power under the constitution to compel testimony in aid of its legislative functions, and consequently could not delegate such power to the Commission.

(1) It is very strenuously urged on behalf of the Commission that whether the particular transactions inquired about bore any relation to any existing regulation of interstate commerce or not, the Commission was entitled to the information because of the duty imposed upon it by the Act to Regulate Commerce to recommend such additional legislation relative to interstate commerce as the Commission may deem necessary; and it was argued that the Act to Regulate Commerce makes the Commission

"virtually a Congressional Committee of inquiry" vested with the "inquisitorial powers of Congress" to inquire into any subject pertaining to interstate commerce with respect to which Congress has power to legislate. Judge HOUGH even held that the powers of legislation and investigation are not coterminus and that the power of investigation is the larger (R. pp. 1441–1442). It was further argued that Congress may authorize, by appropriate legislation, the incorporation of interstate carriers, and in connection therewith regulate the dealings between officers of the corporation and the corporation itself, the right of such corporations to have common directors and the right of the directors of any one of said corporations to own stock in another; that it may prohibit corporations from engaging in interstate commerce or transportation without a license from the National government embodying similar regulations; that it may restrict by legislation the dealings of directors of carrier corporations engaged in interstate commerce with the corporations even when organized under State laws; that it may by legislation regulate the use of the funds of such carrier corporations organized under State laws to assure their conservation

and their proper application to the interstate business of such carriers; and that the testimony sought to be elicited from the Appellant would be useful and material as a basis for recommendations to Congress in aid of future legislation as to these subjects or some of them. This really is the main contention on behalf of the Commission in justification of the questions propounded. How far-reaching and inquisitorial the power is which is thus asserted to exist in the Commission, and how profoundly it affects the individual citizen, is apparent at a glance.

It is obvious that if the power exists there is no practicable limit to such inquiries. Congress or the Commission could then require miners of coal to disclose the cost of coal sold railroad companies; require manufacturers of rolling stock and of all kinds of materials and supplies used in constructing, maintaining and operating railroads to disclose their profits to ascertain whether interstate carriers were paying more or less than they should pay for fuel and materials; and could inquire into the business of all shippers of interstate commerce to ascertain whether in view of their profits, they could pay higher, or should be allowed

lower, rates for transportation. The taxation of incomes and inheritances, not so much to raise revenue for governmental purposes as to secure a more equal distribution of wealth, has been suggested. Has Congress itself, or through a committee, the power under the guise of obtaining information to aid it in framing a law taxing incomes and inheritances, to coerce testimony as to the wealth of particular individuals and how they obtained it. Or, if about to engage in a revision of the tariff would it have the power to coerce testimony on an investigation in aid of that purpose with respect to the contracts, profits, capitalization or financial condition of manufacturers? Or, if it had power to enact a uniform divorce law, could it coerce the testimony of individuals as to their divorces, why they had obtained them and the circumstances under which they were obtained? No one will seriously contend for such a power, and yet it would exist if it be a sound proposition that the power to compel testimony extends to every subject concerning which there is the power to legislate and to every matter bearing on any such subject.

It will appear later from an examination of the

Act to Regulate Commerce that Congress has not constituted the Interstate Commerce Commission a "Congressional Committee of Inquiry" or vested it with the "Inquisitorial Powers of Congress," to inquire into any commercial subject with respect to which Congress may legislate, but has created it only as an administrative board and has conferred upon it merely power to supervise, under the rules of the statute, the *business* of railroad companies as *carriers* of interstate commerce subject to the regulations of the Act and to enforce those regulations. But we think it entirely clear that, under the Constitution, neither Congress itself acting directly or through a committee composed of its members, or through the Interstate Commerce Commission as an administrative board or a legislative agency, is empowered to compel testimony in aid of possible future legislation and certainly not testimony concerning the past transactions of an individual.

(2) This Court has never determined that Congress has the power to coerce testimony *at all* in aid merely of its legislative function. It declined to consider it in *Kilbourn vs. Thompson*, 103 U. S., 168, because it was able to decide

the case without passing upon it. It did, however, say (p. 189):

> "Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation."

It is true the power under consideration was the power of the House of Representatives to punish for a contempt of its authority; but the authority to compel testimony is the fundamental matter to which the power to punish in the case of a contempt of that authority is an incident.

The power to coerce testimony in aid of the legislative function is not conferred upon Congress, or either of its Houses, by the Constitution in express terms. If it exists at all, or to any extent, it exists by implication as a legitimate and necessary means to enable Congress to properly perform its duty of legislation.

Whether it exists has been a subject of much debate and difference of opinion in Congress. We know of only one instance in which

the question was squarely presented and that is the case of *Thaddeus Hyatt* in the years 1859 and 1860. The full report of it is found in *Senate Miscellaneous Documents*, 2nd Sess., 53rd Cong., 1893, 1894, vol. 12, Digest of Decisions and Precedents. (See pages 277 *et seq.*) On the hearing accorded to Hyatt as to whether he should be punished for refusing to answer questions he submitted an elaborate brief prepared by S. E. Sewall and John A. Andrew of Boston, in support of the proposition that Congress was not empowered to coerce testimony on such an investigation. This brief is found on pages 279 to 287 of the volume to which we have just referred. Hyatt was committed for contempt, and after about two months was discharged. On the motion that he be discharged, Senator Sumner of Massachusetts made a strong speech adverse to the power which had been exercised. From that speech we extract a few sentences. (Volume above cited, pages 293, 294.)

> "It [the Senate] has judicial powers in three cases under the Constitution: (1) To try impeachments; (2) to judge the elections, returns, and qualifications

of its members; (3) to punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. In the execution of these powers the Senate has the attributes of a court; and, according to established precedents, it may summon witnesses and compel their testimony, although it may well be doubted if a law be not necessary, even to the execution of this power. Besides these three cases expressly named in the constitution, there are two others, where it has already undertaken to exercise *judicial powers*, not by virtue of express words, but in *self-defence*. (1) With regard to the conduct of its servants, as of its printer; (2) when its privileges have been violated, as in the case of William Duane, by a libel, or in the case of Nugent, by stealing and divulging a treaty while still under the seal of secrecy. It will be observed that these two classes of cases are not sustained by the text of the Constitution; but if sustained at all, it must be by that principle of universal jurisprudence, and also of natural law, which gives to everybody, whether natural or artificial, the right to protect its own existence; in other words, the great right of self-defence.

And I submit that no principle less solid could sustain this exercise of power. *It is not enough to say that such a power would be convenient, highly convenient, or important. It must be absolutely essential to self-preservation of the body;* and even then, in the absence of any law, it may be open to the gravest doubts. 'Doubtless,' says Blackstone, 'all arbitrary measures, well executed are *the most convenient.*' (*Commentaries*, vol. 4, page 350). But *mere convenience* is not a proper reason, under a free government, for the assumption of powers not granted, and this is especially the case where the powers are arbitrary and despotic, and touch the liberty of the citizen. * * * I know it is said that this power is necessary *in aid of legislation.* I deny the necessity. *Convenient*, at times it may be; *but necessary, never.* We do not drag the members of the Cabinet or the President to testify before a committee *in aid of legislation;* but I say, without hesitation, they can claim no immunity which does not belong equally to the humblest citizen. Mr. Hyatt and Mr. Sa[illegible]n have rights as ample as if they were office-holders. Such a power as this—which, without the sanction of law, and merely at

> the will of a partisan majority, may be employed to ransack the most distant States, and to drag citizens before the Senate all the way from Wisconsin or from South Carolina—may be convenient, and, to certain persons, may seem to be necessary. * * * Let me be understood as admitting the power of the Senate where it is essential to its own protection or the protection of its privileges, but not where it is required *merely in aid of legislation.* The difference is worldwide between what is required for *protection* and what is required merely for *aid;* and here I part company with Senators with whom I am proud on other matters to act."

Almost the whole argument on the subject is contained in these pregnant sentences.

(3) Such a radical power is not necessary. There are many sources from which Congress may obtain information. It may undoubtedly appoint a Commission to obtain information upon any subject concerning which it may legislate, but this does not mean that it may *compel* the attendance of witnesses and *extort unwilling* testimony.

Both Houses of Congress are composed of

men of large experience, of varied training, and from all parts of the nation. Reports may be required from the various executive and administrative departments and bureaus, and all the machinery of the Government used for its instruction. Almost every subject of proposed legislation has its advocates and its opponents. Both sides are not only willing, but anxious, to appear and lay before Congressional Committees the facts which support their respective contentions. It has from many different sources the most ample means of obtaining all the information it needs without the aid of compulsory testimony.

Even if the balance of convenience were alone to be the controlling factor in the decision of this question, instead of necessity, who can doubt that the balance would be against the compulsion of testimony? On the one side, Congress possesses ample facilities for acquiring information, and qualified witnesses are always willing and anxious to inform it upon subjects of prospective legislation. On the other side, is the restraint of the liberty of the citizen, his enforced attendance before Congress, and the compulsion of his testimony, without a judicial

proceeding to safeguard his rights, and *without a definite issue to limit the intrusion.* No power could be susceptible of more arbitrary and capricious use. In times of political excitement there is no telling to what limits it might be pushed. And yet it is argued that it exists by implication.

IV.

The Fifth Amendment of the Constitution protects the citizen against such an intrusion into his affairs.

But if this power to compel testimony in aid of future legislation exists at all it does not extend to the invasion of the citizen's right of privacy by the compulsory disclosure of his individual affairs and transactions.

(1) The Fifth Amendment of the Constitution is a limitation upon the powers of Congress as well as upon all other departments of the Government. Congress can no more deprive a person of liberty without due process of law than the executive department. The power granted

Congress originally by the Constitution to regulate commerce with foreign nations and among the several states is limited by the amendments subsequently adopted.

> "Both the Fifth and Tenth Amendments qualify, in so far as they are applicable, all the provisions of the Constitution."
>
> *McCray v. United States*, 195 U. S., 27, 61.

> "Like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the Fifth Amendment," etc.
>
> *Monongahela Navigation Co. v. United States*, 148 U. S., 312. 336.

In regulating such commerce Congress may not subject any person to unreasonable searches and seizures forbidden by the Fourth Amendment, or deprive any person of life, liberty or property without due process of law in violation of the Fifth Amendment. Whatever regulation of commerce Congress undertakes must be conducted within the limits set by the Constitution.

An inquiry into the private affairs of citizens might at some times and in some ways be very useful to Congress in framing legislation. But the preservation of private rights and of personal liberty guaranteed by the Fourth and Fifth Amendments is far more important than any such aid to the additional regulation of commerce. So long as the Fourth and Fifth Amendments of the Constitution are in force we maintain that Congress cannot inquire into the private affairs and transactions of a citizen in order merely to obtain information which might be useful in enacting legislation, even with respect to those subjects respecting which it is authorized by the Constitution to legislate. We maintain that it is without power at all to compel such disclosure for any legislative purpose. *Such inquiries belong to judicial controversies and are to be made only in a judicial proceeding—not necessarily in courts of law, but in proceedings of a judicial nature, some of which are within the powers of the Houses of Congress* (*In re Chapman*, 166 U. S. 661.)

(2) All that this Court determined in *Interstate Commerce Commission vs. Brimson* (154 U. S., 447), was that a petition such as was filed

in this case presented a "case" and "controversy" within the meaning of the Judiciary clause of the Federal Constitution. It expressly adjudged that such "case" being brought against the defendants,

> "it was open to each of them to contend before that court that he was protected by the constitution from making answer to the questions propounded to him."

In answer to the petition Appellant, among other defenses, invokes the Fifth Amendment and asserts that the proceeding of the Commission with respect to the matter in hand is not "due process of law"; and that however interesting and useful the information might be to the Commission or Congress in regulating commerce or otherwise, it is depriving him of his liberty otherwise than by due process of law to require him to testify about any of his affairs in a proceeding that is wanting in all the essential elements of due process of law.

The resort to court by such a proceeding as is provided by the Act to Regulate Commerce *does not dispense with the Fifth Amendment;* it affords the opportunity to the defendant to assert it. If

the court finds that the proceeding in which the defendant has been called upon to testify is not in its nature due process of law it must refuse to require him to answer—and that too without regard to the subject matter of the questions since, as we have seen, Congress even in regulating commerce must conform to the requirement of due process of law when it trenches upon the liberty of the citizen (*MCray vs. United States* and *Monongahela etc. vs. United States, supra*).

That the proceeding in which Appellant was called upon to testify was not due process of law as hitherto understood seems plain. There was no complaint nor answer or pleading in any form—nothing from which a Court, when called upon to aid the Commission, could determine (as this Court in the *Brimson Case* (154 U. S., 447) said it should) whether the questions propounded "relate to the particular matter under investigation" for there was no "*particular matter* under investigation." No issues were made up or joined. There were no parties, no subject matter, no case, no controversy. No citation, summons or notice of any kind was issued or given to any of the corporations of which Appellant was a director, or to Appellant himself

except a subpœna (in the form to be found in the Record at page 46) to appear and testify as a witness. The resolution adopted by the Commission (*ante*, page 2) as the only basis for the proceeding is practically without bounds. It embraces not only the whole field of transportation, but corporate organization, corporate relations and corporate practices. No corporation or person was named as a party to or the subject of, such investigation. The whole citizenship of the country might have been called. If such a proceeding constitutes "due process of law" the meaning of that phrase must be vastly broadened.

It is not the case of a complaint by a shipper or commercial body against a named railroad company or several railroad companies alleging discrimination or injustice in particular rates and in which answers are filed and issues are joined. In such case there would be a "*particular matter under investigation*," and the forms would be appropriate and adapted to that end. Without these the proceeding is not due process of law, and to require the citizen to attend and expose himself to indictment for refusing to answer questions within the almost unlimited range of

the order under which the Commission was proceeding would be to deprive him of his liberty guaranteed by the Fifth Amendment. The objection goes not merely to the questions, but to the *character and form* (or lack of form) of the proceeding in which they were propounded.

This defect, of course, was not cured by resort to the court by the petition in this case. If the duty rests upon Appellant to answer the questions it existed at the time they were asked; the resort to the court is to *enforce*, not to *create*, a duty. Brought into court Appellant interposes the shield of the Fifth Amendment, and claims that the demand of the Commission was an invasion of his liberty. If it was, it remains so. It is impossible that the duty under the law to answer certain questions propounded by the Commission in a matter on one day did not exist, and that the duty will exist to answer the same questions in the same matter propounded by the same Commission on another day. Obviously that would be to make the court *create* the duty and right where none existed before.

Were Congress permitted, merely for its guidance in the enactment of legislation, to compel the citizen to appear before Com-

missions appointed by it and answer any inquiries such Commission might think fit to ask, no matter how private or sacred the matters invaded might be, it would be an arbitrary exercise of the powers of government unrestrained either by the established principles of private right or of distributive justice. There must be a judicial or quasi-judicial proceeding in order that the witness shall be properly protected; and there must be a definite issue under investigation in order that there shall be a sufficient standard by which to measure the relevancy of the testimony sought. Without these prime requisites there should be no compulsory extortion of testimony.

Indeed, the Act to Regulate Commerce itself fails to sanction the disregard of all the forms of law characterizing the Commission's proceeding in this case. As a condition precedent to instituting an inquiry and subpœnaing witnesses, and an application to the Court in case of contumacy, the Act requires that there shall be formulated a statement of the facts constituting the alleged violation of the rules prescribed by the Act which is to become the subject of investigation. Section 13 provides that where complaint

is made to the Commission it must be "by petition, which shall briefly state the facts," and while the Commission may "institute any inquiry on its own motion," yet it must be "in the same manner and to the same effect as though complaint had been made." Section 12 provides that "for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses * * * *relating to any matter under investigation.*" Furthermore, in case of a witness's "refusal to obey a subpœna" issued by the Commission, Section 12 authorizes the Circuit Court of the United States to—

> "issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence *touching the matter in question*".

Unless the subject matter of the inquiry is defined by a complaint or statement and answer how can a witness who refuses to attend before the Commission be ordered by the Circuit Court

to "give evidence touching the matter in question"? What would otherwise constitute the "matter in question" in such case?

While the Act contemplates that oral testimony will be taken at the trial of the issues raised by a specific and definite complaint it further provides, in order that there may be no doubt at what stage of the cause testimony by deposition may be taken, that this may be done " at any time after a cause or proceeding is *at issue on petition and answer*" (Sec. 12).

The same section (12) also provides that "in case of disobedience to a subpœna the Commission or any *party* may invoke the aid " of the Court, etc.; and also provides for the taking of depositions by any *party*, thus showing that the compulsion of the testimony of witnesses was contemplated only in proceedings by *parties* upon issues joined by pleadings.

Vague, general and indefinite as it is, the statement of the subject matter of inquiry contained in the order (*ante*, page 2) is not comprehensive enough to embrace the interrogatories which the Appellant has refused to answer. Its title and recitals both show that the matter to be in-

quired into was combinations of carriers, to the end that

> "it may be ascertained whether such consolidations, combinations, relations, community of interests, practices or methods result in violations of said Act or tend to defeat its purposes."

None of the questions which the appellant declined to answer tend to show any violation of the Act, and unless there is a violation its purposes cannot be defeated.

Give to the order, however, its widest construction, unrestrained either by constitutional limitations, by the terms of the Act to Regulate Commerce, or by the "end" which the order itself declares, and what subjects are named for investigation? They are as follows, namely:

1. Consolidations and combinations of carriers subject to the Act.

2. The relations now and heretofore existing between such carriers, including community of interests therein.

3. The practices and methods of such carriers affecting the movement of interstate commerce.

4. The rates received and facilities furnished therefor.

Suppose the appellant and his fellow directors were interested in the securities purchased by the Union Pacific Railroad Company from Kuhn, Loeb & Co.; suppose these securities had been bought by these officials for the purpose of such sale, and at a lower price; suppose that these officials had also purchased Union Pacific and Southern Pacific stock just prior to the dividends of 1906; and suppose that directors of the Union Pacific had as individuals bought shares of the Santa Fe Company for their own account. Has any of these matters any bearing, even in the remotest degree, upon consolidations or combinations of carriers, or upon the relations now and heretofore existing between them, or upon practices or methods of such carriers affecting the movement of interstate commerce, or upon the rates received and facilities furnished for such commerce? Yet, these are the subjects of investigation described in the order which is the foundation of this whole proceeding,—the order which defines and limits the jurisdiction of the Commission in this investigation.

(3) Whether Appellant had profited at the expense of the corporation while a director was a judicial question. Unless the design of the inquiry was to discover wrong it was idle; while if there was wrong it was a wrong done the corporation and its redress belonged to a judicial tribunal.

Kilbourn v. Thompson, 103 U. S. 168, is the leading case on the subject of the right of Congress to compel the attendance and testimony of witnesses. In that case the House of Representatives had adopted a resolution which, after reciting that the Government was the creditor of a bankrupt firm that had an interest "in a matter known as the Real-Estate Pool", appointed a committee of five members of the House "to inquire into the matter and history of said Real-Estate-Pool", and to report to the House, with power to compel the attendance of witnesses. It was held that Congress in thus attempting to force the attendance and testimony of witnesses had exceeded its constitutional authority.

The Court said (at p. 182):

> "The powers of Congress itself, when acting through the concurrence of both branches, are dependent solely upon the

Constitution. * * * No general power of inflicting punishment by the Congress of the United States is found in that instrument. It contains in the provision that no 'person shall be deprived of life, liberty or property, without due process of law', the strongest implication against punishment by order of the legislative body. It has been repeatedly decided by this court, and by others of the highest authority, that this means a trial in which the rights of the party shall be decided by a tribunal appointed by law, which tribunal is to be governed by rules of law previously established."

And at pages 192–193, the Court said:

"The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in the cases specifically enumerated to which we have referred. If the investiga-

tion which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the government. We think it equally clear that the power asserted is judicial and not legislative."

And at pages 194–195 :

" The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co., or even the United States. *Was it to be simply a fruitless investigation into the personal affairs of individuals ? If so, the House of Representatives had no power or authority in the matter more than*

any other equal number of gentlemen interested for the government of their country. By 'fruitless' we mean that it could result in no valid legislation on the subject to which the inquiry referred.

"What was this committee charged to do?

"To inquire into the nature and history of the real-estate pool. How indefinite! What was the real-estate pool? Is it charged with any crime or offence? If so, the courts alone can punish the members of it. Is it charged with a fraud against the government? Here, again, the courts, and they alone, can afford a remedy. Was it a corporation whose powers Congress could repeal? There is no suggestion of the kind. * * * Can the rights of the pool, or of its members, and the rights of the debtor, and of the creditor of the debtor, be determined by the report of a committee or by an act of Congress? If they cannot, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the government?"

Again at page 190:

"Whether the power of punishment in either House by fine or imprisonment goes

> beyond this or not, we are sure that no person can be punished for contumacy as a witness before either House, unless his testimony is required in a matter into which that House has jurisdiction to inquire, and *we feel equally sure that neither of these bodies possesses the general power of making inquiry into the private affairs of the citizen.*"

Mr. Justice MILLER in his Lectures on the Constitution, page 415, refers to this decision as "one of the most important that has been made in recent years," and epitomizes it as follows:

> "It was held that neither House had any right to organize an investigation into the private affairs of a citizen, and that, except in a case in which the Constitution expressly conferred upon the one body or the other powers which were in their nature somewhat judicial, and which required the examination of witnesses, they possessed no power to compel, by fine or imprisonment, or both, the attendance of such witnesses, and answers to interrogatories which did not relate to some question of which it had jurisdiction."

On the other hand, *In re Chapman*, 166 U. S., 661, 668, the Senate was exercising *quasi* judicial functions, viz.: the consideration of charges against its members under its express power to expel and its inherent power of self-protection. Charges had been made against certain Senators, and the Senate adopted resolutions directing a committee of its members "to inquire if any Senator has been or is speculating in what is known as the sugar stocks during the consideration of the tariff bill now before the Senate." It was held that a broker who had been called as a witness and asked whether any Senators had speculated in such stocks through the firm of which he was a member was bound to answer. The evidence was material to the determination of the matter before the Senate which it was undoubtedly empowered to determine. A portion of the Court's opinion is as follows:

> "Under the Constitution the Senate of the United States has the power to try impeachments; to judge of the elections, returns and qualifications of its own members; to determine the rules of its proceedings, punish its members for disorderly behavior,

and, with the concurrence of two-thirds, expel a member ; and it necessarily possesses the inherent power of self-protection.

" According to the preamble and resolutions, the integrity and purity of members of the Senate had been questioned in a manner calculated to destroy public confidence in the body, and in such respects as might subject members to censure or expulsion. The Senate, by the action taken, signifying its judgment that it was called upon to vindicate itself from aspersion and to deal with such of its members as might have been guilty of misbehavior and brought reproach upon it, obviously had jurisdiction of the subject-matter of the inquiry it directed, and power to compel the attendance of witnesses, and to require them to answer any question pertinent thereto. And the pursuit of such inquiry by the questions propounded in this instance was not, in our judgment, in violation of the security against unreasonable searches and seizures protected by the Fourth Amendment.

" In *Kilbourn v. Thompson*, 103 U. S. 168, among other important rulings, it was held that there existed no general power in Congress, or in either House, to make inquiry into the private affairs of a citizen; that

neither House could, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, investigate the affairs of that partnership, as a mere matter of private concern; and that consequently there was no authority in either House to compel a witness to testify on the subject. The case at bar is wholly different. Specific charges publicly made against Senators had been brought to the attention of the Senate, and the Senate had determined that investigation was necessary. The subject-matter as affecting the Senate was within the jurisdiction of the Senate. The questions were not intrusions into the affairs of the citizen; they did not seek to ascertain any facts as to the conduct, methods, extent or details of the business of the firm in question, but only whether that firm, confessedly engaged in buying and selling stocks, and the particular stock named, was employed by any Senator to buy or sell for him any of that stock, whose market price might be affected by the Senate's action. We cannot regard these questions as amounting to an unreasonable search into the private affairs of the witness simply because he may have been in some degree connected with the alleged transac-

> tions, and as investigations of this sort are within the power of either of the two Houses they cannot be defeated on purely sentimental grounds."

The powers of the Senate to try impeachments, to judge of the election, returns and qualifications of its members, to punish its members for disorderly behavior and expel them, and the power of self protection as defined in this case, are quasi-judicial powers, and the right to coerce testimony is a necessary incident to such powers. The *Chapman Case* is in that category. If in the exercise of such a power individual transactions are pertinent and material their disclosure may be compelled as they may in any case in court. The distinction between the exercise of those powers and the exercise of the purely legislative function is that the one set of powers are quasi-judicial, whereas the other is purely legislative; and the *Chapman Case* is only authority for the proposition that testimony may be coerced and individual transactions inquired into in connection with the quasi-judicial powers of either House of Congress.

Mr. Justice FIELD, who participated in the decision of *Kilbourn vs. Thompson* a few years later,

while on circuit, delivered the opinion of the Court in the case of *In re Pacific Railway Commission*, 32 Fed. Rep., 241, a decision that has frequently been quoted with approval by this Court, and which is directly in point upon this appeal. SAWYER and SABIN, JJ., both delivered concurring opinions. That case was an application by the Pacific Railway Commission (created by the Act of March 3, 1887, entitled "An Act authorizing an investigation of the books, accounts and methods of railroads which have received aid from the United States, and for other purposes") to compel Leland Stanford, the President of the Central Pacific Railroad Company, to answer questions concerning the expenditures shown in certain vouchers of the Railroad Company which had been produced in evidence. The Act creating the Commission evidently intended that the information secured by it should be used for the guidance of Congress in performing its legislative functions, for, it provided that the Commission should report in full in regard to all the matters concerning which it was directed to inquire "to the President of the United States, who shall forward said report to Congress with such recommenda-

tions or comments as he may see fit to make in the premises." (24 Stat. 488, 490).

The right of Congress to gather data to aid it in legislating was recognized, but the power to *extort testimony* was denied. On this subject Mr. Justice FIELD said:

> "In addition to the inquiries usually accompanying the taking of a census, there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment, it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which *limit the investigations of private parties into similar matters.* In the pursuit of knowledge it cannot compel the production of the private books and papers of the citizen for its inspection, *except in the progress of judicial proceedings*, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for en-

forcement upon the evidence those books and papers contain" (p. 250).

In the same case Mr. Justice FIELD also said:

"The law provides for the compulsory production, *in the progress of judicial proceedings, or by direct suit for that purpose*, of such documents as affect the interest of others, and also, in certain cases, for the seizure of criminating papers necessary for the prosecution of offenders against public justice, *and only in one of these ways can they be obtained, and their contents made known, against the will of the owners.*

"In the recent case of *Boyd v. U. S.*, 116 U. S. 616, 6 Sup. Ct. Rep. 524, the Supreme Court held that a provision of a law of Congress, which authorized a Court of the United States in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices, and papers, or that the allegations of the attorney respecting them should be taken as confessed, was unconstitutional and void as applied to suits for penalties or to establish a forfeiture of the party's goods. The Court, speaking by Mr. Justice BRADLEY, said:

'Any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purpose of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom.'

"The language thus used had reference, it is true, to the compulsory production of papers as a foundation for criminal proceedings, but it is applicable to any such production of the private books and papers of a party otherwise than in the course of judicial proceedings, or a direct suit for that purpose. It is *the forcible intrusion into, and compulsory exposure of, one's private affairs and papers, without judicial process, or in the course of judicial proceedings, which is contrary to the principles of a free government, and is abhorrent to the instincts of Englishmen and Americans*" (pp. 250, 251).

* * * * *

"The Act of Congress not only authorizes a searching investigation into the methods, affairs, and business of the Central

Pacific Railroad Company, but it makes it the duty of the Railway Commission to inquire into, ascertain, and report whether any of the directors, officers, or employes of that company have been, or are now, directly or indirectly, interested, and to what extent, in any railroad, steam-ship, telegraph, express, mining, construction, *or other business company or corporation*, and with which any agreements, undertakings, or leases have been made or entered into. There are over 100 officers, principal and minor, of the Central Pacific Railroad Company, and nearly 5,000 employees. It is not unreasonable to suppose that a large portion of these have some interest, as stockholders or otherwise, in some other company or corporation with which the railway company may have an agreement of some kind, and it would be difficult to state the extent to which the explorations of the commission into the private affairs of these persons may not go if the mandate of the act could be fully carried out. But in accordance with the principles declared in the case of *Kilbourn v. Thompson*, and the equally important doctrines announced in *Boyd v. U. S.*, the commission is limited in its inquiries as to the interest of these directors, officers, and employes in

any other business, company, or corporation to such matters as these persons may choose to disclose. They cannot be compelled to open their books, and expose such other business to the inspection and examination of the Commission. They were not prohibited from engaging in any other lawful business because of their interest in and connection with the Central Pacific Railroad Company, and that other business might as well be the construction and management of other railroads as the planting of vines, or the raising of fruit, in which some of those directors and officers and employes have been in fact engaged. And they are entitled to the same protection and exemption from inquisitorial investigation into such business as any other citizens engaged in like business" (pp. 253, 254).

In his concurring opinion in the case of *In re Pacific Railway Commission*, *supra*, Judge SAWYER said:

"A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no re-

strictions except its own will, or caprice, is unknown to our constitution and laws ; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing where the practice under it would end " (p. 263).

Judge SABIN, who also delivered a concurring opinion in the same case, used much the same language :

> " If this power of unlimited, inquisitorial investigation into the affairs of private corporations or companies, or of individuals,—and it concerns all alike,—shall be once established, who can say where it will end, or what will be its limit of injustice at all times, but more especially when called into exercise in times of political excitement, or under the influence of partisan seal or passion ? In the close adherence to well settled principles of law, founded upon just observance of the rights of all parties, will we not find the greatest safety alike to public and private rights ? " (p. 269).

In the *Brimson Case* this Court expressly disclaimed any intention of holding that Congress

possessed the power of making a general inquiry into the private affairs of the people. The Court said (HARLAN J.):

> " We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. *Neither branch of the legislative department, still less any merely administrative body, established by Congress, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. Kilbourn v. Thompson*, 103 U. S., 168, 190. We said in *Boyd v. United States*, 116 U. S., 616, 630, —and it cannot be too often repeated,—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employes of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice FIELD in *In re Pacific Railway Commission*, 32 Fed. Rep., 241, 250, ' of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but

exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value' " (p. 478).

Congress has the power to prohibit the transportation in the mail of letters relating to immoral matters. Therefore, if the Commission's contentions are sound Congress, in order to determine the character of laws it should enact to prevent the transmission of immoral matter through the mails, could summon witnesses and interrogate them concerning the details of all their past correspondence, regardless of the privacy of its nature. But in *ex parte Jackson*, 96 U. S., 727, 732, this Court said concerning this power :

> " The difficulty attending the subject arises, not from the want of power in Congress to prescribe regulations as to what shall constitute mail matter, but from the necessity of enforcing them consistently with rights reserved to the people, of far greater importance than the transportation of the mail. * * * No law of Congress can place in the hands of officials connected with the postal service any authority to in-

vade the secrecy of letters and such sealed packages in the mail; and all regulations adopted as to mail matter of this kind must be in subordination to the great principle embodied in the Fourth Amendment of the Constitution.

"Nor can any regulations be enforced against the transportation of printed matter in the mail, which is open to examination, so as to interfere in any manner with the freedom of the press."

(4): What is the "liberty" protected and the "due process of law" required by the Fifth Amendment? This question is in a large measure answered by the cases just discussed.

In *Allgeyer Co. vs. Louisiana*, 165 U. S., 578, this court, in speaking of the Fourteenth Amendment, said (p. 589):

"The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling;

to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

See, also,

Butchers' Union Co. vs. Crescent City Company, 111 U. S., 746, 762.

Powell vs. Pennsylvania, 127 U. S., 678, 684.

In the *Matter of Davies*, 168 N. Y., 89, 105, the word "liberty" as used in a similar provision in a State Constitution was thus defined by VANN, J.:

> "The word 'liberty,' as thus used, has a broad meaning. It includes liberty of action, which is interfered with by a command to lay aside all business and excuses and appear at a designated place and give testimony. It embraces the right to keep secret one's books and papers, his business methods and his knowledge of his own affairs."

In the same case BARTLETT, J., said:

> "Physical restraint is not essential to constitute, in law, the act which deprives the citizen of his liberty. The Constitution equally prohibits the interference, without

> due process of law with the right of privacy, the right to keep, from the general public business methods and secrets, the right to the custody of books, papers and correspondence, and the general right to shut out the world from private affairs" (p. 111).

As to what constitutes "due process of law" in this connection. In *Bank of Columbia v. Okely*, 4 Wheat. 235, 244, Mr. Justice JOHNSON said:

> "As to the words from Magna Charta incorporated in the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this,—that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

In *Dent v. W. Va.*, 129 U. S. 114, 124, the phrase "Due process of law" is thus explained:

> "The great purpose of the requirement is to exclude everything that is arbitrary and capricious in legislation affecting the rights of the citizen."

Chancellor KENT (1 Com., 10th ed., p. 601) said:

> "The words 'by the law of the land,' as used originally in Magna Charta in reference to this subject, are understood to mean due process of law, that is, by indictment or presentment of good and lawful men; and this, says Lord COKE, is the true sense and exposition of these words. The better and larger definition of due process of law is, that it means law in its regular course of administration through courts of justice."

Judge COOLEY said (Constitutional Limitations, p. 434):

> "Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to whtch the one in question belongs."

In the case of *Taylor v. Porter*, 4 Hill, 140 and 145, BRONSON, Judge, said:

> "The words 'by the law of the land,' as used in the constitution, do not mean a

> statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory and turn this part of the constitution into mere nonsense. The people would be made to say to the two houses: 'You shall be vested with the legislative power of the State, but no one shall be disfranchised or deprived of any of the rights or privileges of a citizen, unless you pass a statute for that purpose. In other words, you shall not do the wrong unless you choose to do it."

In *Norman v. Heist*, 5 Watts & Sergeant, 171, 173, Chief Justice GIBSON, in construing the words "law of the land," said that the design is "to exclude arbitraay power from every branch of the government; and there would be no exclusion if such receipts or decrees were to take effect in the form of a statute."

In *Westervelt v. Gregg*, 12 N. Y., 202, 209, the court said:

> "Due process of law undoubtedly means, in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights."

In *Boyd v. U. S.* 116 U. S. 616, 628, Lord CAMDEN'S opinion in the famous case of *Entinck v. Carrington*, 19 Howell's State Trials, 1029, is quoted as follows:

> "The case of searching for stolen goods crept into the law by imperceptible practice. No less a person than my Lord COKE denied its legality, 4 Inst. 176; * * * observe, too, the caution with which the law proceeds in this singular case. There must be a full charge upon oath of a theft committed. The owner must swear that the goods are lodged in such a place. He must attend to the execution of the warrant to show them to the officer, who must see that they answer the description. * * *"

The cases in which this Court has had occasion to deal with and apply the phrase as used in the Fifth and Fourteenth Amendments are too numerous to discuss, but among them are: *Allen vs. Georgia*, 166 U. S., 138, 140; *Chicago, etc., Railroad vs. Chicago*, 166 U. S., 226, 234; *Holden vs. Hardy*, 159 U. S., 366, 389; *Den vs. Hoboken*, 18 How., 272, 280. But few cases in this Court have dealt with the liberty of the

citizen in his civil rights or apart from persoual restraint. *Allgeyer vs. Louisiana*, 165 U. S., 578, is one of the few.

(5) In support of the right of Congress to elicit information to aid it in legislating, *People v. Keeler*, 99 N. Y., 463; *People v. Sharp*, 107 N. Y., 427; and *In re Falvey*, 7 Wis., 630, have been cited.

These cases considered the power of State legislatures which have all the customary legislative powers except such as are prohibited by the State or Federal constitutions; but Congress, has only such power as the Constitution confers upon it. In the first two cases the subject of investigation was a municipal corporation of the State of New York, and in the third a railroad corporation of the State of Wisconsin. Therefore, even if those cases were correctly decided they may be sustained upon the ground that there the legislative body possessed a visitatorial right over the corporations whose affairs were being investigated, while here the government has no right of visitation over state corporations apart from the regulation of interstate commerce.

Hale vs. Henkel, 201 U. S., 43.

(6) It is true that witnesses have been summoned before committees appointed by the Houses of Congress, and have frequently appeared and testified. Even an unwilling witness might have preferred to obey the summons of Congress rather than incur the obloquy of refusing to answer or the expense incident to a defense of his constitutional rights in case of a refusal, or run the risk of punishment in case his rights were held not to have been invaded. The fact that the practice has been successfully adopted in some instances does not for that reason establish its legality. On this subject COOLEY'S work on Constitutional Limitations was quoted with approval in *Louisville & Nashville Railroad Company v. Kentucky*, 161 U. S., 677, 690, as follows:

> "'A power is frequently yielded to merely because it is claimed, and it may be exercised for a long period in violation of the constitutional prohibition, without the mischief which the Constitution was designed to guard against appearing, or without any one being sufficiently interested in the subject to raise the question; but these circumstances cannot be allowed to sanction a clear infraction of the Constitution.'"

V.

If Congress has power to compel testimony in aid of its legislative functions the power is legislative in its character and may not be delegated to an administrative body under a general grant of power.

Such a delegation of power would be unconstitutional because it would confer upon an administrative body, not only the power to compel testimony, but to determine the subjects as to which Congress needs enlightenment, that is, on what subjects legislation is, in the judgment of the administrative body, expedient. By the Act to Regulate Commerce a definite body of rules for the government of interstate transportation of a specific character is formulated, and the Commission is authorized to make such investigations as may be appropriate to enforce those rules. These rules, though extensive, cover but a small part of the domain of commercial regulation vested in Congress by the Constitution. In other words, Congress has made a law, and entrusted the Commission with its enforcement, and has thus established a standard for the guidance of the Com-

mission. If, however, Congress has in addition attempted to confer upon the Commission a general inquisitorial power with respect to everything within the commercial powers of Congress in aid of future legislation there is an entire absence of any legislation by Congress defining the standard which is to guide the Commission. Such discretionary powers may not be devolved upon an administrative body.

The exercise of such a power of investigation by Congress is very different from its exercise by the Commission. Antecedent to such an investigation by Congress is its determination that legislation may be advisable as to a particular subject. That determination is an act of the legislative body in authorizing and directing the investigation. There is no compulsion of testimony until there has been such a determination. With the Commission it is entirely different. If it has the power it can institute an investigation at any time upon *its* determination that legislation by Congress may be expedient. In other words, it is invested not only with the power to compel testimony but the power to determine the subjects as to which it may be exercised. That is an uncontrolled and arbitrary

power without a safeguard of any kind, or any standard to govern its exercise. The Commission may pick out any subject it pleases in the whole realm of interstate commerce, and investigate it and compel testimony with respect to it, simply because *it, in its judgment*, determines that legislation concerning it may be expedient. It is inconceivable that Congress has the power to invest such a body with a permanent and continuing authority to aacertain at any time whether legislation is expedient upon some matter connected with interstate commerce, and thereupon compel testimony bearing upon it. It would seem much more rational to hold that it is with Congress to determine, in the first instance, whether a subject should be investigated in aid of its legislative function, and then, if it sees fit to do so, to commit it for investigation to the Commission. It has done so in various instances, such as the relations of common carriers to discrimination and monopolies in coal and oil (Resolution approved March 7th, 1906); the ownership and operation of elevators, (Senate Resolution of June 25th, 1906); and the use of block signals and other appliances in

operating railway trains (Joint resolution of June 30th, 1906). (Compiled Stat. 1901, Supp. 1907, pp. 888, 912.) It deemed it necessary, at any rate so far as the coal and oil and block signal resolutions were concerned, to specifically authorize the Commission to compel testimony, which is quite inconsistent with such a general power already existing in the Commission (Idem pp. 890, 912). Legislation is discretionary with Congress; investigation in aid of its legislative function in so far as the power exists is also discretionary with Congress; and it is well settled that such discretionary legislative powers may not be devolved upon an administrative body.

Wayman v. Southard, 10 Wheat. 15, 16, 17.

Field v. Clark, 143 U. S. 649.

Buttfield v. Stranahan, 192 U. S. 470.

Union Bridge Co. vs. U. S., 204 U. S. 364.

Cooley's Constitutional Limitations, p. 163.

VI.

Congress has conferred upon the Commission authority to investigate, and in connection therewith compel the testimony of witnesses, only in aid of its duty to execute and enforce the provisions of the Act to Regulate Commerce.

The Commission is a body of limited powers derived exclusively from the Act to Regulate Commerce. It is a purely administrative body charged with specific administrative duties and invested with specific powers (*Kentucky Bridge Co. vs. L. & N. R. R. Co.*, 37 Fed. R., 567). What are those duties and powers? They are to be definitely ascertained from the specific provisions of the Act, because the Act does not cover the whole field of interstate commerce. It is not only confined to the interstate transportation of persons and property by common carriers but to specific elements and incidents of that transportation. This restricted operation of the Act necessarily limits the powers of the Commission. An analysis of the Act is therefore necessary to determine what these powers and duties are; and it is always neces-

sary to bear in mind that neither the province of the Act or the Commission is co-extensive with interstate commerce or interstate transportation.

In *United States vs. Trans-Missouri Freight Association*, 166 U. S., 290, this Court in speaking of the Act said at p. 316:

> "Although the commerce statute may be described as a general code for the regulation and government of railroads upon the subjects treated of therein, it cannot be contended that it furnishes a complete and perfect set of rules and regulations which are to govern them in all cases, and that any subsequent act in relation to them must, when passed, in effect amend or repeal some provision of that statute. The statute does not cover all cases concerning transportation by railroad and all contracts relating thereto. It does not purport to cover such an extensive field."

We pass therefore to an analysis of the Act.

(1) *The Commission is merely an administrative agency for the enforcement of the provisions of the Act to Regulate Commerce.*

Section 1 defines what persons and corporations are subject to the Act, imposes on them

the duty of furnishing transportation upon reasonable request and of establishing through routes and just and reasonable rates applicable thereto ; ordains that all charges for transportation shall be just and reasonable ; prohibits free transportation with certain exceptions and the transportation by railroad companies of certain commodities manufactured, mined or produced by them or which they may own, or in which they may have any interest, with certain exceptions ; and requires switch connections to be constructed under certain conditions at the instance of shippers, or lateral branch lines. It defines transportation as follows :

> " And the term ' transportation ' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

Section 2 prohibits discrimination between shippers for a like and contemporaneous service

in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

Section 3 prohibits undue or unreasonable preference or advantage to any particular person, locality or particular description of traffic; and provides that connecting lines shall provide facilities for the interchange of traffic without discrimination.

Section 4 prohibits greater compensation for a shorter than a longer distance over the same line in the same direction; but empowers the Commission to relieve a carrier from this prohibition.

Section 5 prohibits pooling of freights and division of earnings by competing railroads.

Section 6 provides for the filing and publication of all tariffs of rates, fares and charges, freight classifications and contracts, agreements or arrangements relating to traffic affected by the Act; which rates, fares and charges are not to be changed except after thirty days notice to the Commission unless the Commission modifies this requirement.

The Commission is authorized to determine the form in which the schedules required by this section to be kept open to public inspection shall

be prepared and arranged; and carriers are prohibited from engaging in the transportation of passengers or property unless the rates, fares and charges have been filed and published, and from collecting a greater or less or different compensation for such transportation than the tariff rates, fares and charges, and from extending to any shipper or person any privileges or facilities except such as are specified in the tariffs. In times of war, or threatened war, preference and precedence over all other traffic is to be given to the transportation of troops and materials of war.

Section 7 prohibits combinations, contracts or agreements interrupting a continuous carriage from the place of shipment to the place of destination.

Sections 8 and 9 impose a civil liability for damages caused by violations of the Act, and provide remedies therefor through proceedings before the Commission or the District or Circuit Courts of the United States of competent jurisdiction.

Section 10 imposes criminal penalties for violation of the Act including false billing by carriers and shippers and inducing common carriers to discriminate unjustly.

Sections 11, 12, 13, 14, 15, 16, 16*a* and 17 create the Commission; authorize and require it to execute and enforce the provisions of the Act and impose upon the district attorneys of the United States the duty, at the request of the Commission, to institute in the proper court and prosecute under the direction of the Attorney General all necessary proceedings for the enforcement of the provisions of the Act and the punishment of violations thereof; and provide for investigations by the Commission, the mode of instituting them and formulating the issues, the taking of testimony, the report to be made by the Commission including its decision, order or requirement, and the enforcement of its decisions, orders or requirements by the Circuit Court of the United States after a hearing therein in proceedings for that purpose instituted by the Commission in its own name or by any injured party.

Section 15 also confers upon the Commission power, *after a hearing upon a complaint* made with respect to unreasonable, discriminatory or preferential rates, or regulations affecting rates, to fix such rates or regulations; and, *after hearing on a complaint*, to establish through routes and joint rates and prescribe the division of rates

between the carriers; and further, *after a hearing on a complaint*, to determine what is a reasonable charge for any service or instrumentality rendered or furnished by a shipper in connection with transportation.

Section 20 provides for annual and special reports to the Commission by carriers subject to the Act; specifies various particulars which they are to contain; authorizes the Commission to prescribe a uniform system of accounts, books and records; provides that the Commission and its special agents and examiners shall at all times have access to the books, accounts, records and memoranda, and prescribes the penalties for non-compliance with these requirements and means for their enforcement.

Section 21 provides for an annual report by the Commission to Congress which shall "contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary."

From this analysis of the Act it appears that it is primarily an enumeration of particular duties imposed upon common carriers; of particular acts on their part which are prohibited; and of particular duties and powers relating thereto conferred upon the Commission. The duties it imposes and the acts it prohibits are the only duties and acts of common carriers with which the Act is concerned. It is an Act of details and not of generalities. Every duty it imposes is definitely specified, and a carrier which observes them complies with the Act in full. The primary function of the Commission is to enforce the performance of those duties and prevent the doing of the prohibited acts, and to that end the necessary machinery of investigation, hearings on complaints, and judicial proceedings is provided. With respect to other duties or acts of carriers not regulated by the Act the Commission has no function to perform and it is invested with none. Congress simply has not seen fit to regulate those acts and duties or to extend to them the functions of the Commission. Having defined certain duties and prohibited certain acts the Commission is created as an administrative body, not with a general super-

visory power over common carriers subject to the Act in all their operations, transactions and relations, but generally speaking, with a power of supervision limited to the specific requirements of the Act, and with power to enforce those requirements and determine complaints made of violations of the Act after notice, answer and hearing. It is easy to indulge in generalities about the far-reaching and beneficent purposes of the Act to convey the idea that it comprehends the entire subject of interstate transportation and its instrumentalities and the regulation to the utmost limit of the power of Congress of the persons and corporations engaged in it, so that the powers and functions of the Commission are equally comprehensive But the Act is not such an Act and it cannot be so read or applied.

The first paragraph of section 12 which confers the power of investigation, is as follows:

> "SEC. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right

to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation."

Is it the sound and reasonable construction of this section that it constitutes the Commission as is contended "virtually a Congressional commit-

tee of inquiry" with all the inquisitorial powers of Congress and the power to compel the testimony of witnesses and the production of books and papers? Or is it the sensible construction that it is a power of investigation auxiliary to the function of the Commission to execute and enforce the regulative provisions of the Act?

The language of this paragraph of the section considered by itself would naturally confine the Commission's power of investigation *with the aid of compulsory testimony*, as distinguished from its power to obtain information from the carriers themselves concerning their business, to inquiries appropriate to enable the Commission to enforce the provisions of the Act. It clearly shows that the purpose of that particular power was to impose upon the Commission *and upon District Attorneys* the duty of enforcing the provisions of the Act, and to confer upon the Commission the power of investigation necessary to that end. In other words, when complaint is made to the Commission of a violation of the Act, or when the Commission itself has reason to believe from information received or obtained by it that such violation exists, then the Commission is authorized

to investigate with the aid of compulsory testimony whether or not there is a violation of the Act.

That the authority given the Commission to compel testimony was intended to be exercised by it in the conduct of quasi judicial proceedings, the object of which is to prevent violations of the Act and enforce its provisions, is made more evident by the second paragraph of the same section. It provides that

> "In case of disobedience to a subpœna the Commission, *or any party to a proceeding before the Commission*, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses. * * *"

Again, that this is the proper construction of the Act is shown by the fourth paragraph of the same section. It was, of course, contemplated that oral testimony would be taken at the hearing before the Commission after a definite issue had been framed. The fourth paragraph authorizes the taking of depositions, and had this provision been less explicit it might have been doubtful at how early a stage of the proceeding such tes-

timony could have been taken. The explicit provisions of this clause, however, conclusively show that the testimony which the Commission is authorized to take must relate to a definite issue, and must be taken in a quasi judicial proceeding, for it provides that—

> " The testimony of any witness may be taken, at the instance *of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue* on petition and answer."

Section 13 provides that complaint of acts or omissions in contravention of the act may be made to the Commission—

> " by petition, which shall briefly state the facts ; whereupon a statement of the charges thus made shall be forwarded by the Commission "

to the carrier against whom the complaint is directed,—

> " who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time."

If the complaint is not satisfied it is made the duty of the Commission to hear the issues thus framed. The section concludes by providing that the Commission shall in like manner investigate any complaint forwarded by a state railroad commission—

> "and may institute any inquiry on its own motion *in the same manner and to the same effect as though complaint had been made.*"

Thus the language of Sections 12 and 13, whether considered alone, or in connection with the subject matter of the Act as disclosed by the first seven sections thereof, evinces a distinct intention on the part of Congress to invest in the Commission certain powers of investigation with the aid of compulsory evidence for the purpose of aiding in the enforcement of the rules prescribed by the statute for the government of interstate commerce, and conveys no suggestion whatever of any intention to invest in the Commission any further or broader powers of compelling testimony.

There is no provision in the Act assuming to regulate the financial operations or transactions of interstate carriers, or prescribing any duty or

prohibiting any act with respect to them. There is no provision respecting the functions or activities of corporations apart from the interstate transportation of persons and property. There is no provision seeking to regulate, even if it were within the powers of Congress to do so the relations of officers or directors of common carriers to the corporation or stockholders or dealings between them. Least of all is there any attempt to regulate the powers and functions of State corporations distinct from the interstate transportation of persons and property. All these matters are beyond the domain of the Commission because not covered by the Act.

This certainly is the view which has been hitherto taken by the Commission itself. In its report for the year 1900 it said (p. 10):

> "The Commission is given authority 'to inquire into the management of the business of all common carriers subject to the provisions of this Act and to keep itself informed as to the manner and method in which the same is conducted.' *but this has never been construed by it to refer to the mere financial operations of railways engaged in interstate traffic.*"

At page 6 of its report for the year 1902 this significant language is found:

> "All the details of regulation incorporated in the act, its requirements as to publishing and filing tariffs and making annual reports, its method for presenting complaints and conducting their investigation, its criminal remedies, the authority of the Commission to make orders founded on ascertained wrongdoing, and various other administrative features, *were designed solely to give effect to its substantive provisions and thereby secure to the public reasonable charges and impartial treatment.*"

The business of a common carrier covered by the Act is the business of transportation;—the movement of traffic; reasonable, equal and public rates; equal facilities; and the functions of the Commission are limited to those aspects of its business. The language of the Act is entirely inappropriate to the creation of a power of investigation with the aid of compulsory testimony co-extensive with a visitatorial power over all the acts, transactions and relations of a corporation, although a corporation engaged in part in interstate transportation.

Had that been intended it would have been clearly expressed. But Congress appreciated that the corporations engaged in interstate transportation are, with one or two exceptions, State corporations; that their corporate powers to issue stock and bonds and acquire property are powers derived from the State and subject to the jurisdiction of the State; and that the internal relations between the corporation and its officers, directors, stockholders and creditors are matters of State law and regulation and subject to the visitatorial powers of the State. It recognized that its powers over such corporations is, in the language of *Hale vs. Henkel*, 201 U. S., p. 75,) which is the broadest language that has been used,) the sovereign authority to ascertain whether its franchises have been exercised with due regard to " its own laws ". It therefore conferred a power of investigation just as broad as the matters regulated by the Act, but no broader. And as the issue of stock and bonds by such corporations, and their relations to and dealings with their officers and directors, and their financial transactions and operations generally, are not matters at all regulated by the Act it follows that the Commission's authority to investigate

and compel testimony did not and was not intended to extend to such matters.

The failure to observe the true nature and scope of the Act led HOUGH, J., into the error of assigning to it a much wider operation than it has, and to the Commission a corresponding function. He says that its purpose is "to compel interstate carriers to perform their function adequately, and that word includes the idea of economy"; that unwise and improper investments of its funds in dealings with directors tends "to defeat the purposes of the Act; and hence that it is the duty of the Commission to investigate them (R., 1437, 1438). But the Act has no other or broader purpose than the observance of its regulations, and its purpose is only defeated by a violation of those regulations. It will be searched in vain for any provision or regulation regarding the use or investment of the funds of a carrier or economy, and as the Act is not concerned with those matters they are not within its purpose and the Commission can have no function respecting them. Only confusion results from the use of phraseology which assumes that the Act is a complete code for the regulation and government of carriers engaged

in interstate transportation, when it is not (*U. S. vs. Trans-Missouri Freight Association*, 166 U. S., 316).

(2) *There is nothing in Section 20 or 21 enlarging the power of the Commission to investigate or warranting the contention that Congress has conferred upon the Commission all the "inquisitorial powers of Congress" with respect to interstate commerce.*

(*a*) Section 20, so far as pertinent, is as follows:

> "SEC. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, *and from the owners of all railroads engaged in interstate commerce as defined in this Act;* to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and

floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; *the accidents to passengers, employees, and other persons, and the causes thereof;* the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements, or contracts *affecting the same* as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the

required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section withtn thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carrier to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the

manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees."

* * * * *

It is obvious from the reading of this section that it is complete in itself both as to its purposes and machinery. It concerns only the reports, annual and special, to be made by carriers and the books or accounts to be kept by them. The duties imposed upon the carrier are to make these sworn annual and special reports; to keep their books, accounts, records and memoranda in the form prescribed by the Commission, and no other, under the penalties provided in the Act; and to allow the Commission and its special agents access to them at all times. The duties and authority imposed upon the Commission are to prescribe the manner in which the annual report shall be made *by the carrier;* to require special reports *from the carrier* from time to time; to require a uniform system of accounts and prescribe the forms of any and all accounts to be kept *by the carrier;* and to enforce the performance of the particular duties imposed *upon carriers* by this section. The annual report has to show in detail the financial condition of the company, including the cost and value of the carrier's property, franchises and equipment and make a complete exhibit of the financial operations of the company during the year. The Commis-

sion may doubtless require special reports from time to time *from the carrier* with respect to any of the items or matters which are required to be set forth in the annual report and other matters bearing on rates and regulations affecting rates: *but this is a power only to call for special reports from the carrier.* No duty or power is conferred by this section to investigate the various matters to be shown by the annual or special reports with the aid of compulsory testimony. HOUGH, J., is in error in saying that a specific power is conferred upon the Commission of ascertaining "the cost and value of the carrier's property (R., p. 1438) unless it is this power to require special reports *from the carrier* There is absolutely nothing in the section suggesting or requiring the aid of Section 12 for the effectuation of its purposes or the performance of the duties imposed upon the Commission. When the carrier makes its annual reports and the special reports which the Commission requires, adopts the system of accounts prescribed by the Commission and allows access to its books and records to the Commission and its special agents, every duty imposed by this section upon the carrier is

performed; and the only duties it imposes upon the Commission are the enforcement of these duties of the carrier. The benefits of a uniform system of book-keeping are obvious. The usefulness of much of the statistical information furnished by the reports and access to the books and records of carriers are equally obvious. The information thereby furnished may lead to an investigation under Section 12; but that would be an investigation into some subject matter authorized by that section. To argue that because the annual report has to show the capital stock of the company, the dividends paid, the surplus fund, the funded and floating debt and the interest paid, the cost and value of the carrier's property, franchises, equipment and other such matters, and special reports as to such matters may be required from the carrier, the Commission is authorized to investigate each of these subjects under Section 12 with all the powers conferred by that section, is to entirely disregard the purposes and scope of Section 20 and to extend the power of investigation under Section 12 to matters which the Act does not regulate and regarding which the Commission can take no effective action.

The method provided by this section of obtaining information as to the matters to be embodied in the reports which are required is exclusive, within the principle stated in Endlich on Statutes (p. 288, § 216) as follows:

> "And so where there are in an act specific provisions relating to a particular subject they must govern in respect of that subject as against general provisions in other parts of the statute, although the latter standing alone would be broad enough to include the subject to which the more particular provisions relate" (citing *Felt v. Felt*, 19 Wis., 193; *State v. Goetze*, 22 *id.*, 363; *Townsend v. Little*, 109 U. S., 504).

(*b*) Section 21, as it has been for many years, reads as follows:

> "That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected

with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary, and the names and compensation of the persons employed by said Commission."

On this section the extraordinary claim is made that the power of the Commission to investigate with respect to interstate commerce is as broad as the power of Congress to legislate. The argument in support of this contention is that as it is the duty of the Commission to make recommendations to Congress as to additional legislation concerning the regulation of interstate commerce that is one of the purposes of the Act, and therefore it may conduct investigations for that purpose under Section 12 to enable it to perform its duty, and compel in connection therewith the attendance of witnesses and the production of books and papers.

The Commission in its investigations based upon complaints, and undertaken on its own initiative, is constantly acquiring information concerning the interstate business of transportation companies. The annual and special reports which common carriers are required to

make under Section 20 furnish a vast amount of detailed information about the business affairs and operations of such carriers. The access which the Commission and its agents and examiners have to the books, accounts and records of all carriers subject to the Act is a source of similar information. The tariffs of rates, agreements, arrangements and regulations which have to be filed by the carriers under Section 6, are another source of such information. Congress was aware that this administrative body would from these various sources collect information, and through that information and the experience obtained in the performance of its duties would acquire a special and expert knowledge of the business of interstate transportation and be specially qualified to recommend legislation extending and developing the regulative features of the Act. Naturally, in requiring an annual report from the Commission it prescribed that it should contain such information and data collected by the Commission as it considered of value in the determination of questions connected with the regulation of interstate commerce, and such recommendations as it saw fit to make as to additional legislation re-

lating to such regulation. It has made frequent recommendations in the past without special investigations. That, we submit, was the entire function and purpose of Section 21. This is the sensible construction, and it avoids the creation of an extraordinary inquisitorial power by inference and implication. The section is a short one, and the natural meaning of its phraseology is that it is the "information collected by the Commission" which is to be the source of its recommendations. It is the habit of Congress to require such recommendations from administrative officers in their annual reports. (Secretary of the Treasury, U. S., R. S., Sec. 257, Sub. 1; Chief of Engineers, 30 Stat. 1150, Act of March 3, 1899, Ch. 425, Sec. 7; Commissioner of Patents, U. S. R. S., Sec. 494; Comptroller of the Currency, *Idem.*, Sec. 33, Sub, 3; Commissioner of Labor, 25 Stat. 183, Act of June 13, 1888, Chap. 389, Sec. 8). It was simply following this habit in providing that the Interstate Commerce Commission should make such recommendations. Had Congress intended that it should conduct investigations for that purpose, and exercise in connection with them the power of compelling the testimony of individuals and the production of books and pa-

pers, it would have said so specifically. A power enabling the Commission to investigate any subject pertaining to or affecting interstate commerce which it in its judgment and discretion might deem helpful in molding future possible legislation by Congress, and to call, for that purpose, individuals from any part of the United States to come and testify and bring their books and papers should not be constructed argumentatively out of vague phrases and separated sections of an elaborate Act.

Section 21, if so construed, would become the predominant and overshadowing feature of the Act so far as the Commission's powers of investigation are concerned, whereas in reality it is, and always has been, regarded as a mere incidental provision.

Evidently Congress has not deemed such wide powers of investigation to have been conferred upon the Commission, for the joint resolution of March 7, 1906, was amended to expressly confer upon the Commission the same power to compel the attendance of witnesses that it possesses under the Interstate Commerce Act as to investigations conducted thereunder (34 Stat., 824). That resolution directed the Commission

to inquire whether carriers subject to the Act were interested in any of the coal or oil carried over their lines, or in coal or oil properties; whether officers or agents charged with the duty of distributing cars or furnishing facilities were interested in coal or oil properties; whether there was any violation of the Anti-Trust Law participated in by any common carrier engaged in the transportation of coal or oil; and also the systems of car supply and distribution in effect upon the railways engaged in the transportation of coal or oil, and whether such carriers discriminate against shippers in the matter of distribution of cars or in furnishing facilities for the transportation of coal or oil. If Congress had already attempted by the Act to Regulate Commerce to make the Commission a Congressional Committee of Inquiry why was it necessary to explicitly confer upon the Commission the power to compel the testimony of witnesses.

The same observation applies to the joint resolution of June 30th, 1906, concerning block signal systems (Idem p. 912).

(*c*) Section 6 of the Act to establish a Department of Commerce and Labor, creating the

Bureau of Corporations with certain powers of investigation (32 Stat., 827) lends no support to the contention for a general inquisitorial function. Power is thereby conferred upon the Commissioner of Corporations, to make, under the direction of the Secretary of Commerce and Labor, "diligent investigation into the *organization*, conduct and management of the business of any corporation, joint stock company, or corporate combination engaged in commerce among the several States, and with foreign nations, except common carriers"; and "to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce." It is further provided that "in order to accomplish the purpose declared in the foregoing part of this section the said Commissioner shall have and exercise the same powers and authority in respect to corporations, joint stock companies and combinations subject to the provisions hereof as is conferred on the Interstate Commerce Commission in said Act to regulate commerce and the amendments thereto in respect to common carriers, *so far as the same may be applicable, including the right to subpœna*

and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths." We fail to conceive how anything contained in this Act, passed in 1903, can throw any light on the power of investigation conferred by Section 12 of the Act to Regulate Commerce passed in 1887. The legislative intent of an Act is often ascertained with the aid of previous legislation, but the rule which permits of that aid scarcely extends to Acts passed after such an interval of time. Then the affirmative power of the Commissioner is to investigate the "*organization*, conduct and management of business of corporations subject to its jurisdiction," which, to begin with is a broader power than the power of investigation conferred by Act to Regulate Commerce, which is confined to the management and conduct of the business of *common carriers*. The Commissioner's power is one purely of investigation and obtaining information to enable him to make reports, not to Congress, but to the President. Instead of setting forth the specific powers necessary to make this duty of investigation effective, such as the power to compel annual and special reports, and the power to employ special agents to make examin-

ation, it invests him with the same powers as the Commission has *so far as applicable.* This delegation of powers by reference to an existing Act so far as applicable, instead of by their enumeration, throws no light upon the proper construction of the existing Act. Moreover, Congress deemed it necessary, in view of the fact that the Commissioner was only empowered to investigate and report and not to execute or enforce anything, to specially confer upon him the power to compel testimony, as otherwise he would not be vested with that particular power for the reason that the Commission's power to compel testimony was confined to the enforcement of the provisions of the Interstate Commerce Act and would not therefore be applicable.

(3) *The cases cited in support of the claim of an inquisitorial power beyond the enforcement of the provisions of the Act do not sustain it.*

The case of *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, is much relied upon as holding that the power of investigation with the aid of compulsory testimony, is as broad as the entire business, affairs, transactions, dealings, relations and management of a carrier engaged to any

extent in interstate commerce whether within the regulations of the Act or not, and in fact as broad as the whole domain of interstate com merce. But it countenances no such doctrine. To begin with, the investigation there involved was under Section 13 of the Act. It originated in an informal complaint made to the Commission alleging that the Illinois Steel Company had caused various small railroad companies to be incorporated for the purpose of operating its switches and side tracks at various places as a " device for the purpose of evading the provisions of the act to regulate commerce and obtaining special, illegal, unjust and unreasonable rates for the transportation of interstate traffic, and that it did thereby obtain an illegal, undue and unreasonable preference and advantage, subjecting other persons, firms and companies to undue and unreasonable prejudice and discrimination in the transportation of property from divers cities and places without the States of Illinois and Wisconsin to divers cities and towns within those States " (pp. 463, 464). The Commission thereupon, as it might do under Section 13, on its own motion formulated charges based on the informal complaint, served them upon the

companies involved, and required them to answer, which they did. Certain witnesses having refused to answer questions and produce books touching the ownership of the stock of the small switching companies by the Illinois Steel Co., the Commission presented its petition to the Circuit Court of the United States under Section 12 for an order commanding the witnesses to answer the questions and produce the books. Answers were served which, though incidentally questioning the materiality of the evidence sought, really relied as a defence upon the unconstitutionality of the provision of Section 12 authorizing the Commission "to invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers and documents" on the ground that the use of its process merely in aid of an administrative body in the conduct of its investigations was not an exercise of judicial power. The question for decision was formulated by the Court as follows (p. 468):

> "Is the twelfth section of the Act unconstitutional and void so far as it authorizes or requires the circuit courts of the

United States to use their process in aid of inquiries before the Commission?"

And (p. 472)

"Guided by these principles, we proceed to inquire whether the twelfth section of the Interstate Commerce Act, *so far as it authorizes the present proceeding*, assumes to invest the circuit courts of the United States with functions that are not judicial."

The Court, after adverting to the power of Congress to regulate commerce, and quoting from the opinion of Chief Justice MARSHALL in *McCullough v. Maryland*, the ruling in that case to the effect that the "sound construction of the Constitution must allow to the national legislature that discretion with respect to the means by which the powers it confers are to be carried into execution which will enable that body to perform the high duties assigned to it in the manner most beneficial to the public" proceeded to say:

"It was not disputed at the bar, nor indeed can it be successfully denied, *that the prohibition of unjust charges, discriminations or preferences by carriers engaged in inter-*

state commerce, in respect to property or persons transported from one state to another, is a proper regulation of interstate commerce, or that the object that Congress has in view by the Act in question may be legitimately accomplished by it under the power to regulate commerce among the several states. *In every substantial sense such prohibition is a rule by which interstate commerce must be governed, and is plainly adapted to the object intended to be accomplished.* The same observation may be made in respect to those provisions empowering the Commission to inquire into the management of the business of carriers subject to the provisions of the Act, and to investigate the whole subject of interstate commerce as conducted by such carriers, *and, in that way, to obtain full and accurate information of all matters involved in the enforcement of the Act of Congress.* It was clearly competent for Congress, *to that end,* to invest the Commission with authority to require the attendance and testimony of witnesses, and the production of books, papers, tariffs, contracts, agreements and documents *relating to any matter legally committed to that body for investigation.* * * *

"Interpreting the Interstate Commerce

> Act as applicable, and as intended to apply, only to matters involved in the regulation of Commerce, *and which Congress may rightfully subject to investigation by a Commission established for the purpose of enforcing that Act*, we are unable to say that its provisions are not appropriate and plainly adapted to the protection of interstate commerce from burdens that are or may be, directly and indirectly, imposed upon it by means of unjust and unreasonable discriminations, charges, and preferences."

This is an explicit ruling that the power of investigation is a power in aid of the enforcement of the regulations of the Act.

Having thus affirmatively expressed itself with respect to the scope and purposes of the power the Court said, at p. 474 :

> "An adjudication that Congress could not establish an administrative body with authority to investigate the subject of Interstate Commerce and with power to call witnesses before it, and to require the production of books, documents, and papers relating to that subject, would go far towards defeating the object for which the people of the United States placed commerce among

> the States under national control. All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced, *otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules.*"

It is urgently insisted that this is a ruling that the power of investigation extends beyond matters involved in the enforcement of the regulations of the Act to the obtaining of information which would be useful to Congress in shaping future legislation. In answer we say, first, that the question whether there is a power of investigation merely in aid of future legislation by Congress was not before the Court, and therefore it will not be held to have decided it by strained inferences from language used in deciding the question that was before the Court. In the next place, what was thus said argumentatively

is not to be taken as changing or modifying what the Court had just said affirmatively regarding the power of investigation in the exercise of which testimony might be coerced. Finally the remark that full information necessary as a basis of intelligent legislation by Congress can only be obtained through the instrumentality of an administrative body with the power of obtaining information does not necessarily refer to information obtained for legislative purposes through the coercion of testimony for the reason that the Commission obtains a vast amount of information not only through the investigations in the enforcement of the provisions of the Act, but from the many other sources which have been pointed out.

But it is further said in the opinion (p. 486):

> " Indeed, of all the modes that could be constitutionally prescribed *for the enforcement of the regulations embodied in the Interstate Commerce Act*, that provided by the 12th section is the one which, more than any other, will protect the public against the devices of those who, taking advantage of special circumstances, or by means of combinations too powerful to be resisted and

overcome by individual effort, would subject commerce among the states to unjust and unreasonable burdens."

The limitation of the power of investigation to the enforcement of the regulations of the Act could not be more clearly indicated.

Interstate Commerce Commission vs. Baird, 194 U. S. 25, also relied upon by counsel for the petitioner, is another case arising under Section 13 of the Act as the investigation was based on a complaint filed against specific companies alleging *unreasonable and unjust rates and undue preferences and pooling of freights.* Answers were filed by the companies and the hearing proceeded on the issues so formulated. In the course of the hearing certain witnesses refused to produce contracts and answer questions and thereupon an application was made to the Court to compel them to do so (pp. 27, 28, 29). The only question presented concerned the relevancy of these contracts and inquiries to the issues made by the petition and answers. The Court expressly refrained from any definition of the power of investigation, under Section 12, saying that "*whatever may be the right of the*

Commission to carry on an investigation under the general powers conferred in Section 12, this proceeding was under the complaint filed and we will examine the testimony offered with a view to its competency under the allegations made by the complaint" (pp. 40, 41). The contracts and questions were held to be relevant for the reason that they had a bearing on rates and pooling. That is all that was decided in the case so far as the question now under discussion is concerned, and its rulings afford not the slightest support for the claim or proposition that the power of investigation under Section 12 reaches to matters not connected with the enforcement of the regulations of the Act.

In *Interstate Commerce Commission vs. Cincinnati, New Orleans & Texas Pacific Railway Company*, 167 U. S., 479, the point involved and decided was whether power had been conferred upon the Interstate Commerce Commission to fix rates, either maximum, minimum or absolute.

A sentence in the opinion (at page 506) concerning the duty of the Commission to inquire into the management of the business

of railroad companies is separated from its context and urged as a ruling sustaining the contention made on behalf of the Commission. The scope of the power was not a question in the case and received no consideration. Moreover, taking the sentence with its context it clearly appears that the reference to the duty or power of inquiry was a reference to it in connection with rates, and rates are a matter very fully regulated by the Act.

Similarly in *Texas & Pacific Railway Company vs. Abilene Cotton Oil Company*, 204 U. S. 426, the point involved was whether, in view of the provisions of the Interstate Commerce Act concerning rates, a shipper could maintain a common law action in a State court to recover on account of excessive rates charged on interstate shipments. In the course of its opinion the Court said at p. 438:

> "The Commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts and their methods of dealing, and generally to enforce the provisions of the act."

This sentence is also separated from its context and cited as another ruling of this Court sustaining a wider power of investigation than is necessary to enforce the regulations of the Act, and this regardless of the fact that the scope of the power was not a question in the case, and that what was under consideration was the function of the Commission respecting rates. The very next sentence to that just quoted is

> " *To that end* it was made the duty of the District Attorneys of the United States, under the direction of the Attorney General, to prosecute proceedings commenced by the Commission to *enforce compliance with the act*"

showing the connection between the plenary power to investigate the affairs of carriers and the enforcement of the Act.

VII.

The decree of the Circuit Court directing this Appellant to answer the questions therein specified should be reversed and the petition dismissed.

JOHN C. SPOONER,
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Of Counsel for Appellant and Appellee
Edward H. Harriman.

Supreme Court of the United States

OCTOBER TERM, 1908.

No. 315.

EDWARD H. HARRIMAN,
Appellant,

vs.

INTERSTATE COMMERCE COMMISSION.

No. 317.

INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

EDWARD H. HARRIMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

ADDITIONAL BRIEF FOR APPELLANT, EDWARD H. HARRIMAN.

ADDITIONAL BRIEF FOR APPELLANT EDWARD H. HARRIMAN.

The facts are so fully stated in our main brief as to render a re-statement thereof superfluous.

It is not disputed that the Union Pacific Railroad Company and the Oregon Short Line Railroad Company are corporations created by the laws of the State of Utah, nor is it disputed that the stock purchases by the said railway companies here involved were authorized by the respective States to whose laws the said companies owe their corporate existence.

The case not only involves the liberty of the citizen, but presents constitutional questions of great gravity and delicacy. It is greatly to be regretted that it was instituted and brought here under circumstances which too much warrant the inference that its object is not so much to secure information as it is to secure, by means of this proceeding, an adjudication from this Court upon the great questions which are involved. This suggestion is predicated upon the fact that the order of investigation (which is hereinafter set forth) was adopted on the 15th day of November, 1906; that the taking of testimony was closed and the inquiry ended on the 27th day of February, 1907; that the report of the Commission setting forth the results of the investigation, *including the conclusions and recommendations of the Commission,* with no intimation therein of a supplemental report, was promulgated on the 17th day of July, 1907; and that the Commis-

sion, notwithstanding, after a little over five months, to wit, on the 10th day of August, 1907, filed in the Circuit Court of the United States for the Southern District of New York its petition against the Appellant and Otto H. Kahn, who had also refused to answer certain questions propounded in the same proceeding, praying for an order compelling them to answer the questions; but the case, nevertheless, is here. The conclusions of the Commission are that—1. "The function of a railroad corporation should be confined to promoting transportation; railroads should not be permitted to invest generally in the stock bonds and securities of other railways and of steamship companies, except connecting lines," etc. 2. That "it is contrary to public policy as well as unlawful for railways to acquire control of parallel and competing lines. This policy is expressed in the Federal laws and in the Constitutions and laws of nearly every State in the Union." 3. "That the time has come when some reasonable limitation should be imposed upon the issuance of securities by railways engaged in interstate commerce." 4. "The ownership by one railway of stocks in a competing railway should not be permitted"; and 5, "Such lines of railway should be prohibited from having any common directors or officers." This leaves nothing further in respect of the Union Pacific and its subsidiary companies, but the pursuit which was interrupted by the declination of Appellants Harriman and Kahn by advice of counsel, to answer the questions propounded.

Argument.

WHAT RELATION DOES A STATE RAILWAY CORPORATION ENGAGED IN INTRA AND INTERSTATE COMMERCE SUSTAIN TO THE STATE WHICH CREATED IT AND WHICH CONTROLS ITS CONDUCT OF INTRASTATE COMMERCE AND TO THE UNITED STATES WHICH ALONE MAY REGULATE ITS CONDUCT OF INTERSTATE COMMERCE.

It seems to be too plain for successful challenge that a railway corporation, created by a *State* and authorized to build and operate a railway *within a State*, which *also* engages in *interstate commerce*, remains, notwithstanding, a State corporation and subject to the control of the State as to its organization, the number of its directors, the amount of its capital stock, the liability of its stockholders, its authority to borrow money and to mortgage its property, in possession and expectancy, including its franchises; to extend its railway into other States, by their consent, by construction, purchase, or by stock ownership in other State railway corporations, and the general regulation of its powers, the increase or diminution of its franchises and to the absolute power of regulating its conduct of commerce "completely internal." The theory underlying the contention of the learned counsel for the Commission is that the moment it engages in interstate commerce it ceases practically to be a State corporation, subject, as to its organization and internal affairs, to the State which created it and which

alone can take from it its corporate life and becomes, *to all intents and purposes, a Federal corporation*, subject to regulation by Congress, not alone as to its conduct of interstate commerce—which power of course is conceded—but also as to its *expenditures*, its *relations with its directors, the conservation of its financial resources*, the *increase of its stock*, and *bonded indebtedness* and *of its internal management and affairs generally*.

Manifestly, no corporation can be subject at the same time to regulation in the matters referred to and to the full visitatorial power which *inheres* in the relation of *creator* and corporate creature, by *two separate governments*. Otherwise, what the one authorizes the other may prohibit. If the State authorizes it to increase its stock, the Congress may prohibit it. If the State authorizes it to purchase stocks in other railway corporations, competitive or *otherwise*, the Congress may prohibit it. If the State leaves it free as to the time and manner in which it shall declare its dividends, the Congress may prohibit the declaration of dividends except upon notice, the duration of which it may fix. If the State authorizes the directors to purchase, pending the declaration of a dividend, its stock, the Congress may prohibit the directors from making such purchases. If the State authorizes it to issue bonds the Congress may forbid it. The notion that a State may authorize its railway corporation to increase its capital stock, but *that the law cannot become effective until some official of the Federal Gov-*

ernment, under authority of the Congress, *consents to it*, not only, to our apprehension, ignores the dual character of our government and the distribution of power which the constitution makes between the Federal and the State Governments, but is without support in any decision or in reason. The contention that a State which has created a corporation and endowed it with the franchise of building, maintaining and operating a railway engaged in intrastate and interstate commerce, may not, although it deems it necessary, authorize it *efficiently* to increase its capital stock or its bonded debt, in order to enable it to better accomplish the purposes for which it was created, unless to the act of the Legislature, approved by its Governor, is superadded the approval of some Federal official, is repellant. One cannot well imagine a more humiliating spectacle than for the Governor of a State, after approving such a measure, to be required to carry it, hat in hand and with "eastern salaam," to some official of *another government* to ask *his* approval *as a precedent condition to its becoming efficacious*. It would seem unnecessary to cite authorities upon such a proposition; and yet that is the recommendation of the Commission in this proceeding and that is the contention elaborately and seriously urged in the brief of the learned counsel for the Commission.

This Court, in *Louisville & Nashville R. R. Co.* v. *Kentucky*, 161 U. S., 677, in which it was contended that the prohibition of Kentucky against the consolidation involved in that case constituted an interference

with the power of Congress over interstate commerce, said:

> *"If it be assumed that the States have no right to forbid the consolidation of competing lines because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of such legislation—a proposition which only needs to be stated to demonstrate its unsoundness.* As we have already said, the power of one railway corporation to purchase the stock and franchises of another must be conferred by express language to that effect in the charter, and, hence, if the charter of the L. & N. Co. had been silent upon that point, it will be conceded that it had no power to make the proposed purchase in this case. As the power to purchase then is *derivable from the State,* the State may accompany it with such limitations as it may choose to impose."

Stronger language could not well be used.

We draw attention to this quotation, although quoted in our main brief, as supporting the general proposition that what a State has power under the Constitution to permit, the Congress can have no power to prohibit; and the converse proposition is equally apparent that what a State may lawfully prohibit its corporation to do, the Congress has no power to authorize it to do, especially in respect of its organization and internal management.

It is not surprising that this Court in *Louisville & Nashville R. R. Co.* v. *Kentucky, supra,* used strong language against any proposition which would inevitably result in friction between the Federal government and the States, which it was one of the objects of the commerce clause to remove and prevent. It cannot be open to disputation, that subject to the qualification that a State may not lawfully or effectively authorize its railroad corporation "to make any contract or arrangement which would restrain interstate trade or commerce or obstruct the channels thereof" it may control absolutely the internal management or domestic polity of its railway corporation, engaged in intrastate and interstate commerce as fully as it might if it were engaged in intrastate commerce alone.

Mr. Justice Harlan says, speaking for the Court, in *Northern Securities Company* v. *United States,* 139 U. S., 349:

> "The question of the relations of the General Government with the State is again presented by the specific contention of each defendant that Congress did not intend 'to limit the power of the several States to create corporations, define their purposes, fix the amount of their capital and determine who may own, buy and sell their stock.' All that is true, generally speaking, but the contention falls far short of meeting the controlling questions in this case. * * * So far as the *Constitution of the United States* is concerned, a State may, indeed, create a corporation, *define*

its powers, prescribe the amount of its stock and the mode in which it may be transferred. It may even authorize one of its corporations to engage in commerce of every kind; domestic, interstate and international. The regulation or control of purely domestic commerce of a State is, of course, with the State, and Congress has no direct power over it so long as what is done by the State does not interfere with the operations of the General Government, or any legal enactment of Congress. A State, if it chooses so to do, may even submit to the existence of combinations within its limits that restrain its internal trade. But neither a State corporation nor its stockholders can, by reason of the non-action of the State or by means of any combination among such stockholders, interfere with the complete enforcement of any rule lawfully devised by Congress for the conduct of commerce among the States or with foreign nations; for, as we have seen, interstate and international commerce is by the Constitution under the control of Congress, and it belongs to the legislative department of the Government to prescribe rules for the conduct of that commerce."

These propositions are without question irrefutable and we are not to be understood, by anything said in this argument, to challenge them.

Speaking of the contentions imputed by the defendants to the Government in the Northern Securities Case, it is said:

> "Still further, it is generally asked whether the organization or ownership of railroads is not under the control of the States under whose laws they came into existence? Such statements as to the issues in this case are, we think, wholly unwarranted and are very wide of the mark; it is the setting up of mere men of straw to be easily stricken down. We do not understand that the Government makes any such contentions or takes any such positions as those statements imply. It does not contend that Congress may control the mere acquisition or the mere ownership of stock in a State corporation engaged in interstate commerce. Nor does it contend that Congress can control the *organization* of State corporations authorized by their charters to engage in interstate and international commerce." (The italics are not the court's.)

The contention that Congress may control the issue of stock and bonds by a State railway corporation, *because* it is engaged in interstate commerce, involves the further proposition that Congress may regulate all of the indebtedness which may be incurred by such corporations. It has been, ever since railroad corporations were created by the States, within the recognized power of the State which creates a corporation to determine what corporate powers it shall possess, the amount of its capital stock, at what price it shall be sold, whether it shall be sold for less than par, whether it shall be sold solely for money, or for money or property, or both, whether and to what extent it may mort-

gage the franchises which it holds from the State and the property which it has acquired or may acquire in the exercise of such franchises.

It is rather startling to be told now that these powers are held by the States *at sufferance only* from Congress, if the corporation engages in interstate commerce.

The power to create railway corporations to engage in intrastate and interstate commerce may as well be taken away from the States, if they may not provide what their capital shall be, whether common or preferred, or both; the liability of their stockholders, and what bonds they may issue secured by mortgage upon their property. It is an astounding suggestion to be seriously advocated that the *State may create* the corporation and *another government may fix the amount of its capital stock*. Moreover it would be idle to fix the amount of its capital bonds without some provision as to the price at which they may be sold, and in what that price shall be paid.

Almost every State has provided, either in its Constitution or by permanent statute, that none of its corporations shall issue stock except for money, property or services estimated at their actual money value, for less than the par value thereof. Some of the same States have provided, rather oddly, that bonds of their railway corporations shall not be sold for less than seventy-five cents on the dollar.

What is to become, under this new doctrine, of these constitutional and statutory provisions adopted by the

States? The theory upon which it is contended that this matter is within the control of Congress and that the States can be divested of the power which they have always exercised in respect of fixing the stock capital and bonded indebtedness of their railway corporations engaged in intra and interstate commerce may constitutionally be taken away, not *by amendment to the Constitution* ratified by the requisite number of States, but by act of Congress, is that it *is important to interstate commerce and to the public that corporations engaged in that commerce shall be financially* able to keep their railroads in good order, and to furnish facilities adequate to the demands of commerce, and that this *can be accomplished only by Federal conservation of their financial resources* and *Federal surveillance of their expenditures;* that it is important to the *nation* that the *credit* of railway corporations engaged in interstate commerce shall be kept sound; that its securities shall be made attractive, and that it shall be managed with economy; that its resources shall be so conserved as to enable it to obtain money at the lowest rates. The learned judge who sat at the circuit says, in his opinion, referring to the object of the interstate commerce law:

> "The purpose of this legislation is to compel interstate carriers to perform their *commercial functions* adequately, and *that word includes the idea of economy.*"

This Court has several times stated the purposes of

the Interstate Commerce Law differently from the statement of the learned judge.

It is said by Mr. Justice Harlan, speaking for the Court in U. S. vs. Brimson, 154 U. S., 472:

> "It was not disputed at the bar, nor indeed can it be successfully denied that the prohibition of unjust charges, discriminations or preferences by carriers engaged in interstate commerce in respect to property or persons transported from one State to another, is a proper regulation of interstate commerce, or that the object that Congress had in view by the act in question may be legitimately accomplished by it under the power to regulate commerce among the several States. In every substantial sense, such prohibition is a rule by which interstate commerce must be governed and is plainly adapted to the object intended to be accomplished."

In Interstate Commerce Commission vs. B. &. O. R. R. Co., 145 U. S., 276, it is said:

> "The principal objects of the Interstate Commerce Act were to secure just and reasonable charges for transportation; to prohibit unjust discriminations in the rendition of like services under similar circumstances and conditions; to prevent undue or unreasonable preferences to persons, corporations or localities, to inhibit greater compensation for a shorter than for a longer distance on them over the same line, and to abolish combinations for the pooling of freights."

Mr. Justice White, delivering the opinion of the Court in N. H. R. R. vs. Interstate Com. Com., 200 U. S., 391, says:

> "It cannot be challenged that the great purpose of the act to Regulate Commerce, whilst seeking to prevent unjust and unreasonable rates, was to secure equality of rates as to all and destroy favoritism—this last being accomplished by requiring the publication of tariffs and prohibiting secret departures from such tariffs and forbidding rebates, preferences and other forms of undue discrimination."

This contention that it is *or ought to be,* the function of the Interstate Commerce Commission, under the law, to supervise the expenditures of a State railway corporation engaged in intrastate and interstate commerce to see that it is *economically managed* and that its general assets are conserved is a proposition to practically take from *the stockholders of the corporation the management of their property* and turn it over to a board acting under authority of another government, from which it received no franchise, and which has no interest in its property; and it takes no account of the fact that the State corporation is engaged in *intrastate* as well as *interstate* commerce; that the State and the people who dwell within her limits have *some* interest in its being able to borrow money at low rates to multiply its tracks within her borders; to furnish adequate terminals and stations, to equip its

trains with the most modern and best approved appliances for safety; to keep enough well-paid men on its pay-roll to render it unnecessary, except in exigencies, that they should be overworked to their detriment and in respect of public safety; and, generally, that it shall always be able to meet the demands of commerce, *State and interstate*. Nor does it take account of the fact that it owes its existence to the State, whose grant of franchises was upon the condition of full performance of the duties for which it was created, and which alone possesses the power to enforce such performance by the *forfeiture* of its charter. It takes no account, either, of another element of great importance, that the owners of the property have an interest, selfish but stronger than the law of State or Nation, that the corporation, into which they have put their money, shall be able to compete with other corporations engaged in the same business; that accidents and destruction of life and property shall be avoided; that rapid transit shall be secured, and that the corporation shall, by rendering adequate service to the public, be able to earn money to pay for necessary improvements, and besides, to pay dividends to those who hold its stock. Moreover, upon what basis is it assumed that the Congress has a more intense interest in maintaining the credit and the consequent ability of the State corporation engaged *in intrastate and interstate* commerce to meet the demands of commerce than the men who are responsible, both to the stockholders and to public opinion, for its successful management and operation?

Railroad corporations are private corporations; their property is private property.

U. S. vs. Union Pacific, 98 U. S. 618.

The Sinking Fund Cases, 99 U. S., 719.

True, their property is "affected with a public interest"; their business is to serve the public, and they therefore are subject to regulation to prevent extortionate rates and discrimination in the service which they render. Most of the States, if not all, are now carefully regulating both the internal affairs, management and conduct of intrastate commerce by their railway corporations through commissions similar to the Interstate Commerce Commission. They are obliged to make to those commissions substantially the same reports they make to the Interstate Commerce Commission, and they are subject to constant supervision. Is this supervision by the State, through its commissions, of their organization and internal affairs, including their finances, to be *ousted* by the Federal Government? This is involved, for, as we have said, two governments can not, at the same time, regulate the purely internal affairs and management of the same corporation.

Is interstate commerce any more important from the Federal standpoint than intrastate commerce is from the State standpoint? The States tax the property of their railway corporations. Many of them require them to pay as a license fee or occupation or franchise tax, a percentage upon their gross earnings, which

gives them a financial interest that they shall conserve their resources, furnish abundant facilities and successfully compete with their rivals, thereby more efficiently meeting the demands of commerce.

The learned counsel, in their brief, shy away from the blunt proposition that Congress may pass a law *directly* regulating the stock capital of State railway corporations engaged in intrastate and interstate commerce, the issue and amount of their bonded indebtedness, the declaration of dividends upon their stocks and the relations of their directors with the corporations and seek to reach this goal by a circuitous route; thus, they say, on page 63:

> "It would seem that Congress may, *as a condition to engaging in interstate commerce,* prescribe *limitations upon its corporate organization, upon the actions of its officers in dealing with the company,* and may *regulate its dividends,* and that this is not such a regulation of the internal affairs of the corporation as is beyond the powers of the Federal Government, *although it may conflict with that of the States.*"

If this be not regulating its organization and internal affairs, what would be?

Again, on the same page:

> "There is a wide difference between authorizing purely domestic corporations to consolidate and *allowing them to engage in interstate commerce;* but when they do engage in such

> commerce they shall not consolidate or combine or *pay dividends beyond a certain rate,* nor *that the officers thereof shall not deal with such corporations,* or that *the officers shall not issue fictitious stock or otherwise imperil their financial standing.* These are regulations which *Congress may impose as a condition when State corporations project themselves into interstate commerce.* Congress may declare that all corporations, under the laws of any of the States, *as a condition* of *engaging in interstate commerce,* shall comply with such regulations as it may prescribe affecting the movement of interstate commerce, and in so doing Congress may provide rules for the regulation of the corporation, for the preservation of its solvency, for the safety of its employees and passengers, and such other regulations as it may deem necessary for the effective control of the instrumentalities of interstate commerce. The power of Congress in this respect is plenary."

It will be observed that here the learned counsel extend their proposition to all State corporations engaged in interstate commerce, and if their premises are sound the scope of their conclusion is none too broad. In other words, they contend that Congress may exclude all State corporations, railway or *industrial,* from engaging in interstate commerce, except upon *condition that it shall regulate the corporations for the preservation of their solvency,* for the safety of their employees and passengers, etc.

The propositions, as stated, are a curious comming-

ling of principles already well established by this Court with other principles which never have been established by this Court, and which, to our apprehension, are utterly untenable; yet it will be found that upon the propositions which seem to us so *untenable* rests the entire case of the Commission as put by its counsel.

But upon what are these propositions predicated? Obviously, that the power of Congress to regulate commerce goes beyond the regulation of *commerce* and extends to the regulation of all the *corporations—railway and otherwise—which are engaged in interstate commerce and solely because they are engaged in interstate commerce;* and, therefore, that the Congress may prohibit any State corporation, railway or otherwise —from engaging in interstate commerce, except upon the *condition* that it will submit to a Federal regulation which heretofore has been admitted to be solely possessed by the State which *created* the corporation. It seems to have escaped the memory of the learned counsel that the power is to *regulate commerce*. There is no grant of power to regulate *those who engage in commerce* except in their conduct of it. The power to *regulate the instrumentalities which are employed in conducting it* is an *implied* power. But this implied power does not include the *regulation of the owners* of the *instrumentalities* except to require them to conform to the lawful requirements of Congress as to the character of the instrumentalities and the manner of their use in interstate commerce.

We have supposed that the object of the commerce

clause was to relieve commerce among the States from the restrictions and burdens which, before the adoption of the Constitution, were placed upon it by the independent States under the Confederation, and to lodge the power in the Federal Government that *it might keep the channels of interstate commerce free from obstruction.* The predicate upon which this contention is based is bad.

Chief Justice Marshall, in Gibbons vs. Ogden, 9 Wheaton, 211, had this to say upon the subject:

> "In pursuing this inquiry at the bar, it has been said that the Constitution does not confer the right of intercourse between State and State. That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. This is true. The Constitution found it an existing right, and gave to Congress the power to regulate it."

In the *Employers' Liability cases,* 207 U. S., p. 497, the Court, speaking through Mr. Justice White, discriminates between the regulation of a *corporation* engaged in interstate commerce and the *regulation of interstate commerce* in which the *corporation is engaged,* and for want of Congressional recognition of this distinction the law was held to be unconstitutional. The Court says:

> "From the first section it is certain that the act extends to every individual or corporation who may engage in interstate commerce as a

common carrier. Its all-embracing words leave no room for any other conclusion. It may include, for example, steam railroads, telegraph lines, telephone lines, the express business, vessels of every kind, whether steam or sail, ferries, bridges, wagon lines, carriages, trolley lines, etc. Now, the rule which the statute establishes for the purpose of determining whether all the subjects to which it relates are to be controlled by its provisions, is that any one who conducts such business be a 'common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States,' etc. That is, the *subjects* stated all come within the statute *when the individual or corporation is a common carrier who engages in trade or commerce between the States,* etc. From this it follows that the statute deals with all the concerns of the individuals or corporations to which it relates if they engage as common carriers in trade or commerce between the States, etc., *and does not confine itself to the interstate commerce business* which *may be done by such persons.* Stated in another form, the statute is addressed to the *individuals or corporations who are engaged in interstate commerce* and *is not confined solely to regulating the interstate commerce business which such persons may do*— that is, it regulates the *persons because they engage in interstate commerce and does not alone regulate the business of interstate commerce* * * * the act then being addressed to all common carriers engaged in interstate commerce, and

> imposing a liability upon them in favor of any of their employees, without qualification or restriction to the business. * * *
>
> "As the act thus includes many subjects wholly beyond the power to regulate commerce and depends for its sanction upon that authority, it results that the act is repugnant to the Constitution, and cannot be enforced unless there be merit in the propositions advanced to show that the statute may be saved," which the Court held there was not.

It is as firmly settled by the decisions of this Court and of the State courts as any proposition in the law, that the power of Congress over interstate commerce is plenary, and that to the rules which it lawfully prescribes for the government of such commerce, State railway corporations engaged therein *must conform, subject to the penalties of the law* for failure so to do. They must serve for reasonable compensation, without discrimination. They must observe the lawful requirements of Congress as to the instrumentalities which they employ in such commerce and as to the manner of their use, but it is a "far cry" from this power over the conduct by State corporations of interstate commerce, to the proposition that Congress may regulate the *State railway corporation itself* in respect of its capital stock; its bonded indebtedness, the prudence and economy of its management; the declaration of its dividends, the relations and transactions between its directors and itself, etc.

The learned Judge, who sat below in this cause, says in his opinion:

> "If, therefore, Congress does possess the powers above indicated, it is within those powers to legislate—not directly against particular officers, nor by way of conferring causes of action on stockholders or the corporation itself, nor by creating new crimes—but by *limiting the interstate operations of corporations not complying with* federal safeguards against the recurrence of obnoxious practices, and *licensing* those affording the public, security against methods *calculated to diminish solvency* and therefore *efficiency* and *economy* in interstate transportation. This is the *larger subject reasonably suggested by the questions propounded and on that subject* I think the power of Congress is *ample although not yet fruitful in results.*" (Italics not the Court's.)

If we understand this language, it announces the proposition insisted upon by the learned counsel for the Commission in their brief that Congress may *prohibit all railway corporations,* except those incorporated by Congress, *from engaging in interstate commerce;* and *therefore* may impose upon them as a *condition* of engaging in such commerce, that they shall submit the management of their internal affairs, including their *finances,* and *the supervision of their expenditures, etc.,* to regulation by Congress.

As to the suggestion that Congress may prohibit all such State railway carriers from engaging in inter-

state commerce, except upon the condition that the Federal government shall have the power to regulate the *corporation itself* in the particulars alluded to, and *all others that the Congress may see fit to embody in the condition,* except the power to regulate *intrastate commerce,* it may be said that it involves an attempt by the Congress to oust the power of the States over the railway corporations of their own creation. In other words, it is an attempt to do indirectly what under the Constitution could not be done directly, which is generally inadmissible, and which is especially sinister in a matter which involves the relations of the States and the general Government. But this proposition is conclusively answered by the opinion of this Court, through Mr. Justice White in the Employer's Liability Cases, *supra,* thus:

> "On the one hand, while conceding that the act deals with all common carriers who are engaged in interstate commerce, because they are so engaged, and indeed while, moreover, conceding that the act was originally drawn for the purpose of reaching all the employees of railroads engaged in interstate commerce to which it is said the act in its original form alone related, it is yet insisted that the act is within the power of Congress, because one who enengages in interstate commerce thereby comes under the power of Congress as to all his business and may not complain of any regulation which Congress may choose to adopt. These contentions are thus summed up in the brief filed on behalf of the Government:

" 'It is the *carrier* and not its employees that the act seeks to regulate, and the carrier is subject to such regulation because it is engaged in interstate commerce. * * *

" 'By engaging in interstate commerce the carrier chooses to subject itself and its business to the control of Congress, and cannot be heard to complain of such regulations.

" '* * * It is submitted that Congress can make a common carrier engaged in interstate commerce liable to *any one* for its negligence who is affected by it; and if it can do that, necessarily it can make such carrier liable to all of its employes.'

"On the other hand, the same brief insists that these propositions are irrelevant, because the statute may be interpreted so as to confine its operation wholly to interstate commerce or to means appropriate to the regulation of that subject, and hence relieves from the necessity of deciding whether, if the statute could not be so construed, it would be constitutional. * * *

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, *because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress.* To *state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely State concern. It*

> *rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress.* It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

Mr. Justice Moody, dissenting because differing with the Court as to the *principle of construction to be applied to the act,* says in his opinion:

> "Of course, the power to regulate commerce does not authorize Congress to *control the general conduct of persons engaged therein,* but unless it is an idle and useless power it authorizes Congress to control the conduct of persons engaged in commerce in respect to everything which directly concerns commerce, for that is commerce itself."

The contention on the other side leads to the questions: Are the issue and sale of stock and bonds by a State railway corporation interstate commerce? Is

there not as much reason for saying that the issue and sale of stocks by a Federal railway corporation engaged in *intra*state commerce are *intra*state commerce? If the issue of bonds is interstate commerce and subject, therefore, to the regulatory power of Congress to the exclusion of the States which created the corporations, why is not the giving of promissory notes for a longer or shorter period also interstate commerce? The most solvent railway corporations in times of panic have occasion quickly to borrow money. It is in the public interest that they should do so. May they exercise the borrowing power conferred by their charters or must they hurry to Washington to obtain the consent of some official of the Government? It is often important in such times that they should not be known as borrowers because of its effect upon the apprehension, already excited, of very many. The scheme seems not only impracticable but irrational.

If *capital* is not interstate commerce or an *instrumentality* of interstate commerce, in the sense in which the word "instrumentality" is used in this connection, it confessedly is beyond the reach of Congressional regulation.

The learned judge who heard and decided this case at the Circuit evidently felt the full force of this suggestion and with the courage of his intellect in acting upon the conclusion to which his logic leads him said, in his opinion:

"No person or company can engage in any com-

> mercial occupation without capital, and the management and investment thereof is as much a commercial instrumentality as is a locomotive or an engineer, and that the power of Congress extends over all instrumentalities of commerce is no longer doubtful. Hopkins vs. United States, 171 U. S., 597; Northern Securities Co. vs. United States, 193 U. S. The method of exercising such power is always open to discussion under the infinitely varied circumstances of commercial activity, but to me it seems clear that financial regulation of corporations engaged in interstate commerce is a regulation of that commerce by regulating its most potent instrumentality."

The cases cited do not sustain the proposition.

We have not supposed that the words "instrumentality" and "instrument," so often used in connection with the definition of "commerce among the several States," and what its regulation includes, could be held to embrace the issue and sale of stocks and bonds any more than it could be held to embrace the money which a railway corporation, engaged in interstate commerce, holds in bank subject to its checks. As a matter of logic, if it embraces stock as an instrumentality of commerce, and bonds as an instrumentality of commerce, in the sense in which the word "instrumentality" is used, it should extend to money, for stock is sold for money—that is the object of issuing it—and bonds represent money borrowed, and all enter into "capitalization." It is money which keeps the cars moving and enables the railway company to fulfill

its duty in both intrastate and interstate commerce. It would, therefore, seem to follow that the money in its treasury is an instrumentality of commerce within the meaning of that word as used in this connection, and it, therefore, must be subject to the regulatory power of Congress as to its *expenditure,* with reference to whether it is provident or improvident, economical or wasteful. That would all go to the ability of the corporation to meet the public demand for added facilities of transportation, intra and interstate. The money received from interstate commerce and intrastate commerce, while the accounts may be separately kept, goes into the same treasury, indistinguishable and commingled, and is used, without reference to its source, as occasion may require.

Is it contemplated that this power of Congress to reguate its expenditure shall apply to moneys received from intrastate commerce as well as to moneys received from interstate commerce? If capitalization is an instrumentality of commerce so that it may be regulated and supervised as to its expenditure by the Interstate Commerce Commission as an instrumentality of commerce, it is equally true, one would think, as to the moneys and other assets of corporations other than *railway companies, engaged in interstate commerce;* because without capital they could not produce or ship from State to State. Is it proposed that Congress shall embrace these in this all pervading regulation? Really, if this power of Congress to regulate commerce among the several States includes capital, including

stock and bonds, and notes and money *as completely as it does the trains and employees engaged in interstate commerce,* what is left of the *States' power* in respect of intrastate commerce or of *control over the corporate creatures* for which *their legislation is responsible?* Congress evidently thus far has not considered capital an "instrumentality" of commerce in the sense that it is within its regulatory power. In the Interstate Commerce Law, passed in 1887, occurs the following sentence:

> "And the term 'transportation' shall include all *instrumentalities of shipment* or *carriage.*"

It was amended in 1906 to read as follows:

> "And the term 'transportation' shall include cars and other vehicles and all *instrumentalities* and facilities of shipment or carriage, etc."

It is said in the brief of the learned counsel for the appellee:

"Speaking for the Court in the *Northern Securities case,* Mr. Justice Harlan said:

> " 'And all, we take it, will agree, as established firmly by the decisions of this court, that the power of Congress over commerce *extends to all the instrumentalities of such commerce,* and to every device that may be employed to interfere with the freedom of commerce among the States and with foreign nations.'

"2. What, therefore, is an *instrumentality* of commerce?

"It is not merely the cars and engines used for transportation, or the roadbed and tracks on which they run. The *corporation* by which the commerce is conducted, as was decided in the Northern Securities case, is in itself an instrumentality, and all the machinery of such a corporation, whenever it enters into interstate commerce, Congress may regulate. True, the cars and engines are the direct means by which the freight is carried, but the corporation is no less an instrumentality than the roadbed, the stations, the telegraph instruments, the employees operating the trains, and many others which may be mentioned."

We look in vain for anything in the opinion of Mr. Justice Harlan to sustain the proposition that it was decided in the *Northern Securities case* that the corporation by which the commerce is conducted is in itself an instrumentality of commerce, as that word is used in this connection, and that all the machinery of such corporation, whenever it enters into interstate commerce, Congress may regulate. It is true, notwithstanding, that in the *Northern Securities* case the Court did, through Mr. Justice Harlan, decide that the Northern Securities Company was an "instrumentality," not an "instrumentality of commerce," for it was not to engage in commerce, but an instrumentality, by means of which the stockholders of the Great Northern and the Northern Pacific Railway Com-

panies sought to bring under a single ownership two parallel and competing railways extending across the continent. The Court did not deny the legality of the Northern Securities Company in itself, but held it to be the instrumentality, lawful in itself, by which it was attempted to accomplish an unlawful purpose and, therefore, brought the case within one branch of the definition of a common law conspiracy. The opinion does contain, however, something on this question not hereinbefore quoted:

> (Page 346.) "It cannot be said that any State may give a corporation, created under its laws, authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. Every corporation created by a State is necessarily subject to the supreme law of the land. And yet the suggestion is made that to restrain a State corporation from interfering with the free course of trade and commerce among the States, in violation of an act of Congress, is hostile to the *reserved* rights of the States. *The Federal court may not have power to forfeit the charter of the Securities Company; it may not declare how its shares of stock may be transferred on its books, nor prohibit it from acquiring real estate, nor diminish or increase its capital stock. All these and like matters are to be regulated by the State which created the company.*"

No one can successfully challenge this deliverance or any part of it.

"That all the machinery of such corporation, whenever it enters into interstate commerce, Congress may regulate," we are not called upon to controvert, *while it is used in interstate commerce;* but if used solely in intrastate commerce, it is not subject to the regulation of Congress, in such commerce, because, with some other machinery, at the same moment—of the same kind—*the corporation is also engaged in interstate commerce.* That the capital stock and bonds or capitalization of the corporation are "machinery" employed in interstate commerce, is to us a novel suggestion.

Reference is made to the decision in *Johnson* v. *Southern Pacific Co.*, 196 U. S., 1, which involved the constitutionality of the Safety Appliance Act, in which it was decided that the act applied to dining-cars, although at the particular time the car was not making an interstate journey, and in which the Court is quoted as saying:

> "The distinction between merchandise which may become an article of interstate commerce, or may not, and an 'instrument'" (the quotation is not the Court's) "regularly used in moving interstate commerce, which has stopped temporarily in making its trip between two points in different States, renders this and like cases inapplicable.
>
> "Confessedly this dining-car was under the control of Congress while in the act of making

> its interstate journey, and in our judgment it was equally so when waiting for the train to be made up for the next trip. It was being regularly used in the movement of interstate traffic and so within the law."

If there is any relation between the *Dining-car case* and the proposition that one government may intervene between a company created by another government and its officials "in the purchase of property forming the corporate assets," we confess our inability to discover it.

The necessity for greater concentration of capital in production of every kind; the fact that ordinarily it has been impossible to secure it, because of the rules of law that the death of one partner dissolves a partnership, and that each partner is liable for the entire indebtedness of the partnership, has rendered the corporation a commercial necessity. The Congress, under the Constitution, has, outside of the territories, the District of Columbia, and the other places over which the United States has exclusive jurisdiction, no power to *create a corporation, unless it be as an incident to and to carry into effect the powers granted by the Constitution.* Corporations to engage in production are not within its power to create.

Chief Justice Marshall said, in *McCulloch* v. *Maryland,* 4 Wheaton, 404:

> "Among the enumerated powers, we do not find that of establishing a bank or *creating a*

> *corporation.* But there is no phrase in the instrument which, like the Articles of Confederation, excludes incidental or implied powers; and which requires that every thing granted shall be expressly and minutely described. Even the tenth Amendment, which was framed for the purpose of quieting the excessive jealousies which had been excited, omits the word 'expressly' and declares only that the powers 'not delegated to the United States, nor prohibited to the States are reserved to the States or to the people.' Thus leaving the question whether the particular power which may become the subject of contest has been delegated to the one government or * * * to the other, to depend on a fair construction of the whole instrument."

And so under the clause conferring upon Congress the power to make "all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States, or in any department thereof," was rightly found the power to incorporate the United States Bank, and from the commerce clause has been derived by the same reasoning, the power to incorporate railroad corporations, corporations to build and maintain bridges across interstate streams, etc. On the other hand the States are *unrestricted in respect of the creation of corporations*, except so far as they are limited by the Constitutions which they have adopted.

The people of the States have organized their cor-

porations, railway, industrial and otherwise, under the laws of the States. They have been and must continue increasingly to be a tremendous factor in production, and therefore in the promotion of *commerce among the States* and with foreign nations. To strike them down by Federal law by *excluding them from shipping their products from State to State,* except upon such conditions as Congress may prescribe, with power of revocation of the license, etc., by the Executive Department, and to prohibit the State railway corporations from engaging in interstate commerce, except upon *condition* that they will submit, as to capitalization, internal management, the economy of their expenditures, the liability of their stockholders, the issue of bonds, and, generally, the supervision of their internal affairs, with power of revocation as suggested, would be to obstruct that commerce among the several States and with foreign nations, to secure the freedom of which from obstruction by the States, the commerce clause of the Constitution was inserted.

If it be admitted that Congress possesses this power of prohibition, the conditions which it may impose are confessedly limited only by its will, and it would inevitably restore the friction, greatly intensified, which paralyzed commerce among the several States, under the Confederation, and to avert a continuance of which was one of the most powerful inducements to the formation of the Union under the Constitution.

We may well believe, that if a provision had been inserted in the Constitution, that no State corporation should ship its product from State to State or engage in transportation "among the several States," *without permission of the Congress,* and *upon such conditions as to its capital* and *internal affairs* as the Congress might impose, it is morally certain that the instrument would never have been adopted. The States were suspicious and fearful of losing their rights and of being unduly subordinated to the federal power. Chief Justice Marshall said, in *McCulloch* v. *Maryland, supra*:

> "In America the powers of sovereignty are divided between the government of the union and those of the States. They are each sovereign with respect of the objects committed to it, and neither sovereign with respect of the objects committed to the other."

The plenary power which the Congress has, and the exercise of which has been steadfastly sustained by this court, to regulate interstate commerce, including its "instrumentalities," to prevent any State action directly regulating or burdening it, was deemed by the framers of the Constitution to be Federal power *adequate for its regulation,* and so it has proved to be. When Congress passes beyond the *regulation* of *interstate commerce* and exercises the function of *regulating the State corporation engaged there-*

in, as to its internal and corporate management, its capitalization, its issues of stock and bonds, the prudence of its investments, the economy of its expenditures, the relations and conduct of its directors with and toward it, the conservation of its assets, the maintenance of its credit, the declaration of its dividends, and the safeguarding of its financial ability to perform the functions for which it was created by the State, and upon the performance of which its corporate existence is conditioned, it usurps a power, in respect of which, so far as interstate commerce is concerned, the people of many States have an interest, but the *regulation of which we contend is within the sole power and authority of the State which created it.*

THE SUBJECT MATTER OF THE INQUIRIES ADDRESSED TO THE APPELLANT HARRIMAN ARE, IF OPEN TO INQUIRY OTHER THAN A JUDICIAL ONE, AN INVASION OF THE VISITORIAL POWER EXCLUSIVELY POSSESSED BY THE STATE WHICH CREATED THE UNION PACIFIC RAILWAY COMPANY AND THE OTHER STATE CORPORATION INVOLVED; AND BEYOND THE POWER OF THE CONGRESS TO DEAL WITH; AND THEREFORE OUTSIDE OF ANY POWER WHICH COULD BE CONFERRED UPON THE INTERSTATE COMMERCE COMMISSION TO INVESTIGATE.

The power of visitation of its corporations is vital to the sovereign which creates them, in order that they may be kept within their charter powers; in order that through waste of assets their ability to perform the

functions for which they were created may not be destroyed or seriously impaired. It, of necessity, inheres in the power which creates the corporation, for that power alone possesses the jurisdiction to investigate and the power through *direct* legislation or the medium of *its* courts or both to restrain the corporation from *ultra vires* acts, or to forfeit its franchises. From its nature it must be exclusive.

> "A public corporation instituted for purposes connected with the administration of the government may be controlled by the legislature, because such a corporation is not a contract within the purview of the Constitution of the United States. In those public corporations, there is, in reality, but one party, and the trustees or governors of the corporation are merely trustees for the public." (2nd Kent 306.)

A resort to the courts as to such a corporation is not necessary, nor is it necessary that there should be any reservation of power to alter or repeal its charter, it being simply a governmental agency for governmental purposes.

It is said in Angell & Ames on Corporations, page 724, Section 687:

> "Private and particular corporations founded and endowed by individuals for charitable purposes are, without any special reservation of power to that effect, subject to the private government of the founder and his heirs; not from

> any ecclesiastical canons or constitutions, but by appointment of law, as an incidental right, arising from the property which the founder had in the land or funds assigned to support the charity. The origin of such a power, says Lord Hardwicke, is the property of the donor, and the power every one has to dispose, direct, and regulate his own property; * * * and therefore, if either the crown or the subject creates an eleemosynary foundation, and vests the charity in the persons who are to receive the benefit of it, since that contest might arise about the government of it, the law allows the founder, or his heirs, or the person specially appointed by him to be visitor, *to determine concerning his own creature.*"

If the king created an eleemosynary corporation, and it was endowed by a subject, the subject became *fundator perficiens*, and was given, because thereof, by the law, visitorial power over it.

In this country, the government which *creates* a corporation, whether it be the Federal government or a State, is the *founder* of it, and is the visitor. This court had occasion, in Guthrie v. Harkness, 199 U. S., 148, speaking through Mr. Justice Day, to consider quite fully the subject. The question then was as to the right of a stockholder of a national bank to secure an inspection of the books of the corporation. The court says:

> "The origin and nature of 'visitatorial' power received full discussion in the case cited by

Bouvier from 4 Wheaton. See opinion of Mr. Justice Story in *Dartmouth College case,* 4 Wheat., 673.

"The meaning of this section was before Judge Baxter in the case of First Nat. Bank of Youngstown v. Hughes, 6 Fed. Rep., 737, and of the meaning of the term 'visitorial powers,' as used in Section 5241, that learned judge said:

" 'Visitation, in law, is the act of a superior or superintending officer, who visits a corporation to *examine into its manner of conducting business, and enforce an observance of its laws and regulations.* Burrill defines the word to mean 'inspection; superintendence; direction; regulation.' "

"At common law the right of visitation was exercised by the King as to civil corporations and as to eleemosynary ones by the founder or donor. 1 Cooley's Blackstone, 481. 'In the United States the legislature is the visitor of all corporations *created* by it, where there is no individual founder or donor, and may direct judicial proceedings against such corporations for such abuses or neglects as would at common law cause forfeiture of their charters.' 1 Cooley's Blackstone, 482, note.

"In the case before us the Supreme Court of Utah quotes from Merrill on Mandamus as follows:

" 'Visitors of corporations have power to keep them within the legitimate sphere of their operations, *and to correct all abuses of authority,* and to nullify all irregular proceedings. In

> America there are very few corporations which have private visitors, and in the absence of such, the State is the visitor of all corporations.' "

By this, obviously is meant the State which creates them.

Chancellor Kent says, in 2nd Kent, 306:

> "A private corporation, whether civil or eleemosynary, is a contract between the government and the corporators; and the legislature cannot repeal, impair, or alter the rights and privileges conferred by the charter, against the consent, and without the default, of the corporation, judicially ascertained and declared. This great principle of constitutional law was settled in the case of *Dartmouth College* v. *Woodward;* and it had been asserted and declared by the Supreme Court of the United States, in several other cases, antecedent to that decision. But it has become quite the practice, in all the recent acts of incorporation for private purposes, for the legislature to reserve to themselves a power to alter, modify, or repeal the charter at pleasure."

Undoubtedly the legislature which creates a corporation and which alone possesses the power to repeal the charter or to modify powers already granted, to prohibit practices which it deems pernicious or adverse to the public interest, or foreign to the purposes for which the corporation was created, may, through the executive officers, of the State or through its commit-

tees, thoroughly investigate its management and conduct and the manner in which the franchises of the corporation are exercised to the end that it may advisedly exercise the reserved power to alter or repeal. Or it may provide for judicial proceedings for the purpose of ascertaining the existence of grounds for and enforcing a forfeiture of the charter for default or abuse of power.

Chancellor Kent continues (p. 313):

> "There are two modes of proceeding judicially to ascertain and enforce the forfeiture of a charter for default or abuse of power. The one is by *scire facias;* and that process is proper where there is a legal existing body, capable of acting, but who have abused their power. The other mode is by information in the nature of a *quo warranto;* which is in form a criminal, and in its nature a civil, remedy; and that proceeding applies where there is a body corporate *de facto* only, but who take upon themselves to act, though, from some defect in their constitution, they cannot legally exercise their powers. Both these modes of proceeding against corporations are at the instance and on behalf of the government. *The State must be a party to the prosecution, for the judgment is that the parties be ousted, and the franchises seised into the hands of the government.* This remedy must be pursued at law, and there only."

It is very manifest that either judicial method of corporate visitation must be at the suit of and in the courts

of the government which created the corporation. A corporation may be restrained at the suit of the State which created it from exceeding its corporate powers, but this may not be done by another Government *or in courts other than its own.* It is obvious that judgment of *ouster,* and seizure of the franchise "into the hands of the Government" is *possible only at the suit of the State which creates the corporation.*

Franchises granted by a government *can be forfeited only to it.* They surely cannot "be seised into the hands" of another government.

Under the power *reserved* to alter and repeal, which can apply, of course, only to the government which *creates* the corporation, it being a qualification of the grant, the visitorial power may be exercised by the legislature.

This Court had occasion, in the Sinking Fund cases, 99 U. S., 720, to consider the scope of the power, *particularly in its relation to the field of visitation.*

The Court, speaking of the reserved power, says:

> "That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made; but, as was said by this Court, through Mr. Justice Clifford, in *Miller* v. *The State* (15 Wall. 498), 'it may safely be affirmed that the reserved power may be exercised, and to almost any extent, to carry into effect *the original purposes of the*

grant, or to secure the due administration of its affairs, so as to protect the rights of stockholders and of creditors, and for the proper disposition of its assets;' and again, in *Holyoke Company* v. *Lyman* (Id. 519), 'to protect the rights of the *public* and of the *corporators,* or to promote the due administration of the affairs of the corporation.' Mr. Justice Field, also speaking for the court, was even more explicit when, in *Tomlinson* v. *Jessup,* (Id. 459), he said, 'the reservation affects the entire relation between the State and the corporation, and places under legislative control all rights, privileges, and immunities derived by its charter directly from the State;' and again, as late as *Railroad Company* v. *Maine* (96 U. S., 510), 'by the reservation * * * the State retained the power to alter it (the charter) in all particulars constituting the grant to the new company, formed under it, of corporate rights, privileges, and immunities.' "

The Court further says (p. 721):

"Legislative control of the administration of the affairs of a corporation may, however, very properly include regulations by which suitable provision will be secured in advance for the payment of existing debts when they fall due. If a State *under its reserved power of charter amendment* were to provide that no dividends should be paid to stockholders from current earnings until some reasonable amount had been set apart to meet maturing obligations, we think it would not be seriously contended that

such legislation was unconstitutional, either because it impaired the obligations of the charter contract or deprived the corporation of its property without due process of law. * * * Railroads are a peculiar species of property, and railroad corporations are in some respects peculiar corporations. A large amount of money is required for construction and equipment, and this to a great extent is represented by a funded debt, which, as well as the capital stock, *is sought after for investment,* and is *distributed widely among large numbers of persons.* Almost as a matter of necessity it is difficult to secure any concert of action among the different classes of creditors and stockholders, and consequently all are compelled to trust in a great degree to the management of the corporation by those who are elected as officers, without much, if any, opportunity for personal supervision. The interest of the stockholders, who, as a rule, alone have the power to select the managers, is not unfrequently antagonistic to those of the debt-holders, and it therefore is especially proper *that the government,* whose *creature* the corporation is, *should exercise its general powers of supervision and do all it reasonably may to protect investments in the bonds and stock from loss through* improvident *management.*"

It is not only the visitorial power of the founder of the corporation but it is the police power of the State over the citizen dwelling within its borders.

Thus it is apparent that this is a function of the government which creates the corporation.

It is impossible that a private corporation shall be subject, in respect of the exercise of this visitorial or reserved power, to two different governments. Otherwise the conflict of power and its exercise would lead not only to friction between the governments but to the practical *paralysis* of the *visitorial power*.

It is very evident that it is the sole function of the government which creates the corporation to regulate its internal management, its issues and sale of stock, the liability of its stockholders, the declaration of its dividends, and the conservation of its resources.

That the jurisdiction of Congress over the conduct by a State corporation of interstate commerce is exclusive has been sturdily upheld by this Court from the beginning. It is equally well settled that the power of the State over commerce "completely internal" is as exclusively subject to regulation by the State. Where the State, therefore, creates a corporation to construct and operate a railway which is engaged both in intrastate and interstate commerce, it is settled that while the State cannot, in the exercise of its power, lay any direct burden upon interstate commerce which is solely within the jurisdiction of the Federal government, it *exclusively may visit and regulate the internal affairs of its corporation and its conduct of intrastate commerce.*

A Federal corporation, which Congress can undoubtedly create under the commerce clause, must, of necessity, engage not only in *interstate* commerce, but likewise in *intrastate* commerce. As to the former its

rates must be fixed under the authority of the Federal government. In so far as commerce "completely internal" is concerned, its rates can only be fixed by the State government within whose borders it engages in intrastate commerce.

What would be thought of the proposition, in such case, that, because the State is interested in the financial ability of the corporation to meet the demands of *intrastate* commerce, the *corporation* had subjected itself, *by engaging in such commerce,* to regulation by the State, as to its organization, internal management, the amount of its capital and as to abuses in its management, to regulate its issues of stock, the prices at which it may issue its bonds, the declaration of its dividends, and generally its financial management? The answer to such a proposition would immediately be made that while the State might *regulate the conduct of commerce wholly within its borders* conducted by such corporation, it is solely for the Federal government, which gave it its charter and could repeal it or alter it, to regulate the internal management of the corporation itself and all of the matters referred to. To us, the answer would be conclusive.

It would not do to say in reply that the interstate commerce which the corporation transacts is larger and of infinitely more importance than the intrastate commerce. That could in no wise affect the question, for it is a matter of constitutional power, not of the relative importance of the two kinds of commerce. As Mr. Webster said, in McCulloch v. Maryland, 4 Wheaton, 327:

> "The question of Constitutional power can hardly be made to depend on a question of more or less."

Again, the proposition that Congress can exercise a general visitorial power, or any visitorial power, and we have shown that these questions are plainly within the field of visitorial power, is in conflict with well settled principles of law upon the subject. It will not be claimed that the Union Pacific Railroad Company and the Oregon Short Line Railroad Company are Federal corporations, albeit engaged in interstate business. They were created by the State of Utah, and by transacting business elsewhere, they do not lose their citizenship or cease in any sense to be corporations of the State which created them, by engaging in interstate commerce. This elementary.

In the absence of a Federal question, they cannot sue in the courts of the United States any more than can domestic corporations. Every Federal corporation may sue in the Federal Courts, and remove suits into them from the State Courts regardless of the nature of the question. It is said in Clarke & Marshall on Private Corporations, Section 864:

> "It is a thoroughly well-settled principle that the courts of a State or country have no visitorial power over foreign corporations. Such power belongs exclusively to the State or country by which the corporation was created. The courts of a State or country, therefore, have no jurisdiction to interfere, by injunction or other-

wise, in the internal affairs and management of a foreign corporation, even at the suit of a resident stockholder, and even though the corporation may be doing business in the State or country, and may have expressly or impliedly agreed to submit to the jurisdiction of the court in suits against it. 'Our courts,' it was said in substance in a late Maryland case, 'possess no visitorial power over a foreign corporation, and can enforce no forfeiture of charter for violation of law, or *removal of officers for misconduct;* nor *can they exercise authority over the corporate functions, the by-laws, nor the relations between the corporation and its members, arising out of, and depending upon, the law of its creation. These powers belong only to the State which created the corporation.*' No jurisdiction to regulate or interfere with the internal affairs or management of a foreign corporation doing business in a State is conferred by a statute providing that lawful process served upon an agent of a foreign corporation authorized to receive such service, shall be of the same force and validity as if served on the corporation within the State; or by a statute making a foreign corporation liable to a suit 'on any dealings or transactions' had within the State."

(Notes 278, 279, 280 and 281 on pages 2753 and 2754 contain a large number of authorities).

It is said by the learned counsel in the brief for the Commission, on page 65:

"The petitioner does not claim that the Fed-

eral government has a *primary* visitorial power over State corporations. *We admit that such power belongs to the State which creates the corporation;* but we stand upon the elementary proposition that when the Federal power to regulate commerce is found to *overlap the State power* of *corporate visitation*—in other words, when it becomes *evident* that *the regulation of the interstate transportation business of a railway company* cannot be made effective *except* by *regulation also of those particular activities which have hitherto been considered rather more peculiarly a part of its personal life, and so subject to State control*—the Federal power *must dominate* and assume *entire control of those necessary functions.* Our opponents' contention seems to be that the State visitatorial power must in such cases dominate. Their position is the contrary to the repeated adjudications of this court, holding that where such powers conflict, that of the Congress is supreme."

This statement is not only essentially *petitio principii,* but in our view it is revolutionary. We are not to be placed in the attitude of contending that where legislation of a State conflicts with a constitutional enactment of the Congress in any case, the former must not yield to the latter. That would be contrary not only to the decisions of this Court but to the plain provision of the Constitution itself.

The vice of the argument lies in its *assumption* that the power of Congress to regulate interstate commerce

includes the power to regulate—if in its judgment it is necessary—not only the *interstate commerce* conducted by the State corporation but the *State corporation itself*, in respect of its *issues of stock and bonds, its ownership* under authority of the State of *stocks in other railway corporations; the declaration of its dividends;* the *expenditure of its moneys; the qualification of its directors,* and *generally the internal affairs of the corporation,* powers which hitherto the States have always exercised without challenge as to corporations of their own creation. The decisions of this Court not only do not sustain such a proposition but on the contrary condemn it. What would the power to *create* a stock corporation be worth if the State could not authorize it to issue capital stock and fix the price at which it should be sold, and authorize it to borrow money and issue bonds, secured by mortgages, upon its property, including its franchises, and to elect a board of directors, define their powers and duties, and generally to control its organization and internal affairs?

We challenge as an untenable and dangerous doctrine the assertion that a Federal *power* can overlap a State *power*. The Federal government possesses the powers expressly and impliedly granted to it by the people through the Constitution. Such power is, and must be, exclusive.

It is said, in McCulloch vs. Maryland (*supra,* 328):

"But it is essential to the existence and pres-

> ervation of the government that Congress should be able to exercise its constitutional powers at its own discretion, without being subject to the control of State legislation."

Is not the converse of the propisition true, that all Governmental power affecting the internal affairs of the States not granted by the Constitution to the United States, nor prohibited by it to the States, are reserved to the States respectively and to the people? And is it not essential to the existence and preservation of their governments that their legislatures shall be able to exercise their constitutional powers at their own discretion, without being subject to the control of congressional legislation? The power to create a corporation with no power to equip it to perform the conditions of the franchise grant, is no power at all.

We cannot be persuaded that the dual system of government created by the framers of the Constitution is so faulty in its structure as that under its provision a Federal *power* may *"overlap"* a State *power,* or that a State power may overlap a Federal power. The proposition seems paradoxical. If the Federal government possesses a power under the Constitution, the State does not possess it; and there can be, in such a case, no overlapping of Federal power by State power, or of State power by Federal power.

There seems to have grown up an impression that the Federal government, because national, is greater than the State governments. It is not so. The range of its power is wider *in its scope,* for it deals with the

external affairs of the United States and with affairs affecting the States, while each State deals only with its own internal affairs. The Constitution of the United States is a grant, while that of the State is a limitation; but the two governments are not to be compared. They are different, and each is, within its sphere, supreme. Chief Justice Marshall covered it all when he said, in McCulloch vs. Maryland (*supra*):

> "In America, the powers of sovereignty are *divided* between the government of the Union and those of the States. They are each sovereign with respect of the objects committed to it, and neither sovereign with respect to the objects committed to the other."

Evidently some think it would be better if under the Constitution Congress possessed the power to control both interstate and intrastate commerce. There is but one way known to the Constitution in which that status can be brought about; and that is by submission to the States of an amendment to that instrument, and its ratification by the requisite number of State legislatures.

It cannot be imputed to the framers of the Constitution that by the commerce clause they intended that Congress should be competent to oust the several States of their visitorial power over their own corporate creations and transfer it to the Federal govern-

ment. The States would not have surrendered such power, and that it can be constitutionally wrested from them after they have exercised it unchallenged for over a century is unthinkable.

We do not assert that the power which the State exercises when it creates a corporation in authorizing it to issue stock, and to borrow money, and to issue bonds, secured by a mortgage on its property, *including the franchise,* and to carry on the business for which it is created, is a visitorial power. The corporation cannot be "visited" until after it is created and organized and engaged in fulfilling the purposes for which it was created. All these things are included, of necessity, in the *power to create* the corporation.

The regulation of commerce among the several States does not involve the exercise of any visitorial power by the Government of the United States upon the State corporations engaged in that commerce. But where the Congress creates a railway corporation to engage in interstate commerce, and aside from the territories and District of Columbia and the "outlying possessions" it has not the power to create a railway corporation for any other purpose—it sustains the same relation to it exactly that the State does to its railway corporations and may exercise absolutely the same exclusive visitorial power that the State may exercise as to its corporations, either under the reserved power or by the courts, or both, at its option.

The learned counsel are consistent with their argu-

ment in stating that they do not claim that the Federal government has a *primary* visitorial power over State corporations. This would ordinarily imply that the Federal or some other government has a *secondary* visitorial power over the State corporations. If the exercise of the primary visitorial power conflicts with the exercise of the secondary visitorial power, which is to control? Ordinarily, the *primary* power remains the primary power so long as the possessor of it does not surrender it.

Evidently, what is meant is that so long as the State railway corporation confines its activities to intrastate commerce, its visitorial power over such corporations is primary; and the moment it engages in interstate commerce, it becomes secondary; and then the *secondary* power possessed by the Federal government becomes *primary;* and the power of the State becomes *secondary.* Therefore, as long as the State corporation is engaged in interstate commerce, the State possesses no visitorial power; and the only way in which the State can resume the visitorial power of the creator over its creature is by prohibiting it from any longer engaging in interstate commerce.

One may well think that a cause the exigencies of which are such as to force its advocates to such a contention must in the nature of things be unsound. It is overlooked by the learned counsel that a railway corporation is created by the State, liberally endowed with franchises and powers, *primarily* for the development of the State, and that while it engages in interstate commerce it also engages at the same time in intra-

state commerce, and that the State possesses the same interest in regulating it and the exercise of the visitorial power over it that it did when very many such were not engaged in interstate commerce at all. It not only has peculiar interest in the exercise of this power but alone possesses the power to make it effective.

The learned judge who sat at the circuit in this case says in his opinion:

> "But if a corporation engaged in occupations as to which it *fundators efficiens* or *perficiens* is *wholly without authority,* occupations which such founder cannot control or regulate, for which he cannot license and from which he cannot prevent the child of his creation, the visitatorial power of controlling or arresting abuses in respect of such occupations *becomes wholly inefficient,* and either that power or its equivalent must be lodged with the sovereign that can control the occupations so entered upon.
>
> "That such power in respect of interstate and foreign commerce is lodged in the Federal government, I believe to be the declaration of the case last cited at page 75."

The case cited in support of this reasoning and conclusion is Hale vs. Henkel, 201 U. S., 75.

Exactly what is meant by the phrase "for which he cannot license, and from which he cannot prevent the child of his creation" is not quite clear. In the first paragraph, the learned judge evidently overlooked the statement hereinbefore quoted from the

opinion of this court, speaking through Mr. Justice Harlan, in Northern Securities Company vs. U. S. (*supra*), page 348:

> "So far as the Constitution of the United States is concerned, a State may, indeed, create a corporation, define its powers, prescribe the amount of its stock, and the mode in which it may be transferred. *It may even authorize one of its corporations to engage in commerce of every kind; domestic, interstate and international*

What can the learned judge be understood to mean by the observation that the power of the State to protect the corporation from "abuses" by its officers becomes wholly inefficient? Is the constitutional capacity of the State which creates a corporation to enact a law prohibiting its officers and directors from purchasing from it stock or other property, or selling to it stock or other property to be doubted? It would be interesting to know upon what ground the validity of such a law could be challenged. Equally difficult would it be to demonstrate that the Congress may by any law prohibit the directors and officers of a State railroad corporation engaged in intrastate and interstate commerce from having any dealings with the corporation, purchasing property from it or selling property to it.

The "inefficiency" referred to cannot be based upon a want of power in the State, for the State may prescribe a penalty for the violation of its law. By "in-

efficient" must be meant that the *State cannot be relied* upon *to exercise its powers* to protect its corporation engaged in interstate and intrastate commerce from such abuses. If the power is in the State under the Constitution of the United States, that power is not to be ousted and transferred to the Federal government upon the theory that the latter would be more rigorous and efficient in the exercise of the power than the former. This is in essence an argument which would transfer many reserved powers of the State to the Federal government, not by amendment to the Constitution of the United States but by construction, upon the ground that the State, although constitutionally competent had shown herself incapable of wisely and faithfully exercising the power which she possesses. Such a doctrine is not to be tolerated. It would lead to changes in the Constitution in a manner other than that provided for in the instrument. It points the way to its destruction by the slow, indirect, but fatal process of "sapping and mining."

We think, that rightly read, Hale vs. Henkel (*supra*), affords no support for the suggestion. It does not tend to show that the sale of its stock by a State railroad corporation engaged in interstate commerce is interstate commerce and can be regulated by Congress, or that the purchase by or sale to such corporation or any other person, including a director whose ownership is undisclosed and who makes a profit thereby, is interstate commerce. The Court dealt with no such question. It says (pp. 74-75):

"Upon the other hand, the corporation is a creature of the State. It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and holds them subject to the laws of the State and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its powers are limited by law. It can make no contract not authorized by its charter. *Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation. There is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers.* It would be a strange anomaly to hold that a State, having chartered a corporation to make use of certain franchises, could not in the exercise of its sovereignty inquire how these franchises had been employed, and whether they had been abused, and demand the production of the corporate books and papers for that purpose. The defense amounts to this: That an officer of a corporation, which is charged with a criminal violation of the statute, may plead the criminality of such corporation as a refusal to produce its books. To state this proposition is to answer it. While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, it does not follow that a corporation, vested with special privileges and franchises, may refuse to show its hand when charged with an abuse of such privileges.

"It is true that the corporation in this case was chartered under the laws of New Jersey,

and that it receives its franchise from the legislature of that State; but such franchises, so far as they involve questions of interstate commerce, must also be exercised in subordination to the power of Congress to regulate such commerce, and in respect to this the General Government may also assert a sovereign authority to ascertain whether such franchises have been exercised in a lawful manner, with a due regard to its own laws. Being subject to this dual sovereignty, the General Government possesses the same right to see that its own laws are respected as the State would have with respect to the special franchises vested in it by the laws of the State. The powers of the General Government in this particular in the vindication of its own laws, are the same as if the operation had been created by an act of Congress. *It is not intended to intimate, however, that it has a general visitatorial power over State corporations.*"

It is not obvious to us that a State railway corporation engaged in intrastate and interstate commerce holds any franchise from the government of the United States, but that so far *as its conduct of interstate commerce is concerned, it is absolutely subject to the constitutional enactments of the Congress is unquestionable; and that power is exclusive.* The regulation of interstate commerce by Congress is, we repeat, in no respect an exercise of visitorial power. It does not spring from the relation which the corporation bears to its creator. It is the exercise of a power applicable to any carrier engaged in interstate commerce, whether

a corporation or otherwise, and whether operating a railway or otherwise. Obviously, out of an abundance of caution to prevent misconstruction, this sentence is added:

> "It is not intended to intimate, however, that it has a general visitatorial power over State corporations."

What language would afford a stronger recognition of the possession by the State of general visitorial power over the corporation, which it creates, it is quite difficult to conceive. The narrowest phase of visitorial power over a corporation by its founder or creator includes preventing a waste and dissipation of its assets by its directors, officers or agents or any conduct by them or by the corporation which would tend to impair its ability to accomplish the purposes for which it was created. It would undoubtedly be in the power of the State creating the corporation to prohibit its directors from being officers of competitive corporations or interested in them, in order to thereby exclude any conflict of interest or of duty to the detriment of either the corporation or the public. Some States have prohibited common directors or officers of parallel and competing railway companies. The exercise of such a power rests, however, in the policy and power of the State. The States have not been backward in safeguarding competition between their railway corporations. Certainly there is nothing in the opinion of the court in Hale vs. Henkel (*supra*), which affords the

slightest encouragement to the contention that the Congress may regulate the stock and bond issues of a State railway corporation; the declaration of its dividends; the qualifications of its directors or may prohibit dealings by them with the corporation secretly or openly to their profit. We contend these matters not only are not interstate commerce but if they have any relation whatever to it, it is so indefinite, indirect and remote as to be excluded under the decisions of this court from Congressional control or regulation.

THE POWER OF A STATE TO AUTHORIZE A RAILWAY CORPORATION CREATED BY IT TO ACQUIRE AND HOLD THE STOCKS OF OTHER RAILWAY CORPORATIONS IS INDISPUTABLY SUBJECT ONLY TO THE LIMITATION THAT "NO STATE MAY GIVE A CORPORATION CREATED BY ITS LAWS AUTHORITY TO RESTRAIN INTERSTATE OR INTERNATIONAL COMMERCE AGAINST THE WILL OF THE NATION, AS LAWFULLY EXPRESSED BY CONGRESS."

The States are perfectly free to create railway and other corporations and to confer upon them the power to engage in independent enterprises. The only limit to their power in this respect is that they "may not restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress." The State may authorize a railway corporation to construct and operate for commercial purposes a telegraph line; it may authorize it, through the ownership of stocks, to own and operate a steamboat or steamship line or lines; it may confer

upon it the power to own coal lands and to operate coal mines; it may confer in the same charter, if it chooses so to do, the franchise to operate a railroad and a bank; it may authorize it to own and operate trolley lines; it may authorize it, if it chooses so to do, to acquire vast tracts of land for purposes of colonization; and it may authorize it to exercise the powers of an investment company; and in respect of the franchise to engage in intrastate and interstate commerce, it would, of course, be subject to the power of Congress to regulate its conduct of interstate commerce, without regard to the other enterprises or business in which it is authorized by its charter to engage; and all the business might be carried on without separate capitalization for each.

The wisdom of commingling in one corporation different and unrelated franchises may be open to question, but the *constitutional power of the State to do so,* unless precluded by its own constitution, is not open to doubt.

The fact that under authority from the State its corporation may combine the operation of a railroad employed in intra and interstate commerce with other enterprises, cognate or dissimilar, is recognized by this court in the opinion in the Employer's Liability cases, *supra,* delivered by Mr. Justice White, thus:

> "Take again the same road having shops for repairs, and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of

its being engaged in other independent enterprises."

The opinion of the Interstate Commerce Commission in this very matter expressed in their report upon its investigation, Vol. 12, I. C. C. Rep., p. 305, says:

> "The function of a railroad corporation should be confined to the furnishing of transportation. Railroads should not be permitted to invest generally in the stocks, bonds, and securities of other railway and steamship companies, except connecting lines, for the purpose of forming through routes of transportation, including branches and feeders. It is in the interest of the public to facilitate the consolidation of connecting lines. The credit of a railway company is founded upon the resources and prosperity of the country through which it runs. Its surplus funds and credit should be used for the betterment of its lines and in extensions and branches to develop the country contiguous to it."

Whether this is sound or unsound, the fact remains that it is a matter for the States alone to determine—subject to the limitation which has been adverted to. It is quite impossible to perceive if the States differ in opinion from the Commission upon this subject and the Congress should be of the opinion that the conclusion and recommendation of the Commission are sound, where it could find constitutional authority for prohibiting a State corporation authorized by the State which created

it, "to invest generally in the stocks, bonds and securities of other railway and of steamship companies" to effectually prohibit it. The power of Congress to regulate the interstate commerce conducted by such a corporation would be as complete as if it were confined by its charter to the function of furnishing transportation only. The fact that a portion of its authorized capital was employed in investments or in the conduct of the other enterprises authorized by its charter would have no effect whatever as is shown elsewhere herein upon the fixing of its rates in intra or interstate commerce, since under the decisions of this court, the basis of fixing rates is the fair value of the property devoted to the public convenience; and in ascertaining that value, all capitalization not represented in the property so devoted to the public convenience would of necessity be excluded from consideration.

IT IS CLEAR THAT THE POWER OF INQUIRY CONFERRED BY SECTION 12 OF THE INTERSTATE COMMERCE LAW DOES NOT WARRANT SUCH INQUIRY AS IS CONTENDED FOR INTO THE ORGANIZATION, INTERNAL MANAGEMENT AND AFFAIRS OF A STATE RAILWAY CORPORATION OR THE QUESTIONS PROPOUNDED BY IT TO THE APPELLANT HARRIMAN.

Although the language is broad, the purpose is not to be imputed to Congress of authorizing the Commission to exercise the inquisitorial power so conferred, in a field or in respect of matters over which the Congress confessedly has no jurisdiction.

We say this because it is undeniable that the power is not conferred by Section 13, for that section is confined entirely to investigations based upon *complaints* of violation, either through commission or omission, of the law, which complaints are to be served upon the carrier, with demand for answer thereto, and on the complaint of a railroad commissioner of a State, and upon informal complaint made to the Commission and adopted by it and served upon the carrier, as was done in the Brimson case.

The pertinent language of Section 12 is as follows:

> "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it is created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act."

It is obvious that the word "business," as here used, refers to the business of interstate transportation. There is no reason, it may be observed, in passing, for giving the word (business) used in Section 12 any other meaning.

This is followed by a provision which makes it the duty of any District Attorney of the United States to whom the Commission may apply to institute and prosecute, under the direction of the Attorney-General, all necessary proceedings for the enforcement of the act, and for the punishment of violations thereof.

Although the language quoted from Section 12 is very general, it is, even considered apart from the two clauses which follow it, evidently not intended to confer upon the Commission the power to investigate the "method and manner" of conducting the financial and internal business affairs of the corporation, as contradistinguished from the conduct of its business of transportation.

It will not be denied, we suppose, that if an interstate railway corporation, engaged in both interstate and intrastate commerce, conducted the latter separately as to trains, employees and otherwise from the former, that there could be imputed to Congress an intent to authorize the Commission to inquire and keep themselves informed as to the "method and manner" in which the corporation conducted its business of intrastate commerce alone. That is, as to regulation, beyond the power of Congress.

This Court said, in Atlantic Coast Line Co. v. N. Car Com. Com., 206 U. S., 19:

> "The elementary propositions that railroads, from the public nature of the business by them carried on and the interest which the public have in their operation, are subject, as to their

> State business, to State regulation, which may be exerted either directly by the legislative authority or by administrative bodies endowed with power to that end is not and could not be successfully questioned, in view of the long line of authorities sustaining that doctrine."
>
> Citing a large number of cases.

Over a dozen years before the enactment of the Interstate Commerce Law, some of the States had inaugurated the regulation and visitation of the railway corporations created by them and engaged in State and interstate commerce through such administrative bodies, and their power so to do was *in limine* affirmatively challenged, and settled by this Court.

It is practically impossible, however, for State railway corporations engaged in State and interstate commerce to conduct the transportation of one separately from the other, except within narrow limits. In the conduct of both, they employ the same roadbed, the same trains, largely the same employees, and the same facilities. Therefore, the State Railway Commission cannot inquire into the "method and manner" of conducting the business of State transportation, without, at the same time, becoming informed of the "method and manner" of conducting, within the State, interstate transportation. This, it may be presumed, Congress well knew.

And the converse of the proposition is true—that the Interstate Commerce Commission cannot investigate the "method and manner" in which the business

of a State corporation engaged in interstate commerce is conducting such commerce, without thereby becoming as fully informed as to the "method and manner" of the conduct of the business of State transportation by the State corporation.

But this is not true as to the "method and manner" of conducting, by a State corporation, *its financial and other purely internal corporate affairs.* And there is not to be imputed to the Congress an intention, by the use of this language, to subject, through the Commission, the State railroad corporation engaged in State and interstate commerce to a double inquisitorial power—State and Federal—over the conduct of the purely internal affairs of the corporation, financial and otherwise, for over that the State has entire jurisdiction, for reasons hereinbefore stated, and over that the Congress has no jurisdiction.

Moreover, the clause of Section 12 above quoted must be read in connection with the language which follows it, which is:

> "And shall have the right to obtain from such common carriers full and complete information *necessary* to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act."

Reading the first three clauses of Section 12 together, it is clear that it was intended to clothe the

Commission with the "power to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created," to wit, to execute and enforce the provisions of the act, is undeniable.

If the first clause of the section were omitted, in our view, the second clause would carry with it the same *measure* of inquisitorial or investigating power. It will be asked why then were both clauses employed, if the first is no broader than the second? The answer to this question seems very clear. It was necessary that the Commission should have express statutory authority "to inquire into the management of the business of all common carriers subject to the provisions of this act, &c.," in order to confer upon it the power to require, by subpœna, "the attendance and testimony of witnesses, and the production of all books, papers, tariffs, agreements and documents relating in any manner to the matter under investigation, and the power to administer oaths," and the power to secure the judicial aid which is provided.

An administrative body could not make such investigation in the manner provided, without express authority, and the words "authority to inquire" are *jurisdictional* in that respect. The language "and shall have the right to obtain from such common carriers full and complete information, &c," would not be adequate, since it would leave *entirely undefined the method by which the Commission is to "obtain" such information.*

This construction of the first clause of Section 12 referred to finds the strongest possible support in Section 20, to which we shall later briefly refer.

We are aware that this view impeaches the theory of the learned counsel who represent the Commission, that the first clause of Section 12 confers, and was intended to confer upon that body the inquisitorial power necessary to enable the Commission to perform not only the duties and to carry out the objects for which it was created, but *in addition* for *the sole purpose of obtaining information upon which to base recommendations to Congress for new legislation,* which we deny and consider in connection with Section 21.

It will be observed that there is absolutely nothing in the section, nor is there anything in the act, which can be construed as authorizing the Commission, in the exercise of its inquisitorial power, to issue subpœnas and compel the attendance and testimony of witnesses, the production of papers, books, etc., except so far as it is necessary so to do to obtain "information from such common carriers," or information as to whether the act has been violated.

Of course, as a corporation can act only through officers, agents and employees, they may be inquired of by the Commission under oath and their testimony compelled fully as to whether the carrier, in the conduct of its business of interstate transportation, has observed as to the reasonableness of rates, as to equality of service, as to discriminations and rebates, the issue of passes, the pooling of freights or the earnings of

freight, and otherwise, the commands of the law, and the production of papers bearing on the subject. And such witnesses cannot refuse to answer any pertinent inquiry addressed to them by the Commission, whether it would incriminate them or not, for in order that the Commission shall be able to obtain by compulsion full information as *to the carriers' conduct of the business of interstate transportation*, the witnesses are made immune from prosecution for any matter as to which they testify.

It is clear that it was not the purpose of Congress by this section to authorize the Commission, at its will, to investigate *every corporate act*, however *dissociated from interstate commerce*, and which a Commission of the State creating the corporation might be lawfully authorized to do, and which the legislature of such State might also do. Obviously it cannot be inferred from this language as intended by the Congress, to assume through the Commission, the visitorial power of the State which created the corporation or to subject the corporation as to such matters to the visitorial powers of two separate governments. To say otherwise is to assert that Congress intended to authorize the Commission to pursue inquiries through compulsory testimony of the citizens as to matters in respect of which it could make no order, and as to which the Congress could pass no law, and into mere corporate abuses having no direct relation either to intra or interstate commerce. Nor can it be said to have been the purpose of the Act to *place the interest and protec-*

tion of the stockholders from the bad faith of officers or directors in the keeping of the Commission. This view of the Commission's power has been *steadily maintained by it from the time of its creation until the questions here were propounded.*

The Commission is authorized only to compel the attendance of witnesses and testimony under the provisions of the Act *"for the purposes of this Act."*

The words "inquiry" and "investigation" are both used in section 12. Whether they are used interchangeably and as synonymous may be an open question. "Inquiry" is defined by Webster: (1) "To ask a question; to seek for truth or information by putting queries; and (2) to seek to learn anything by recourse to the proper means of knowledge; to make examination." "Investigation" is defined to mean: The act of investigating; the process of inquiring into or following up, research, study, inquiry, esp. patient or thorough inquiry or examination. "Inquisition" is defined thus: "The act of inquiring; inquiry; search, examination; inspection; investigation." They seem to be synonymous. Whether they mean the same thing as used in the Act or not, it seems to be clear that the power to compel the attendance and testimony of witnesses, the production of papers, etc., in either is limited by the language (*a*) to "the purposes of this Act"; and (*b*) *"the matter in question"*; in other words, a defined subject of inquiry or investigation. It is assumed on the authority of I. C. C. vs. Brimson, 154 U. S., that the Commission may make inquiry or investiga-

tion, to that end compelling the testimony of witnesses, and it is so contended on the other side, *without complaint* or *other definition of the precise subject of investigation or inquiry*. This is not justified by the Brimson case. In that case, as stated by Mr. Justice Harlan, who delivered the opinion, an informal complaint was made to the Interstate Commerce Commission under the provisions of the Interstate Commerce Act, setting forth in detail the charges: that the Commission of its own motion,

> "decided to investigate the matters set forth in said informal complaint by inquiring into the business of all of said railroad companies and the management thereof with reference as well to the alleged making of illegal, unjust, and unreasonable rates, as to the alleged unjust and illegal discrimination in favor of the Illinois Steel Company, and the failure, as above stated, to file with the Commission the above contracts, agreements, and tariffs.
>
> "An order was thereupon made by the Commission, *which recited the facts of the informal complaint made to it, and required each of the above-mentioned companies to make and file in its office in Washington, a full, complete, perfect, and specific verified answer, setting forth all the facts in regard to the matters complained of and responding to the following questions*" (setting forth questions).

Answers were made to the *complaint;* and the Commission then proceeded with an investigation by

the examination of witnesses and the papers and books of the corporations involved, to ascertain whether the *Act of Congress was being violated by said companies in the particulars stated in the complaint,* and in the course of the investigation, the Court was applied to under the act to compel the attendance and testimony of the witness Brimson, who was an officer of the companies. This proceeding was entirely within the authority of the Act. For section 12 says, after requiring the Commission to investigate any complaint forwarded by the Railroad Commissioner or Commission of any State or territory at the request of such Commissioner or Commission continues: "and it may institute any inquiry on its own motion in the *same manner* and *to the same effect* as though complaint had been made."

What do the words "in the same manner" mean? Obviously they are not to be discarded in reading the statute. It is to be conclusively presumed that they are necessary to express the Congressional intent. They evidently refer to the words *"any complaint forwarded by the Railroad Commissioner,"* etc., and they certainly involve, if these words in the statute be not ignored, a specific statement as to the character of the subject matter of the proposed inquiry. That seems to be a necessary prerequisite of the compulsory attendance and testimony of witnesses.

Section 20 provides that the Commission shall have authority to require annual reports from all common

carriers subject to the provisions of this Act, and from the owners of railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for the same; the dividends paid, the surplus, if any, and the number of stockholders, refunded and floating debts, and the interest paid thereon; the cost and value of the carriers' property, franchise and equipments, the number of employees and the salaries paid each class, the accidents to passengers, employees and other persons, and the causes thereof; the amount expended for improvements each year, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses, the balances of profits and losses, and a complete exhibit of the financial operations of the carrier each year, including a new balance sheet. Such report shall also contain information in relation to rates or regulations concerning fares or freights, the agreements, arrangements or contracts affecting the same, as the Commission may require; and the Commission may in its discretion for the purposes of enabling it the better to carry out the purposes of this Act prescribe a period of time within which all common carriers subject to the provisions of this Act shall have as near as may be a uniform system of

accounts and the manner in which such accounts shall be kept. It is provided when the report shall be filed each year, how it shall be verified, and where it shall be filed, and that *if any carrier, private or corporate,* "subject to the provisions of this act," *shall fail to make and file such annual report within the time specified, or within the time extended by the Commission for making and filing the same,* or *shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of One hundred dollars and each and every day they shall continue to be in default with respect thereto.* The Commission is authorized to require a monthly report of earnings and expenses or special reports within a specified time, subject to the forfeitures last above provided. And *inter alia* it is provided that the *Circuit and District Court of the United States shall have jurisdiction upon the application of the Attorney-General of the United States at the request of the Commission alleging a failure to comply with any of the provisions of the said Act or of any act supplementary thereof or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of such acts or any of them.* A portion of this information is necessary to enable the Commission to know whether or not the Act is being violated in respect of rebates; and whether the rates permitted

to be charged in the State violate the rule laid down in Smythe vs. Ames, *supra*: "That a State cannot justify unreasonably low rates for domestic transportation considered alone upon the ground that the carrier is earning large profits on its interstate business, over which so far as rates are concerned, the State has no control, and that the carrier cannot justify unreasonably high rates upon domestic transportation upon the ground that it will be only in that way able to meet losses on its interstate business" (from syllabus), and whether inter-States are reasonable, etc.

It is also intended to afford to the Commission *the Railway Company's valuation* of its property and its contracts and agreements so far as they affect rates. But it will be noticed that this section does not contemplate *investigation* by the Commission and the *compulsory attendance* and *testimony of witnesses* to verify the accuracy of the Company's estimate of the value of its property, or its statement of the cost of its property, etc. It is substantially the same information as is furnished by the Railway Companies to the State Commission. The answers are to be in writing as the questions are to be in writing. And the compulsive features of the statute and the means of compelling information are definite and *exclude all others*. They are, first, *cumulative forfeitures*, and second, the *writ of mandamus*. The amended law supplies the defect which this Court held to exist in the old law by expressly conferring jurisdiction on the courts of the

United States to use the writ of mandamus to compel the filing of the special report and answers to specific questions, on which application for mandamus the question would be open to determination by the Court whether the information asked was within the power of the Commission or of Congress. It seems clear that this is an independent section, and that the only means of securing information are the means *provided by the section* which includes the utilization of examiners who are given access to the papers and records for which the section provides. It manifestly has no relation to section 12, or to any power conferred upon the Commission in that section.

THE QUESTIONS PROPOUNDED TO THE APPELLANT, HARRIMAN, ASSUMING THE JURISDICTION OF THE COMMISSION OVER THE SUBJECT MATTER OF THE INQUIRY HAD FROM NO POINT OF VIEW ANY RELEVANCY DIRECT OR REMOTE THERETO.

It is to be remembered that the Commission had already in the course of the inquiry become fully informed from the records of the Companies as well as from the testimony of witnesses, of the prices paid by the Companies for stocks of other railway companies, which they had purchased. Speaking generally, but accurately, the questions propounded to the appellant, and which, by advice of counsel, he declined to answer, were:

Whether he was interested in the shares of stock

purchased by the Union Pacific and Oregon Short Line Companies;

Whether, when, and at what prices, the appellant had acquired shares of stock subsequently sold to said companies; and

Whether appellant and other directors had acquired such shares with intent to sell them to the companies:

Whether the appellant and other directors of the Union Pacific acquired as individuals shares of the Atchison, Topeka & Santa Fe Railway Co., a competing line; and

Whether the appellant or other directors of the Union and Southern Pacific Railway Companies purchased stocks of these companies in anticipation of the dividends of August, 1906.

It seems to be perfectly apparent without elaboration of argument that the proposition is irrefutable. What conceivable relation could the interest of the appellant, Harriman, in stocks of other companies purchased by the Union Pacific or the Oregon Short Line Company, or any secret profit, if there had been one made by him and co-directors named and unnamed, in the transactions covered by the interrogatories, bear to *consolidations* and *combinations of carriers*, or, to the *relations now and heretofore existing between such carriers* or to *a community of interest between such carriers* or to the *practices and methods of such carriers affecting the movement of interstate commerce* or *to the rates received* and the *facilities furnished* therefor?

It is not pretended that the questions could elicit

information that would bear upon any of these subjects except it is suggested that they might bear upon the reasonableness of rates. It will be noticed that the order does not refer to the reasonableness of rates. It refers only to the *rates received;* in other words, to the rates collected. It does not profess in any way to deal with the reasonableness of rates.

But it was contended in the court below, and is here contended by the learned counsel for the Commission, that the appellant Harriman should be required to answer the questions propounded, upon the ground that the reasonableness of rates on the Union Pacific. But it may be said in reply to this:

FIRST—That the Commission possesses no power under the Interstate Commerce Law, as amended in 1906, to make a general reduction of rates, and never did. The power of the Commission to act upon rates is found in Section 15 of the Interstate Commerce Law, which is a new section incorporated in it by the Hepburn Act. It provides:

> "That the Commission is authorized and empowered, and it shall be its duty, whenever, *after a full hearing upon a complaint made as provided in Section thirteen of this Act, or upon complaint of any common carrier,* it shall be of the opinion that any of the *rates,* or *charges whatsoever,* demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation

of persons or property, as defined in the first section of this Act, or that any *regulations* or *practices* whatsoever of such carrier or carriers *affecting such rates*, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, *to determine and prescribe* what will be the *just* and *reasonable rate* or *rates, charge* or *charges, to be thereafter observed in such case as the maximum to be charged;* and what *regulation* or *practice* in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed."

Omitting some matters of detail, the section authorizes the Commission, *after hearing*, to make a supplemental order in the event that the companies cannot agree as to the just and reasonable proportion of a joint rate to be received by each carrier party thereto, and also, *after hearing, on a complaint,* establish through rates and joint rates as a maximum to be charged, and prescribe the division of such rates, as hereinbefore provided.

It will be seen that the Commission is *expressly precluded from reducing rates except upon complaint, and*

after full hearing. Whatever else may be said of the order under which the investigation proceeded, it will not be contended that it was under the rate-making section of the Interstate Commerce Law.

SECOND.—It is apparent from the testimony taken, that the reasonableness of rates was in nowise involved, the matter of rates being considered, only so far as it was considered at all, with reference to the *effect* upon them of *combinations, consolidations,* and *community of interest.* We have already shown from the decisions of the Commission that the fact that a rate is the product of a combination in violation of the Sherman Anti-Trust Law is not, in their view, *which* is manifestly correct, *evidence of its unreasonableness;* that while it may deprive the rate of the *presumption* of reasonableness, it cannot be *set aside* unless upon investigation *as to its reasonableness,* it is found to be, *in fact, an unreasonable rate.* If it were reduced because the product of unlawful agreement, it would be punishing the company for violating the Sherman Law, which can only be done by a court. There is no such testimony before the Commission. It is also apparent from a perusal of the elaborate report of the Commission itself, in which there is not found any suggestion of the prevalence of unreasonable rates on the railways involved.

THIRD.—Moreover, if it were true that the object of the investigation was within the purview of the act, and was, to ascertain and determine the rea-

sonableness of rates generally on the Union Pacific and the rates of the allied companies, no answer which *could be made* to the questions propounded to the appellant Harriman would afford information which *could* be considered by the Commission in determining whether the rates were or were not reasonable, or in determining what rates would be reasonable. The argument in the Court below assumed, and here assumes, that capitalization performs a large function in the fixing of rates. In determining whether an Act of a State Legislature containing schedules embracing *all the rates* which a company may exact is or is not valid under the Fourteenth Amendment, this Court had occasion, in Smythe vs. Ames, 169 U. S., at page 546, to say:

> "We hold, however, that the basis of all calculations as to the reasonablenes of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not

> be other matters to be regarded in estimating the value of the property. What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

Taking the basis which has been settled as the proper one for fixing railway rates *at large, which* is the *fair value of the property devoted by the corporation to the convenience of the public*, it is impossible, even if the Commission had the power, to fix the body of rates of the Union Pacific, which it has not, to include in that value the *money invested in stocks*, or *any money owed by a Director or officer* or *any one else to the company*, for they must be *excluded from the basis upon which the question of reasonableness is determined*. A fair return upon the value of the *property devoted by it to the public convenience* is all the carrier is entitled to receive. *Rates cannot, therefore, be based upon the general assets of the corporation, including surplus.* If the $100,000,000 of stock of the Union Pacific Railroad had been sold for $100,000,000 and the money were now in its treasury, it must be excluded from the basis upon which its rates would be fixed. *The company would still be entitled, regardless of its surplus,* to rates which would afford a fair return upon the fair value of the property devoted by it to the public convenience. The same thing is true as to the stocks of other railroad companies purchased by the Union Pacific. Such stocks might be considered in ascertaining the value of the property devoted to the

public use by the *companies which issued them*, but they *could sustain no relation whatever*, so far as the basis of rate-making is concerned to rates on the railway of the company which owned them. So soon, however, as the $100,000,000 in money had been invested in additional railway or equipment, or facilities of any kind (and the same is true of the proceeds of the sale of the stock) and *represented* property devoted *by the corporation to the public convenience*, the stocks originally issued and held by it would for the first time enter into the basis of rate making, and would be considered in ascertaining the value of the property devoted to the public use.

Milwaukee Electric Railway Co. vs. City of Milwaukee, 87 Fed. Rep., 577.

San Diego Land & Town Co. vs. City of National City *et al.*, 74 Fed. Rep., 79, 87; affirmed 174 U. S., 739, 760.

Louisville & N. R. Co. vs. Brown *et al.*, 123 Fed Rep., 946.

If a railway corporation issues and sells stock for the purpose of buying traction lines and operating them between cities, along its route or in them, or for the purchase of the stock of a coal company, or a steamship company, all would be excluded. Stocks representing the coal property, and the traction property, and the steamship property must all be excluded from the basis of fixing rates, because they *do not represent in any wise the value of the property used for*

the transportation of passengers and freight over the railway of the company.

Atlantic Coast Line R. Co. vs. N. C. Corp. Com., 206 U. S., 24, 25.

The Commission states in its report upon this investigation that the stocks and bonds of the Union Pacific and Oregon Short Line Railway Companies have *been issued and used exclusively for the purchase of stock of other railroad companies* named in the record.

IF IT WERE ADMITTED THAT EITHER HOUSE OR THE CONGRESS MAY LAWFULLY DELEGATE TO THE COMMISSION POWER TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES SOLELY FOR THE PURPOSE OF ENABLING THE COMMISSION TO GATHER INFORMATION UPON WHICH TO BASE RECOMMENDATIONS TO CONGRESS OF NEW LEGISLATION, IT HAS NOT DELEGATED THE POWER TO THE COMMISSION.

It is said by Mr. Justice White, speaking for the Court, in N. Y., N. H. & H. R. R. Co. vs. Interstate Commerce Commission, 200 U. S., 394:

> "It cannot be challenged that the great purpose of the Act to Regulate Commerce, while seeking to prevent unjust and unreasonable rates was to secure equality of rates as to all, and to destroy favoritism; this last being accomplished by requiring the publication of tariffs, and by prohibiting secret departures from such tariffs and forbidding rebates, preferences, and

> all other forms of undue discrimination. To this extent, and for these purposes, the statute was remedial, and is, therefore, entitled to rereive that intrepretation which reasonably accomplishes the great public purposes which it was intended to subserve."

This is indisputably true.

The Court said, in Interstate Commerce Commission vs. Baird, speaking through Mr. Justice Day, in 194 U. S., 45:

> "The inquiries * * * of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation, and it should not be hampered in making inquiries pertaining to interstate commerce by those narrow rules which prevail at common law, where a strict correspondence is required between allegation and proof."

This assumes the jurisdiction of Congress over the given subject; that it may constitutionally delegate the power to an administrative body, and that it has delegated the power to the Commission. To this we agree, but it is respectfully submitted that where the power is sought to be exercised by such a body, *not for the purpose of enforcing the law,* but for the *sole purpose of eliciting information upon which to base a recommendation to Congress of legislation,* to that end exercising the power to subpœna the citizen from any part

of the United States, and to compel his testimony—the power must be conferred, if it can be conferred at all, *plainly*, and is not to be *inferred* from vague and general language which may for some purposes carry valid authority, and for other purposes can not.

It is a momentous power, greatly involving the privacy and liberty of the citizen, and the contention that it has been vested in an administrative body, must always call for close judicial scrutiny. But there is nothing in the act, as we think, rightly read, conferring upon the Commission a power so broad and general as is contended for here.

The opinion of Mr. Justice Harlan, in I. C. C. vs. Brimson (*supra*), and some other opinions which are used by the advocates of this latitudinarian construction, do not justify it, although in one or two other opinions there are sentences which, read apart from the question involved in the case, may be thought to do so.

Mr. Justice Harlan, speaking for the Court, concerning the power granted by Section 12 of the Interstate Commerce Law, says:

> "The same observation may be made in respect to those provisions empowering the Commission to inquire into the business of carriers subject to the provisions of the act, *and to investigate the whole subject of interstate commerce as conducted by such carriers, and in that way to obtain full and accurate information of all matters involved in the enforcement of the Act of Congress.* It was

> clearly competent for Congress, to that end, to invest the Commission with authority to require the attendance and testimony of witnesses and the production of books, papers, tariffs, contracts, agreements and documents relating to any *matter legally committed to that body for investigation.* We do not understand that any of these propositions are disputed in this case."

Nor are they in this.

He adds:

> "Interpreting the Interstate Commerce Act as applicable and as intended to apply only to matters *involved in the regulation of commerce, and which Congress may rightfully subject to investigation by a commission established for the purpose of enforcing that act,* we are unable to say that its provisions are not appropriate and plainly adapted *to the protection of interstate commerce from burdens that are or may be directly or indirectly imposed upon it by means of unjust and unreasonable discriminations, charges and preferences."*

We have already, in another connection, presented our view of the reasonable and fair construction of the first three clauses of section 12, and we contend that section 21, relied upon as giving the authority to the Commission to conduct inquiries *solely* for the purpose of collecting information to lay before Congress with its recommendations for new legisla-

tion, and to that end employing the great power given by section 12 of compelling the attendance and testimony of witnesses, does not do so. A construction which would authorize it to do so ought not be favored.

Section 21 is as follows:

> "That the Commission shall on or before the first day of December in each year make a report which shall be transmitted to Congress and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to *additional* legislation relating thereto as the Commission may deem necessary and the names and compensation of the persons employed by such Commission."

This provision was not only natural but necessary to be incorporated in the law. That Congress should desire an annual report from the Commission, was to be expected. Otherwise, it would be in ignorance as to the effectiveness of the law as well *as the adequacy of its execution* by the Commission.

The Commission is a body of dignity and importance, confessedly necessary to the enforcement of such a law, and Congress assumed that in dealing with interstate transportation, and the various carriers engaged therein throughout the United States, receiving

annual reports, and with authority to demand special reports from such corporations; investigating upon complaint and upon its own motion, matters, information as to which would aid it in executing the law, that of necessity the Commission would collect a mass of information and data disclosing probable omissions and defects in the law and suggestive of improvements in it, the *whole of which it would be impracticable to embody in its annual report.*

It, therefore, wisely left to the Commission to embody in its report such information as it deemed valuable for the information of Congress. And it was also natural and important that the Commission should be instructed to make such recommendations for additional legislation as it might deem necessary. They would not only be familiar with the defects disclosed by the operation of the law, but acquainted with the devices resorted to from time to time for evading the law, which might require additional prohibitions or additional penalties.

There is no authority in this language, certainly, to conduct investigations outside of the enforcement of the law and the investigations made necessary by the law into the conduct and management of interstate commerce by railway corporations engaged therein, to enable the Commission to execute the law.

This is an ordinary and natural provision.

Its language certainly can not be construed as a grant to the Commission of power to inaugurate investigations and compel the attendance and testimony of wit-

nesses from all parts of the United States upon *any aspect of interstate commerce which its members think the Congress should legislate upon.*

It says "the report shall contain such information and data collected by the Commission as may be of value," etc. This is a command, not a grant of power.

The word "collect" is defined by Webster to mean; to gather into one body or place; to assemble or bring together; to obtain by gathering. The synonyms are: to gather, assemble, congregate, muster, accumulate, garner, aggregate, amass, infer, deduce. These definitions are significant in the construction of the section.

The intention cannot be imputed to Congress to commit to this body, with no limitation except that the subject shall, in *its* opinion, relate to interstate commerce, *at large and apart from transportation therein* an undefined inquisitorial power, involving the compulsory attendance and testimony of citizens, solely for the purpose of *assembling* a mass of information—new legislation not being amendments to the Act.

This section is as it was when the law was enacted in 1887. At that time, it was the only administrative body provided for by Congress, charged with any duty in relation to interstate commerce. Therefore, the contention that it was the intention of Congress to authorize the Commission, at its will, to investigate the *whole subject of interstate commerce,* irrespective of its duty to administer the Interstate Commerce Law, imputes to Congress a purpose to put upon the Com-

mission a burden which would render impossible the wise administration of the law which is shown by its first section *related only to interstate transportation,* and was then an experiment.

The words "additional" and "necessary" used in the section are themselves a sure index of the purpose of Congress. Keeping constantly in mind that the acts apply only to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water, when both are under a common control, management or arrangement, for a continuous carriage or shipment) from one State or territory of the United States or the District of Columbia to any other State or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation of property in like manner shipped from any place in the United States to a foreign country and carried from such place to the port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or in an adjacent foreign country," it is easy to see, first, that the word "additional" means in addition to the Interstate Commerce Law with the administration and enforcement of which the Commission was charged; and second that the word "necessary" referred to amendments which the Com-

mission, out of its experience in administering the law, should consider important to be made to *that law,* in order to strengthen it where it was weak and to render it more efficient for the accomplishment of the purposes which Congress had in view in its enactment.

To construe its language as evidencing a congressional intention that it might exercise at will the power to investigate and to compel the attendance and testimony of witnesses, and the production of papers solely for the purpose of enabling it to collect information to lay before Congress with recommendations of legislation—such as a *national incorporation act* or an act prohibiting State corporations, *railway, industrial* and otherwise, from engaging in interstate commerce, except upon such conditions as Congress might prescribe or *as the Commission might recommend.* This would be a new and radical change of National policy of the gravest moment and of the largest conceivable scope. Yet it is contended in the brief of the learned counsel for the Commission that this is the *"size"* of the grant and was the intention of the Congress and to warrant compulsory answer to the question propounded to the appellant Harriman this must be the construction of the act.

This is called, in the brief of the learned counsel for the Commission, "economic legislation," whatever that means in this connection.

It would be rather *infra dignitate* for Congress to so far evidence, by any law, so great dependence upon one of its creatures.

It is believed that if it had been the intention to confer a general inquisitorial power upon the Commission, *outside of the execution of the act*, and for the sole purpose of aiding the Congress in the matter of new and radical legislation, it would, out of respect to the President, whose duty it is to recommend legislation, he being the chief executive officer of the United States, and at the head of a co-ordinate branch of the government, have required the report of the Commission to be laid before him, and transmitted by him with *its* recommendations and *his* recommendations.

It is argued by the learned counsel for the Commission that Congress has recognized such a power as existing in the Commission under the Interstate Commerce Law, by the passage of what is known as the Tillman-Gillespie Joint Resolution, passed by Congress in 1906, instructing and empowering the Commission to investigate and report as follows:

> "First: Whether any common carriers by railroad, subject to the interstate-commerce act, or either of them, own or have any interest in, by means of stock ownership in other corporations or otherwise, any of the coal or oil which they, or either of them, directly or through other companies which they control or in which they have an interest, carry over their or any of their lines as common carriers, or in any manner own, control, or have any interest in coal lands or property or oil lands or property."
>
> "Second. Whether the officers of any of the carrier companies, aforesaid, or any of them,

or any person or persons charged with the duty of distributing cars or furnishing facilities to shippers are interested, either directly or indirectly, by means of stock ownership or otherwise, in corporations or companies, owning, operating, leasing, or otherwise interested in any coal mines, coal properties, or coal traffic, oil, oil properties, or oil traffic over the railroads with which they or any of them are connected, or by which they or any of them are employed.

"Third. Whether there is any contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States, in which any common carrier engaged in the transportation of coal or oil is interested, or to which it is a party; and whether any such common carrier monopolizes or attempts to monopolize, or combines or conspires with any other carrier, company or companies, person or persons to monopolize any part of the trade or commerce in coal or oil, or traffic therein among the several States, or with foreign nations, and whether or not, and if so, to what extent, such carriers, or any of them, limit or control, directly or indirectly, the output of coal mines or the price of coal and oil fields or the price of oil."

It will be observed that the first section relates to the control of oil wells or works, the product of which was to be carried over their *own* or any of *their lines*, as *common carriers*, and to ownership in coal lands or property, or oil lands or property.

Second, whether the officers of any of the carrier companies aforesaid, or any person or persons charged with the *duty of distributing cars* or *furnishing facilities to shippers* are interested, either directly or indirectly, by means of stock ownership or otherwise, in corporations owning, selling, operating or otherwise interested in oil properties or oil traffic over the railroads with which they or any of them are connected.

And, third, whether there is any contract, combination or agreement in the form of trust or conspiracy in restraint of trade or commerce to which any common carrier engaged in the transportation of coal or oil is interested, or to which it is a party.

In other words, whether any of them were violating the Sherman Anti-Trust Act by obstructing the channels of interstate commerce.

It was doubtless the opinion of members of both Houses that there was a direct relation between the subjects embraced by the first and second paragraphs of the joint resolution and interstate commerce. Coal and oil are both necessaries. It would seem that if corporations were engaged in their production, or the officers of corporations who *could control the distribution of cars* and the *fixing* of *rates* for the transportation from State to State of such commodities, and in that way *favor their own product*, both as to *cars and rates*, as against *competitors in the same field of production, dependent upon the railway for transportation*, the inequality in *status* among the producers, and the advantage of the one over the other, would

tend to create monopoly and the clogging of interstate commerce, and that therefore the matter should be investigated, to the end that the *interstate commerce law might be enforced.*

The third, whatever may be said about the first and second, was obviously not within the power of the Interstate Commerce Commission's jurisdiction without the joint resolution. Its object was to confer it. As to the first two clauses it was a mandate to exercise powers which it was doubtless believed the Commission already possessed. The President, on the 7th day of March, 1906, informed the two Houses, by a message, that he had approved it with hesitation, "because, in the form in which it was passed, it achieves very little, and may achieve nothing." Adding, "That it is highly undesirable that a resolution of this kind shall become law in such form as to give the impression of insincerity—that is, of pretending to do something which really is not done. But after much hesitation I decided to sign the resolution because its defects can be remedied by legislation which I hereby ask for; and it must be understood that unless this subsequent legislation is granted the present resolution must be mainly, and may be entirely, inoperative."

He made objections to the resolution; one, that no appropriation was made to defray the expense of it; another and more important one, that it was questionable whether the Commission could, *under the resolution, administer oaths at all, or compel the attendance of witnesses.* It was amended accordingly.

Reference is made also by the learned counsel to the "Safety Appliance Act." One would think it apparent that that subject, involving the safety of persons and property being *transported in interstate commerce*, bore direct relation to such commerce and was clearly within the jurisdiction of the Commission to inquire into. It is not known whether compulsory testimony was taken. It is to be presumed that it was not necessary.

NEITHER HOUSE OF CONGRESS NOR THE CONGRESS POSSESSES, UNDER THE CONSTITUTION, POWER TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES OR THE PRODUCTION OF PAPERS SOLELY IN AID OF ITS LEGISLATIVE POWER.

This proposition seems absolutely essential to the protection of the citizen in respect of his liberty, and privacy. No power is expressly conferred by the Constitution upon either House of Congress or upon the Congress to compel the attendance and testimony of witnesses in aid of its legislative function. Therefore, if the power exists, it must be because it *inheres in the power to legislate*. It is apparent without a moment's reflection, that such power in its magnitude and scope is stupendous. It means that upon every subject concerning which Congress has power to legislate it may inaugurate an inquisition; and compel the attendance and testimony of witnesses without limit as to numbers, selected by the Chairman of the Committee by whomsoever suggest-

ed. In times of great passion, such as prevailed during the war, such a power would be easily susceptible of abuse. Its exercise might not always be aloof from partisanship or other ulterior purpose in time of peace. Such power of investigation and of compulsory testimony would extend to innumerable subjects. It would open a limitless field for meddlesomeness, mischief and malice. The theory of the Constitution was, and is, that the men who are chosen to constitute the two bodies of Congress are equipped for the discharge of their functions. Upon almost every question of general import and scope as to which Congress may legislate, citizens take sides; sometimes on party lines; sometimes on industrial lines, and in such cases, interest leads not only to willingness to appear before Committees and testify or make statements, but by letters, petitions and memorials citizens furnish information to the Senator or Representative representing the State or District and to each House. It is rare that upon questions of proposed legislation of general public interest there are not appeals from those espousing either side for an opportunity to be heard. It can hardly be said that the power inheres in the power to legislate. Mr. Justice Miller said in Kilbourne v. Thompson, 103 U. S., 189:

> "We are of opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the

precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices. *Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine, that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation.*"

The refusal to testify must either be punishable for contempt or made an offense under the statute, and, therefore, indictable. Without the power to punish for contempt or a statute making it a criminal offense to refuse to testify, the power would not be compulsory. In Wilkins v. Willet, 1 Keyes, *supra*, it is said:

> "The power to punish for disobedience and contempt is a necessary incident to the powers to require and compel attendance. This is not denied by the plaintiff's counsel."

The Court in the Kilbourne case (*supra*) also said:

> "We decline to decide whether the Houses of Congress possess the power to compel the attendance and testimony of witnesses in order to enable either House of Congress to *exercise successfully its function of legislation.*"

Mr. Justice Field *In Re* Pacific Railway Com'n, 32 Fed., p. 250, says:

"The investigation directed is to be distinguished from the inquiries authorized upon taking the census. The Constitution provides for an enumeration of the inhabitants of the States at regular periods, in order to furnish a basis for the apportionment of representatives and, in connection with the ascertainment of the number of inhabitants, the act of Congress provides for certain inquiries as to their age, birth, marriage, occupation, and respecting some other matters of general interest, and for a refusal of any one to answer them a small penalty is imposed. Rev. St. Sec. 2171. There is no attempt in such inquiries to pry into the private affairs and papers of any one, nor are the courts called upon to enforce answers to them. Similar inquiries usually accompany the taking of a census of every country, and are deemed to encroach upon the rights of the citizen. And in addition to the inquiries usually accompanying the taking of a census, there is no doubt that Congress may authorize a commission to obtain information upon any subject which, in its judgment it may be important to possess. It may inquire into the extent of the productions of the country of every kind, natural and artificial, and seek information as to the habits, business, and even amusements of the people. But in its inquiries it is controlled by the same guards against the invasion of private rights which limit the investigations of private parties into similar matters. In the pursuit of knowledge it cannot compel the production

> of the private books and papers of the citizen for its inspection, except in the progress of jucial proceedings, or in suits instituted for that purpose, and in both cases only upon averments that its rights are in some way dependent for enforcement upon the evidence those books and papers contain."

In any event, if the power exists, which is denied, in the nature of things, its exercise must be preceded by resolution *defining with precision the subject of the investigation.* This is jurisdictional. Without such a definition of the subject of investigation, there would be an absence of any standard of relevancy, and, moreover, there must be such definition in order to enable a witness and the court to see whether the proceeding is within the legislative power, or if it be a joint or concurrent resolution, within the power of Congress. It is believed that such resolutions always utilize a preamble for that purpose. In the Kilbourne case (*supra*) this court analyzed with great care the preamble of the resolution of investigation, and was not able to discover from it any jurisdiction, which was tested in that case not only by the absence of legislative power to afford a remedy by legislation, but by the absence of evidence that it was preliminary to possible impeachment. It is said in the opinion:

> "If indeed any purpose had been avowed to impeach the secretary, the whole aspect of the case would have been changed."

If from the resolution it had appeared that the object was the impeachment of the secreary, the power would have been *quasi* judicial, not legislative. For in cases of impeachment, the House is the grand inquest of the country, the Senate is the Court. But the Court says:

> "But no such purpose is disclosed. None can be inferred from the preamble, and the characterization of the conduct of the secretary by the term 'improvident' and the absence of any words implying suspicion of criminality repel the idea of such purpose, for the secretary could only be impeached for 'high crimes and misdemeanors.'"

It is futile for the learned counsel for the Commission to dismiss the opinion of the Court through Mr. Justice Miller in this case with the observation that that case is not like this case, for that was a proceeding by the United States as a creditor.

In re Chapman, 166 U. S., 661, the court scrutinized the preamble and resolution under which the investigation, in which Chapman was called as a witness and refused to testify, was instituted, and found its recitals to be such as to establish the jurisdiction of the Senate. In the latter case it is said:

> "Specific charges publicly made against Senators had been brought to the attention of the Senate, and the Senate had determined that investigation was necessary. The subject-mat-

ter as affecting the Senate was within the jurisdiction of the Senate."

The investigation was in the exercise of its power of protecting itself against the unworthy, if there were any such in the body, by expulsion. The court says:

> "The questions were not intrusions into the affairs of the citizen; they did not seek to ascertain any facts as to the *conduct, methods, extent or details of the business of the firm* in question, but only whether that firm, confessedly engaged in buying and selling stocks, and the particular stock named, was employed by any Senator to buy or sell for him any of that stock, whose market price might be affected by the Senate's action."

The implication from this language is that the questions *would have been intrusions into the affairs of the citizen, if they had sought to ascertain any facts as to the conduct, methods, extent or details of the business of the firm.*

If it be true that either House of Congress or that Congress may constitutionally compel the attendance and testimony of a citizen, purely in aid of its legislative function, this power is as general as the subjects over which the Congress can legislate. There is no reason, the power being once admitted, why it should be any less in respect to one subject within the legislative competency of Congress than over another. The subject, of course, concerning which the inquiry is or-

dered in aid of legislation is chosen by either House or by the Congress. There must be some limit to the exercise of this power in aid of legislation, if it exists at all.

This leads us to inquire, what is the limit? The Court held, in Kilbourn vs. Thompson, *supra,* among other things, that "there *exists no general power in* Congress or in either House to make inquiry into the private affairs of a citizen." Is this the limit, that while a citizen may be called and compelled to testify in aid of the power of legislation, he cannot be required to testify except as to matters generally known and in no sense private? Can he be compelled to testify as to his business and the manner in which he conducts it? Can he be interrogated as to the integrity of his business methods? Can he be interrogated as to past personal transactions? It seems not, for manifestly Congress could not legislate so as to affect past transactions. Can he be compelled to testify as to transactions the disclosure of which would subject him to public animadversion or to diminution of his estate? One would say manifestly not, even if Congress could reach the transaction by general legislation. A citizen may be compelled to serve in the army in time of war, because a government has that claim upon its citizens, but is it possible that a citizen can be dragged before a committee of Congress and compelled to testify of himself and his affairs in aid of legislation? Can citizens be compelled to answer questions which would

make public the secrets of their trade or business, in aid of legislation?

BUT IF EITHER HOUSE OF CONGRESS OR THE CONGRESS POSSESSES THE POWER TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES IN AID OF LEGISLATION, THE POWER IS LEGISLATIVE AND CAN NOT BE DELEGATED.

An administrative body may be charged with the execution of a law of Congress, with the power to conduct investigations and, upon defined subjects, to subpœna and compel the attendance and testimony of witnesses in respect of matters directly relating to the enforcement of the law, which they are created to enforce. Some of the functions are quasi-judicial, and administrative, but none of them are legislative, but the power of either House of Congress or of the Congress to compel the attendance and testimony of witnesses in aid of *legislation* is a *legislative power* and its exercise involves *legislative discretion* and *selection* as to the *subject-matter of the inquiry*. It would seem to be impossible for the Congress to delegate that discretion. Here it is contended that Congress has done both. It has given to the Commission the power, as an administrative body, to conduct investigations in aid of the legislative power of Congress, and, to that end, to compel the attendance and testimony of witnesses and the production of papers in aid of its duty to execute

and enforce the law; and it is contended that Congress has conferred power upon the Commission to compel the attendance and testimony of witnesses and the production of papers in *aid of its legislative power* Congress in respect of "interstate commerce," which is a very large subject of many phases. Congress has, if this be true—which we think it is not—abdicated its legislative power of determining upon *what phase of the subject it desires to be enlightened* through the inquisitorial power of the Commission, and the attendance and testimony of witnesses, to the Commission in order that it may lay before Congress, *not what Congress has expressed a desire shall be ascertained* or *evidenced an intention to legislate upon,* but *upon such subjects as the Commission thinks it advisable for the Congress to have information upon,* and to legislate upon. In the wide field of interstate commerce involving a multitude of aspects, it is left to the Commission, unguided, except by its own will or wish, to select therefrom the *particular subject* which it will, through the compulsory testimony of citizens, inquire into. True, it may be a matter concerning which the Congress does not care to be advised with a view to legislation, but that is immaterial under this contention. It is enough that the *Commission desires to lay information upon the particular subject before Congress with its recommendation that it legislate upon it.*

It seems impossible that such discretion can be delegated in this way. No better illustration could be

afforded of the breadth and depth of this delegation at large to the Commission of a vast field of inquiry, through compulsory testimony, in which it may wander at its own sweet will and compel the citizen to wander with it *in aid of legislation*, than the order which instituted this proceeding and under which it was conducted.

The order gave no notice to the appellant Harriman of what might or might not, under its terms, become the subject of inquisition. He had a right to be as much surprised at the questions which were propounded to him as he would have been if the Commission had inquired of him, under oath, as to the health and ages of the members of his family, or the details of any of his business transactions.

Each of the several generalizations embodied in the order is susceptible of multitudinous aspects. Neither House of Congress nor the Congress itself could if it had power of compelling testimony in aid of legislation have conferred power upon one of its committees or a joint committee, select the subjects of investigation and put the questions which, as a matter of principle, appellant Harriman declined to answer.

If one of the Houses or the Congress could not compel an answer, how could it delegate to the Interstate Commerce Commission the power to compel answers to the questions?

THE COMMISSION HAD NO JURISDICTION OF THE SUBJECTS MATTER OF THE INVESTIGATION AS DELINEATED BY THE RESOLUTION OR ORDER UNDER WHICH IT WAS CONDUCTED, AND, THEREFORE, NO POWER UNDER THE

INTERSTATE COMMERCE LAW TO ISSUE SUBPOENAS OR TO HAVE THE COMPULSORY TESTIMONY OF WITNESSES THEREIN.

This proposition is made fully recognizing the importance of the Commission, the value of its work, and that the power to regulate commerce among the several States cannot be successfully exercised without the utilization of such a body. It is moreover conceded, that, in the exercise of the powers clearly conferred upon it, it should not be restricted by the technical rules which obtain in judicial proceedings. It is, however, undeniably, neither a judicial nor a legislative body and can in no event be more, under the Constitution, than an administrative body to enforce the law, possessing, in some respects, quasi-judicial functions; not other, however, than are often vested in executive officials and even ministerial officers. The order under which the investigation proceeded is, including the caption, as follows (Rec., pp. 2-3):

> "In the matter of the *consolidations* and *combinations* of carriers, relations between *such* carriers and *community of interests therein,* their rates, facilities and practices therein.
>
> *"Whereas,* the act to regulate commerce provides that the commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted;' and also requires the commission 'to execute and enforce the provisions of said Act';

"*And, whereas,* it appears to the Commission that *consolidations* and *combinations* of carriers subject to the act and the *relations* now and heretofore existing between *such* carriers, including *community of interest therein,* and the practices and methods of *such* carriers affecting the movement of interstate commerce, rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether consolidations, combinations, relations, community of interests, practices or methods result in violations of said act or tend to defeat its purposes;

"*It is ordered,* that a proceeding of investigation and inquiry into and concerning the matters above stated be and the same is hereby instituted and that the same be set for hearing at United States court rooms in the city of New York, New York, on the 28th day of December, 1906, at 11 o'clock; the further hearing to be continued at such times and places as may be required."

The commission took testimony under this order in New York, Chicago, Seattle, Portland, San Francisco and Los Angeles, and the testimony thus taken, which is made an exhibit to the petition herein, covers 1,383 of the 1,468 pages of the record upon these appeals.

It is apparent that the object of the investigation was to ascertain whether combinations and consolidations of carriers subject to the act had been entered into

and the relations then and theretofore existing between carriers subject to the act so entering into consolidations and combinations, including "community of interests" therein, and the rates received and the practices and methods of such carriers so entering into the consolidations and combinations or between which there exist, through stock ownership or otherwise, "community of interests." The object of the investigation is stated to be "*to the end* that it may be fully informed in respect thereof, and to the *further end* that it may ascertain whether such combinations, consolidations, relations, community of interests, practices, or methods result in violations of said act, or tend to defeat its purposes."

This preamble and order is jurisdictional just as the preamble and resolution adopted by the House of Representatives which came under review by this court in Kilbourn vs. Thompson, 103 U. S., was said to be jurisdictional.

The combination or consolidation of competing railroads engaged in interstate commerce, however accomplished, including community of interests, *is not prohibited by the Interstate Commerce Law.*

If it violates any law of Congress, it is the Sherman Anti-Trust Law. The fact that such a combination exists and that it operates to raise and to maintain rates, does not prove that such rates are unreasonable; nor does its validity depend at all upon its effect upon rates.

If its operation in a given case for the time has been to reduce rates, instead of to increase them, it is never-

theless, condemned by the Sherman Law if it is "in restraint of trade or commerce among the several States or with foreign nations," which is declared by the Sherman Act to be illegal.

In the Northern Securities case, *supra*, it appeared that after the combination had been effected by the stockholders of the Great Northern and Northern Pacific Railway Companies, through the instrumentality of the Northern Securities Company, as trustee, rates not only had not been increased but had been lowered. But the court held that that fact did not redeem the combination from invalidity under the Sherman Law.

There is nothing in the Interstate Commerce Law which relates to combinations between competing railroads or gives to the commission any jurisdiction over such combinations, or to inquire into the existence of such combinations, except section 5, which has been in force unamended since the Interstate Commerce Law was enacted in 1887, which is as follows:

> "Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of the act to enter into any contract, agreement or combination with any other common carrier or carriers for the *pooling of freights* of different and competing railroads, or to divide between them the *aggregate or the net proceeds of the earnings of such railroads*, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

The commission is, while endowed with great power and dignity, nevertheless, a statutory administrative body which possesses no jurisdiction, except such as is *expressly conferred, or necessarily implied,* by the Interstate Commerce Law. It derives all of the power it possesses from the Interstate Commerce Law, except so far as the Congress has at times conferred upon it, a temporary power as to special investigation.

By section 12, the commission is given authority to inquire into the conduct and management of all business of common carriers subject to the provisions of this act, and is required to keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from such carriers full and complete information "necessary to enable the commission to perform the duties and *carry out the objects for which it was created.*

It has no general power to subpoena and require the attendance and testimony of witnesses and the production of books, papers, agreements, contracts and documents. This power is expressly limited by the words *"and for the purposes of this act,* the Commission shall have power to require by subpoena the attendance and testimony of witnesses, etc."

It may be the power to investigate whether offenses have been committed by railway corporations engaged in interstate commerce against the Sherman Law should be conferred upon the Commission. Our point is that it has not been conferred. And it is a plain proposition that giving the most latitudinarian construction to the

Interstate Commerce Law, in respect of the power of the Commission to prosecute investigations thereunder and to compel thereunder the attendance and testimony of witnesses, it must have *jurisdiction over the subject matter* in order to exercise such a power. It is not enough to give them such jurisdiction that a combination unlawful under the Sherman Law has been entered into between railway carriers *who are engaged in interstate commerce*, and therefore subject to the jurisdiction of the Commission under the Interstate Commerce Law. Attendance and testimony of a witness cannot be compelled by a court which has no jurisdiction over the subject matter; much less by a statutory body in favor of whose jurisdiction there are no presumptions.

The fact that the Commission has hitherto exercised at times a jurisdiction, without resistance, which it does not possess is inefficacious to confer it. It can be acquired only by an act of Congress. It has happened, and will happen, probably, as it happened in this case, because of the power which the Commission has under the Interstate Commerce Law over carriers engaged in interstate commerce, and for other reasons, witnesses subpoenaed, even without power of compulsory attendance, may appear and give testimony. But that does not deprive any witness of the right to decline to testify where the Commission has not jurisdiction.

Attention is called, in the brief of the learned counsel for the Commission, at page 34, to the fact that the Commission exercised the same power which it has assumed to exercise under the order which has been quoted in the Northern Securities matter. Counsel say:

> "The Northern Securities investigation was based on no complaint. It was made under the general inquisitorial powers of the Commission, and in our view the chief element of law involved in that investigation was primarily a violation of the Sherman law, and was only connected with the Interstate Commerce Law through the fact that the *corporations involved were interstate carriers.*"

It seems to be the impression of counsel that under the Interstate Commerce Law the Commission is vested with general inquisitorial power to investigate and ascertain whether an offense has been committed under the Sherman Anti-Trust Law simply if the offense is alleged to have been committed by *carriers engaged in interstate commerce.*

In our view, this is a grave mistake. A corporation, simply because it is engaged in interstate commerce, cannot be compelled, nor can its officers be compelled, to submit to the inquisitorial power of the Commission, exercised under an order which, upon its face, shows that the subject matter is without the jurisdiction of the Commission.

It is said by Mr. Justice Harlan, in Interstate Commerce Commission vs. Brimson, 154 U. S., 447, where a witness was brought under subpoena before the Commission to contend, *inter alia*:

> "That neither the questions propounded nor the books, papers, etc., called for related to the particular matter under investigation; *nor to any matter which the Commission was entitled, under the Constitution or laws, to investigate.*"

Aside from the admission of counsel that this proceeding is parallel with that conducted by the Commission in the Northern Securities matter, and that the Commission has no power to enforce the Sherman Anti-Trust Law, it is perfectly apparent, from the record, that the question of reasonableness of rates was not involved.

This is evidenced by the further fact that in the elaborate report of the Commission, and in its recommendations, unaccompanied by any order, nor is one word to be found in it with respect to the reasonableness of rates.

The counsel say, on page 3 of their brief:

> "The inquiry thus far has been practically directed to carriers controlled by the appellant Harriman. While one of the ultimate ends of the inquiry was to ascertain the *effect upon rates and facilities for the movement of commerce which was produced by the so-called community of interests mentioned in the resolution,* the inquiry, as it progressed, developed such startling disclosures as to the financial methods which had been used to produce such community of interests as to temporarily overshadow this ultimate end."

The counsel add, referring to the Northern Securities investigation:

> "It was for these reasons that the evidence there produced by the Interstate Commerce Commission, instead of being used by the Commission as the basis for an order addressed by

> it to the carriers, was turned over to the Attorney-General, TO BE EMPLOYED IN A PROSECUTION UNDER A LAW WHICH THE COMMISSION HAD NO POWER TO ENFORCE."

What order could the Commission make upon the subject under the Interstate Commerce Law?

This admission is in full accord with our contention. Again counsel say:

> "Since the character of the present investigation bears so close a parallel to the investigation conducted by the Interstate Commerce Commission into the circumstances surrounding the Northern Securities merger, we set out at length the order on which the Northern Securities investigation was based."

The Court will notice not only how similar it is, but how identical it is, except as to places and dates, with the order under which this investigation was instituted. It will be noticed that the word "rates" is used in the Northern Securities order precisely as it is used here.

This has been the construction placed by the Commission upon its power in respect of the Sherman Law. In *Spriggs* v. *Baltimore & Ohio R. R. Co.*, 8 I. C. C. R., 456-7, they announced their position upon their right to investigate under or enforce the Sherman Anti-Trust Law as follows:

> "It is suggested that the rates now in force between Baltimore and Washington are unlawful because lower rates were withdrawn as the result of an agreement between the defendant

companies, which violates the Anti-Trust Law. For reasons that will be briefly stated, we are unable to concur in that opinion. It is observed, in the first place, that the complaint in this proceeding does not charge a violation of the Anti-Trust Law, nor was any such claim made at the hearing. This is not perhaps a serious objection, and need not be taken into account in disposing of the question.

"*The real difficulty is that the Commission has no authority to administer the Anti-Trust Law,* or *even to determine whether that law has been violated.* A court of general jurisdiction could do so, but not an administrative body whose power is limited by the law which created it. We are not prepared to admit that the evidence in this case shows a violation of the statute against trusts; but even if the fact of such violation were clearly established, we do not see how that, of itself, furnishes ground for an order against the rates now in force.

* * *

"If an investigation by the Commission discloses a violation of that law, its power is not enlarged or its duty changed in respect of the rate involved in the inquiry. *The most it could do in such case would be to lay the proofs before the Attorney-General for such action as he might think proper to take.* Assuming that a rate which has been complained of is shown to be *maintained by a forbidden contract or combination, nevertheless, if that rate is, in fact, just and reasonable within the meaning of the Act to Regulate Commerce, what warrant has the Commission for condemning that rate, and where is its authority for requiring the carrier*

> *to cease and desist from charging it?* We are convinced that such authority does not exist, and that we are without power to grant relief in this case upon the theory that the Anti-Trust Law has been violated, even if the facts were found in support of that contention."

This decision was announced in 1900.

In *China & Japan Trading Co.* v. *Ga. R. R. Co., et al.,* 12 I. C. C. R., 241, the Commission says:

> "The evidence of the complainants very strongly tended to show that an illegal agreement to advance these rates was entered into by these trans-continental lines, and that the advanced rates were put in in consequence of that agreement. We do not, however, find it necessary to pass upon that question, because if it were answered in favor of the complainants we would be still of the opinion that this would afford no ground for either reducing the rate from southern mills or awarding reparation.
>
> "*We administer the Act to Regulate Commerce alone.* The complainants assert that under the provisions of that Act this rate is excessive. In determining that issue, we should inquire into the circumstances under which the rate was made. If we find that it was not the product of free competition, but was the result of an agreement, this fact would rob the rate of the presumption of reasonableness which might otherwise attach, and should be considered by the Commission in determining whether the advance was justifiable; but if, after giving

> due weight to that and all other circumstances, we are still of the opinion that the rate in effect is not too high, the mere fact that it was the product of an unlawful combination will not justify us in setting it aside. Such is the fair import of what we have said in several cases. 11 I. C. C. R., 238; Idem. 296; 10 I. C. C. R., 548; Idem. 505."

To reduce a rate, regardless of its reasonableness, because product of a combination or agreement in violation of the Sherman Law, would be to administer the Sherman Law by punishing a company for its violation, and this the Commission could not do.

The Congress, fully advised by these decisions of the opinion of the Commission that it was *charged with no duty* and *clothed with no power of investigation under,* or with the *enforcement of, the Sherman Law,* in revising the Interstate Commerce Law, in 1906, made no change in it in this particular.

If there were no decision by the Commission, it is plain from the act itself, that it has no jurisdiction to prosecute an inquiry to ascertain whether the Sherman Law has been violated, or to subpœna and compel the testimony of witnesses in that behalf.

The act says:

> "Section 12. And the Commission is hereby authorized and required to execute and enforce the provisions of *this act.*"

This is not only conclusive in itself upon the subject, but the incorporation of Section 5 into the act,

which is penal, and therefore to be strictly construed, confined to any contract, agreement or combination with any other carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof, is language of exclusion. *Expressio unius est exclusio alterius.*

IF THE CONSTITUTIONAL POWER OF EITHER OF THE HOUSES OF CONGRESS, OR OF THE CONGRESS, TO COMPEL THE ATTENDANCE AND TESTIMONY OF WITNESSES IN AID OF THE POWER OF LEGISLATION, WERE ADMITTED, WHICH IT IS NOT, CONGRESS POSSESSES NO POWER TO LEGISLATE, RETROSPECTIVELY OR *in futuro*, UPON THE SUBJECT OF THE INTERROGATORIES PUT TO THE APPELLANT HARRIMAN, AND COULD NOT DELEGATE ITS INQUISITORIAL POWER IN RESPECT OF THEM TO THE COMMISSION.

This proposition was presented to the Court below, and upon it this is said in the opinion (Record, p. 1439):

> "(a) Could Congress itself legislate upon the subjects reasonably suggested by the questions under consideration?
>
> "(b) If Congress could not so legislate, are the matters so *reasonably suggested* within the Congressional power of investigation, assuming that the powers of investigation and legislation are not co-terminus, and that the power of investigation is the larger.

"(c) Would Congressional action, either enforcing answers to the question in hand or legislating on any matters suggested by them, trench upon the powers of the States by assuming to regulate, govern or visit a State corporation in matters not relating to Congress as that word is used in the Federal Constitution.

"IV (a) This inquiry is put and answered by respondent's argument that should the answers show certain directors of the Union Pacific to have sold property of their own to that corporation at prices *aliunde* proven to be unfair or giving unlawful or even abnormal profits to the vendors, or to have so sold property unwise or illegal for their corporation to possess—yet Congress could not punish the act of either director or corporation by the application of any existing statute or the passing of any constitutional law. From this premise it is argued that what Federal power cannot cure or punish—that it cannot inquire into.

"I think it is true that if any director or directors of a State corporation engaged even wholly in interstate or foreign commerce are guilty of malfeasant in office, in effect make away with corporate funds or are privy to the waste or devastavit thereof—Congress can afford no direct remedy for that particular kind of wrong-doing under authority of the commerce clause of the Constitution."

But the learned Judge continues, at page 1442:

"It is not necessary in order to discover this power in Congress to enact exact constitutional language creating it. It is necessary to point

> out in the Constitution that which authorizes Congress to legislate, but unless that be shown and the subject of the investigation be reasonably included within the subject of legislation, even though collateral or incidental thereto, I think the so-called 'inquisitorial power' of Congress is in that regard entirely clear. *It results that the powers of investigation and legislation are not absolutely identical, and that that of investigation is the wider, though even that must necessarily be confined to matters reasonably calculated to afford information useful and material in the framing of the constitutional legislation.*"

We repeat that if it were true that the appellant Harriman was interested in the stocks purchased by said railway companies, and realized a profit therefrom, such interest and profit being undisclosed, he thereby would have violated neither the Interstate Commerce Law nor any other act of Congress; nor is it contended that if he and other directors purchased stocks of the Union Pacific and Southern Pacific Railway Companies pending the declaration of the dividend in August, 1906, that they thereby violated the Interstate Commerce Law or any other Act of Congress.

It will be observed that the learned judge who sat at the Circuit held that Congress can afford no legislative remedy for such wrongs if committed. But the learned Judge held that the powers of *legislation and of investigation are not coterminus,* and that the *power of Congressional investigation is the larger power*—how much larger is left undetermined. But it is deter-

mined that Congress may investigate and compel the attendance and testimony of the citizen upon a subject matter *over which it has no legislative power*. This, it is believed, cannot possibly be the law.

The learned Judge cites *People ex rel McDonald* v. *Keeler*, 99 N. Y., 464, decided after *Kilbourn* v. *Thompson, supra,* in which Mr. Justice Rapallo, and the quotation is incorporated in the Brief of counsel for the Commission but the following from the same case is not:

> "We are finally brought to the consideration of the important and more doubtful question whether the investigation which the committee was conducting was a legislative proceeding which the House was authorized to institute. *This is a jurisdictional question*, for the statute applies only to such proceedings, and if the House had any authority independently of the statute, that must depend upon the question whether the testimony was sought for the purpose of aiding it in the performance of any of its *constitutional functions*. An investigation instituted for the mere sake of investigation or for political purposes, not connected with *intended* legislation, *or with any of the matters upon which the House could act*, but merely intended to subject a party or body investigated to public animadversion or to vindicate him from unjust aspersions where the *legislature had no power to put him or it on trial for the supposed offences, and no legislation is contemplated*, but the proceedings *must necessarily end with the investigation* would not, in our judg-

> ment, be a legislative proceeding to give to either House jurisdiction to compel the attendance of witnesses, or punish them for refusing to attend."

It may reasonably be inquired, if some evidence of Congressional intent to legislate is necessary, how the Commission could know that the *Congress intended to legislate.* They also quote the case of *Wilckins* v. *Willett,* 1 Keyes, 521-525, as follows:

> "That the power exists, admits of no doubt whatever. It is a necessary incident of the sovereign power of making laws, and its exercise is often indispensible to the great end of enlightened judicious and wholesome legislation."

The case, briefly stated, was this:

One Williamson was on the jail limits in New York; while so restrained, he was arrested by the Sergeant-at-Arms of the National House of Representatives upon a warrant issued upon adjudication of contempt, taken from the jail liberties to Washington, and brought before the House to answer for contempt; later he was discharged and returned voluntarily to the jail liberties. The Sheriff was sued for permitting an escape; the question was, whether, being taken by the Sergeant-at-Arms, the sheriff had permitted an escape, which involved the further question of the right of the House to issue its warrant and of the officer to take him. The Court says, referring to the power of the House to compel the attendance and testimony of witnesses:

> "The power is rather judicial in its nature, but in a legislative body exists as an auxiliary to the *legislative power only*,"

which we take to be equivalent to saying that if there is no power of legislation over a given subject, there is no power to compel the attendance and testimony of witnesses. It is apparent from the whole opinion that the court treats the judicial power—in fact it has so said—as surviving the first Constitution of New York, under which judicial powers were vested in the legislature, the Senate being the Court of Errors. And it is said that when that was changed, and the judiciary became an independent and co-ordinate department of the State government, a portion of the judicial power remained in the legislature sufficient to aid its legislative functions.

In the Brimson case, supra, it is said in the opinion of Mr. Justice Harlan, speaking of the contention of the Government:

> "It insists that the evidence called for is *material to the matter under investigation;* that the *subject of investigation is within legislative cognizance*, and may be inquired of by any tribunal constituted by Congress for that purpose."

In re Chapman, 166 U. S., at page 661, are set forth the sections of the Revised Statutes making the refusal of witnesses summoned by authority of either House to give testimony or to produce papers upon any matter under inquiry before such House or any

Committee of either House, a misdemeanor punishable by fine or imprisonment. Section 102 provides that every person who, having been summoned as a witness by authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House or any Committee of either House of Congress, wilfully makes default, or having appeared, refuses to answer, guilty of misdemeanor punishable by fine and imprisonment.

The point was made on behalf of Chapman that the use of the word "any" rendered the act fatally defective, because too broad and unlimited in its extent. In answer to this contention, the Court, through Mr. Chief Justice Fuller, says:

> "But nothing is better settled than that statutes should receive a sensible construction such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion, *Lau Ow Bew* v. *United States,* 144 U. S., 47-59; and we think that the word 'any' as used in these sections refers to *matters within the jurisdiction of the two Houses* of Congress *before them for consideration* and proper for *their action;* to questions pertinent thereto, and to facts or papers bearing thereon."

But for the application of this rule of construction, it is apparent that the Court must have held the objection fatal.

Even the rule of construction there applied could not redeem from invalidity the general and undivided dele-

gation of inquisitorial power contended for, or the order under which by its attempted exercise this proceeding was inaugurated and conducted. It is well to inquire what legislation could the Congress have enacted that would have any reference to or effect upon the transactions covered by the interrogatories to the appellant, Harriman. If it were true that in anticipation of the dividends or pending the public announcement of them, he and other directors purchased stock of the Union Pacific and Southern Pacific Companies, expecting them to advance in the market because upon the announcement of the dividend, what legislation could Congress constitutionally enact? It could not undo the act. It could not invalidate the purchases of stock. It could not regulate the manner in which the dividends of these State corporations should thereafter be declared in respect of its being made public. Even if Congress could enact, which it could not, a constitutional law operative *in futuro* to prevent directors of State railway corporations from purchasing the stock of the company in anticipation of a dividend under a penalty prescribed, it could not be operative upon past transactions. Could Congress provide for the removal of directors of a State corporation for dealings with the corporation which did not meet with its approval; or for any other reason? Could Congress enact any constitutional law compelling restitution to the company of secret profits on such sales, if any were made? All these questions answer themselves. What order could the Commission make if the questions had been

answered, and from the answers it had appeared that the appellant and other directors had bought stocks and sold them to the company at a profit, their interest and profit being undisclosed? Could Congress provide for bringing any suit in the interest of the corporation to secure restitution? Could Congress repeal or amend the State charters? These questions all answer themselves. The Commission could make no order. Its conclusions would establish no right. Its report would not be competent evidence in any suit brought by the Company or a stockholder or creditor in the right of the Company in respect of the transactions.

It is a proceeding, to use the language of Judge Rapallo, in *People vs. McDonald, supra, "which must necessarily end with the investigation."* Of necessity it must be utterly futile. Is it to be tolerated that an administrative body, or any tribunal which can render no judgment, make no order, afford no remedy, can compel the attendance and testimony of a citizen in respect of a private transaction as to which it is powerless, whatever the answers may be, to do more than to adjourn and report and recommend?

It is said by this Court in the Brimson case, ***supra***:

> "We do not overlook these constitutional limitations which for the protection of personal rights must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department,

> *still less any merely administrative body established by Congress,* possesses or can be invested with the general power of making inquiry into the private affairs of the citizen."

It is contended that such transactions, if they occurred, could not be the private transactions of the appellant. This we deny. It cannot be contended that the questions related to acts of the corporation. The transactions of the corporation in the purchase of the stocks referred to were fully and cheerfully disclosed without challenging the jurisdiction of the Commission to make the inquiry. The prices paid for the stocks by the corporation were disclosed from the records, as well as by the testimony of witnesses. The corporation afforded all of the information it possessed. If the appellant purchased stocks which were afterwards sold to the company through others, it is not contended that the purchases were made with money of the corporation. Certainly the *purchases of the stock* with whatever intention they were made were his private affairs. If they were sold to the company at an undisclosed profit, albeit at a fair price, and there is no evidence that they were not sold at a fair price, if anyone had a right to complain of the profit it would be the corporation or a stockholder moving in its right, or a creditor if it were insolvent, of which the Commission's report acquits it. Such transactions are unchallengeable except at the suit of the corporation or of the stockholder, or in some circumstances, a creditor, and

they are the *private affairs* of the appellant as against *all the world except the company*. If the Commission had jurisdiction to investigate the matter at all, it need not be content with the statement of the appellant as to what the stocks cost him. It would have the power to compel him to produce his accounts both to verify his accuracy and his veracity. Would not the papers in that event showing his purchases with his own money be his private papers? There is something abhorrent in the notion that an administrative body, under authority of a government other than that which creates a corporation, can intervene between the corporation and its officer, or director, or both, to compel his testimony as to a transaction of the kind covered by these questions in a proceeding which would not *entitle* him to compel the attendance of witnesses to support his statements, and thereby protect himself from the obloquy which might follow an adverse determination by the Commission upon the questions of fact. We say he has no right to compel the attendance and testimony of witnesses to support his statements for the reason that the Interstate Commerce Law provides that (Section 12):

> "In case of disobedience to a subpoena, the *Commission or any party to a proceeding before the Commission,* may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses, and the production of books, papers and documents under the provisions of this section."

If it could be said that the railway companies are parties in the sense in which that term is used in the Act, which it cannot, no one can contend that the appellant is a *party to the proceeding*. It may be said in reply that if he desired the attendance of witnesses, the Commission would doubtless issue the requisite subpoenas. But a *party cannot be compelled* to testify as to personal transactions, before an administrative body in a proceeding in which the Commission can grant no relief, which the Congress is powerless to confer upon it the power so to do, and compel the attendance of witnesses to sustain his veracity only *by favor of the Commission*. He could not avail of their refusal by any appeal. The citizens of the United States are not subject to an inquisitorial power of that kind, and cannot lawfully be made subject to it, and in such a proceeding, if compelled to testify where there is no claim that the law has been violated by the corporation or by himself, it would not be due process of law to compel his testimony under such circumstances, and would withhold from him the shelter and protection of a guarantee of the Constitution, which was intended to be the refuge of every citizen, rich or poor, popular or unpopular, from arbitrary and unlawful pursuit.

We have said that, if a director of a State corporation in violation of his duty sells property to the company of which he is a director or officer, or both, deriving therefrom a concealed profit, none but the corporation can complain; that out of the transaction there

arises a *cause of action* against him, to account therefor, it is a cause of action in the corporation which can be asserted only by itself or by one entitled to sue in its right. The same thing would be true if the Union Pacific Railroad Company *were a Federal Corporation.*

There was a Union Pacific Railroad Company which was a corporation created by Congress. By the Act of March 3, 1873, it was provided that:

> "The Attorney-General shall cause a suit in equity to be instituted, in the name of the United States against the Union Pacific Railroad Company, and against all persons who may, in their own names or through any agents, have subscribed for or received capital stock in said road, which stock has not been paid for in full in money, or who may have received a dividend or otherwise portions of the capital stock of the said road, or the proceeds or avails thereof, or other property of said roads, unlawfully and contrary to equity; or who may have received as profits or proceeds of contracts for construction or equipment of said road, or other contracts, therewith, moneys or other property which ought, in equity, to belong to said railroad corporation; or who may, under pretence of having complied with the acts to which this is an addition, have wrongfully and unlawfully, received from the United States bonds, moneys or lands, which ought, in equity, to be accounted for and paid to said railroad company or to the United States, and to compel payment for such stock, and the collection and payment of such moneys, and the restoration

of such property, or its value, either to said railroad corporation or to the United States, which ever in equity shall be entitled thereto."

The Act provided that the suit could be brought in the Circuit Court of any circuit, and that all such parties might be made defendants regardless of the district or circuit of their residence.

The Attorney-General elected to bring the suit in the Circuit Court of the United States for the District of Connecticut. It was brought against the Union Pacific Railroad Company, the Wyoming Coal Company, the Credit Mobilier Company, and some one hundred and fifty individual defendants, including a large number of directors. The bill recites numerous frauds by directors and officers. It is too elaborate for recital, nor is it necessary. The defendants demurred to the bill, thereby admitting the allegations. It was argued by eminent counsel on both sides, Mr. Sidney Bartlett and Mr. Evarts appearing for the appellees. The bill was objected to as multifarious, which the court overruled as being a matter of practice which the Congress might regulate and which it had regulated for that case by the passage of the law. The defendants also attacked the constitutionality of the law in that it authorized parties to be sued in a district in which they did not reside. This objection was overruled. The court said (United States vs. Union Pacific Railroad Co., 98 U. S., at page 609):

"The substance of the charge in all these cases

is that the *board of directors* of the Railroad Company *made* contracts *for the building of the road,* and for the running of Pullman cars on it, and for the mining of its coal lands and the purchasing of the coal so mined, *which was a fraud upon the company whose directors they were;* that these contracts allowed exorbitant prices for work done and material furnished for the use of the railroad company; that otherwise they were very advantageous to the parties contracting with that company and injurious to the company; *that in all of these contracts directors of the corporation, or a controlling majority of them, were interested, that interest being against the company; that in fact the directors were in the name of the company making contracts with themselves as the other parties.* In short, it may be taken for granted that if these allegations are true, as they must be held to be on demurrer, *more unmitigated frauds were never perpetrated on a helpless corporation than are set forth in this bill.*

"That these frauds are such as a court of equity would relieve against in a proper case, may be seen in the opinion of the Circuit Court for the Nebraska District in the case of Wardell vs. R. R. Co., 4 Dill., 330, which was a suit growing out of Wyoming Coal Company's contract.

"The first inquiry arising on these facts is: What relief can be given and who is entitled to it?

"The obvious reply to the first branch of the question is, that the parties who made the contract and received the pecuniary benefit of it can be made responsible in damages at law, or

held to compensation in equity for the loss suffered. There would be no difficulty in holding in a proper suit such contracts void, and then ordering an accounting, on a basis of a fair compensation for what was done in the way of construction, building, opening mines, furnishing coal, etc., and what was received for such work and materials. The difficulty is, to whom shall this money be paid when recovered, and can it be recovered in this suit? *If the railroad corporation falling into purer hands, had brought such a suit, the bill might be sustained.*

"But the *corporation is not plaintiff here. It* seeks no relief for these wrongs. It may have been the design of the law to *give the corporation an opportunity by a cross-bill, against the other defendants,* who are charged with these frauds, to obtain relief against them. Such a bill is not strictly within the rule of equity procedure, which only allows a defendant to file a cross bill against a plaintiff, might be sustained under the provisions of this statute.

"But the corporation files no such bill. It *desires no such relief.* On the contrary, it resists by demurrer any further proceeding in the matter. *Can it be compelled in this mode to prosecute in such a suit? So long as the corporation exists in possession and unrestrained in the exercise of all its corporate powers, those powers must be exercised by the board of directors. To them belongs, unless under judicial restraint or compulsion, the sole power to decide whether it will assert its right of action for a supposed injury, or will condone it* * * *

"The circumstances of the alleged fraud,

the probability of success in the suit, the extent of the injury and amount which may be recovered, the expense of the proceeding, the danger of injury to the company itself, are all matters which address themselves to them as grounds for the exercise of their discretion. They have decided to have nothing to do with it. How, then, can this court render a verdict in their favor? How can relief be given to them which is not asked? With what hope of advantage can the court enter upon the inquiry into the truth of the frauds alleged and the amount of the injury when the party aggrieved refuses to proceed?

"On the other hand, if the court does proceed, and renders decrees against the defendant, shall these decrees be in favor of the company? If so, what good would follow? Since they resist any decree in their favor now, *they would probably enter satisfaction or releases of the judgments as fast as the court renders them.* If they did not do this, but the money is collected and paid into the treasury of the company, what would be done with it? The bill alleges that the company is insolvent and in debt, but except the claim of the Government, which will be presently considered, there is no allegation showing any use of this money to which the court can decree its application. *It must, therefore, go into the treasury of the company, to be subject to the control of the directors, who are now resisting this action.* Not only this, but it is obvious that the money recovered would come mainly out of the same men who now as directors or stockholders would

control the fund, and would probably order its redistribution to the parties who paid it, or give receipts or releases in advance.

"The truth is, that the persons who were actually defrauded by these transactions, if any such there be, were the few *bona fide* stockholders of the corporation who took no part in these proceedings, and had no interest in the fraudulent contract. But it is not alleged that they were such. If there are such, they are not made parties to this bill, nor does the bill provide any relief for them. *Yet, a moment's consideration will show that they alone (to say nothing of plaintiff for the present) suffers any legal injury, or are entitled to any relief.* * * *

"We are of opinion, therefore, that no decree can be rendered in favor of the railroad company on account of these transactions. The same considerations prevents a recovery in this suit for the value of the stock not paid for by those who received it. Although the law may have been violated by issuing such stock without payment and though an implied contract may exist on which the company could compel payment, the United States cannot recover it as the plaintiff in this suit, *and the company refuses to assist its rights of recovery.*"

It appears from the case that there was reserved in its charter the power to alter or repeal it. The court refers to this and says that Congress might have directed the Attorney-General by that bill and as part of that proceeding, or as an independent one, to ask the court to declare the franchises of the company *for-*

feited, or it *might have ordered a bill to inquire if the company was insolvent, and if so, to wind up its affairs and distribute its assets.* If the Congress as to a corporation, created by itself, in whose charter was reserved the right to alter or repeal, could not afford a remedy to the *corporation* against such frauds as were admitted by the demurrer in the case just quoted from, what shall be said of the right of the Congress to afford a remedy against the directors of a *State corporation* who are shown to have sold stocks to their company at an undisclosed profits? It is to be observed too that a State which created a corporation could do many things in respect of it which another government could not do. It could direct its Attorney-General to institute a suit to forfeit its charter. How far the legislature could investigate the transactions may be open to question, but that the Congress could not do it, or any body created by the Congress, seems not to be open to question.

In a recent case decided by the Supreme Court of Wisconsin, the State vs. Milwaukee Electric Railway & Light Company, *et al.*, similar questions were involved at the suit of the State against one of its corporations. A report of the case is found in Volume 116, No. 9, Northwestern Reporter, July 14, 1908, p. 900. The suit was brought by the Attorney-General in the name of the State to vacate the charter of the corporation for the exercise of unlawful franchises; to uncover and account for corporate funds, which it was alleged they had wrongfully transferred to the city officials as a bribe, and to remove the city officials, etc. The appeal

was from orders denying petitions of some of the defendants to disallow an examination or discovery on behalf of plaintiff. Plaintiff asserted as the general nature of this action (1) to compel the defendant directors and officers of the corporation to account for their said official conduct in the management and disposition of its funds; (2) to compel the defendant directors of the corporation and also the defendant directors of the North American Company to account for their official conduct in the management and disposition of the funds and property of that corporation; (3) to compel both such directors to pay to the corporation all sums of money and the value of all property which any of them had acquired to himself or transferred to others or had lost or wasted by any failure of duty; (4) to suspend the said defendant officers of the corporation for abuse of their trust; (5) to remove said defendant directors and officers of the corporation for gross misconduct; (6) to set aside all alienations of property of the corporation made by said defendant directors and officers contrary to the provisions of law or for purposes foreign to the lawful business or objects of said corporation in all cases where the person receiving the property so alienated knew the purpose; and generally for a discovery of the acts and transactions of the directors. The court held, among other things, that the Attorney-General was not entitled by the statute to the relief prayed for, and said:

> "That the uncovering of assets and the reclamation thereof either from the recipient or the

recreant officers is a right vested in the corporation is too plain for debate, and is universally declared by authority. U. S. vs. Union Pacific Railroad, 98 U. S., 569, 25 L. Ed., 143; Jenkins vs. Bradley, 104 Wis., 540, 552, 80 N. W., 1025; Brahm vs. Gehl, 132 Wis., 674, 112 N. W., 1097.

An action for that purpose rests in the corporation, and can be exercised only by it, except that when the corporation by its ordinary machinery and officers refuses to act or is prevented by the *adverse interests of those officers, a stockholder,* as a *cestui que* trust of the corporation, *may apply to a court of equity to practically coerce the corporation to bring such suit,* and in such action may proceed to the enforcement of the right." * * *

"Another exception in case of insolvency or threatened insolvency when the creditor of the corporation becomes the real *cestui que* trust and may apply to a court of equity to accomplish the same results."

The Court adds:

"Private corporations are organized for private profit and, except as to their members and creditors, are as free to exercise their judgment over expenditures, nay even the donation of their funds as an individual. * * * The State, which is but another name for the general public, has no interest therein, save possibly in the case where a corporation charged with a duty to the public, as is this, might, by dissipation of its assets or property disable itself from

performing that public duty, a result which is not suggested in any way in this case, and which, indeed, is pretty completely refuted by the showing that for seven years since the alleged wrongful expenditures the corporation has continued to perform its public functions of operating a street railway. Authorities supporting this view are numerous, and in them will be found full discussion of that sort of interest which will qualify the State to sue in equity as plaintiff."

The court further says that authorities cannot be found to the contrary, concluding this branch of the opinion, says:

> "We think these authorities are sustained by very obvious reasons and that the rule thereof is sound, and that so far as the present action is addressed to the subject of reclamation of assets, the State is without *interest* to maintain it."

The court also says, speaking of another question which is involved here:

> "We therefore reach the conclusion that there exists no cause of action which may be maintained by the Attorney-General in the name of the State of Wisconsin for any of the general purposes asserted in this. *The right to call men to the witness stand and examine them as to their private affairs is a most serious invasion of their liberties*, if not, indeed, a depri-

> vation of property in many cases. (Phipps vs. Wisconsin Cent. Ry. Co., 113 N. W., 456) and can be justified only on the ground that the courts are entitled to the information in aid of a proper judicial proceeding. Section 3096, St. 1898, was intended to go no further, and, where it is apparent that there is no such judicial proceeding, examination should not be allowed. The courts under such circumstances, when the futility of the alleged attempt to institute a suit is made manifest, should not only prevent an examination, but should dismiss the ostensible action."

The opinion was rendered by Mr. Justice Dodge, who as Assistant Attorney-General of the United States under the administration of Mr. Cleveland frequently appeared for the government at the bar of this court.

The quotation in the main brief from the *report of the Commission* as to the condition of the Union Pacific Railroad and its allied lines in respect of their ability to serve the public is important in this connection. This decision sustains the position here taken that whatever the conduct and transactions of the directors may have been, no cause of action exists in respect of them *except by or for the company*, and *that the transactions were their private affairs to all the world except the real party in interest, as we contend here.*

THE SUBJECT MATTER OF SAID QUESTIONS IS JUDICIAL IN ITS NATURE, AND THE COMPULSORY TESTIMONY OF THE APPELLANT IN RESPECT THEREOF SAVE IN A SUIT BROUGHT BY THE REAL PARTY IN INTEREST

IN A COURT OF COMPETENT JURISDICTION, AND CONDUCTED ACCORDING TO THE FORMS OF LAW, WOULD DEPRIVE HIM OF HIS LIBERTY WITHOUT DUE PROCESS OF LAW, CONTRARY TO ARTICLE FIVE OF THE AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES.

We base this proposition on reason and on the authority of *Kilbourn* v. *Thompson*, supra. It cannot be questioned that if any cause of action exists by reason of the dealings of a director or other officer or agent of a corporation with it, in which his interest in the profits derived from the transaction were undisclosed, it is vested solely in the corporation, and can be asserted only by it or a stockholder or director suing in its right. It may sue or not, as it chooses, and it is, against everybody but the *corporation*, a perfectly legal transaction.

That the corporation or a stockholder suing for it and in its right, can call such official to account in the pursuit of a remedy nowhere except *in a court of justice*, and in the due and orderly course of judicial procedure, is axiomatic. The State which created it cannot do it, which has no existence here. *A fortiore* no other government can do it either by judicial procedure or by legislative committee or by an administrative body created by it.

A contention that he can be pursued upon a transaction involving personal liability by or before a body

without right in himself to compel the attendance and testimony of witnesses to testify in his behalf and without remedy by appeal or otherwise, if witnesses who having voluntarily appeared are not allowed to testify, whose proceedings are exempt in respect of the examination and cross-examination of witnesses from the rules of evidence which prevail in the courts and are essential to the protection of his rights, which can render no judgment, enter no order, and afford no remedy, shocks the average sense of justice.

Such a body is not a judicial body; it possesses no judicial power; its conclusions settle nothing outside of its power to enforce the law for the administration and enforcement of which it was created.

The decision of this court in *Kilbourn* v. *Thompson,* supra, held that the subject matter of the investigation there was *judicial* and not *legislative,* and that the attempt by a committee of Congress to investigate a subject which was judicial was without jurisdiction, and an encroachment by the House of Representatives upon the domain of one of the three separate and coordinate branches of the Government. He says:

> "The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. If what we have said of the division of the powers of the Government between the three departments be sound, this is equivalent to a declaration that no judicial power is vested

> in the Congress, or either branch of it, save in the cases specifically enumerated to which we have referred. *If the investigation which the Committee was directed to make was judicial in its character* and could only be *properly* and *successfully* made by a court of justice, *and if it related to a matter wherein relief or redress could be had only by a judicial proceeding,* we do not, in view of what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial and not to the legislative department of the Government. We think it equally clear that the power is judicial and not legislative."

Every assertion made by the Court *arguendo* supports this proposition and applies literally to this case. It is immaterial that the facts are not precisely the same *if the principles applicable are precisely the same.* Can there be any doubt that if out of a transaction between a director or officer of a corporation and the corporation, there arises a cause of action for damages or restitution, that that cause of action is judicial and that it can be pursued only by the real party in interest and in the courts of justice? Is it not clear that no where else could the investigation be *"successfully made."* To argue that it can be successfully made before an administrative body in a proceeding instituted by itself, to which there are no parties, and which can render no judgment, enter no order, afford no remedy, which is only to acquire information *and make a report*

with recommendation of *legislative action,* which no one is bound to follow, would seem to be a work of supererogation. Is it not equally manifest that the relief or redress, if the facts warrant it, could be had by a judicial proceeding?

The test applied by the court in *Kilbourn* v. *Thompson,* supra, was a crucial one, and every question asked and answered in the opinion is, both as to question and answer, applicable to this proceeding. One test to which the jurisdiction of the House and its committee was subjected was its power to afford redress or relief. The Court says:

> "In all the argument of the case, no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke & Co. or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals. If so, the House of Representatives owned no power or authority in the matter, any more than any other equal number of gentlemen interested in the government of their country. By 'fruitless' we mean that it could result in no valid legislation on the subject to which the inquiry referred."

Applying that test to the jurisdiction of Congress or of the Commission in this matter, must not the answer be the same? No one will have the hardihood to contend that whatever might be the answers given to these

questions, the Commission would not be absolutely powerless to afford remedy or redress. Nor, if we may repeat, could the Congress even if it might legislate to prohibit such transactions in the future, by all the power of legislation which it possesses, reach or touch past transactions or afford redress for them.

The test was applied thus in *Kilbourn* v. *Thompson*:

> "What was this committee charged to do—to inquire into the nature and history of the real estate pool? How indefinite! Is it charged with any crime or offence? If so, *the courts alone can punish the members of it. Is it charged with a fraud against the Government? Here again the courts*, and *they alone can afford a remedy*. Or was it a corporation whose powers Congress could repeal? There is no suggestion of the kind. * * * Can the rights of the pool or of its members, and the rights of the debtor, and of the creditor of the debtor, be determined by the *report of a committee* or by an *act of Congress. If they cannot, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the Government.*"

Is the appellant Harriman charged with any violation of law? *"If so, the courts alone can punish him." Is he charged with a fraud against the corporation? "Here again the courts, and they alone, can afford a remedy."*

It is not for the Commission or a Committee of Con-

gress or for any of its agencies, vicariously representing these corporations, to put the appellant on his oath as to transactions over which neither has any power of redress.

On principle and authority the guarantees of the Fifth Amendment of the Constitution protect every citizen from such intrusion into his private affairs.

The order of the court below denying so much of the petition as prayed that the appellant Harriman be required to answer the questions in regard to the purchase of stocks pending the announcement of the dividend of the Union Pacific and Southern Pacific Railway Companies should be affirmed, and the order requiring him to answer the other interrogatories propounded by the Commission should be reversed.

JOHN C. SPOONER,

Of Counsel for Appellant Harriman.

Supreme Court of the United States.

OCTOBER TERM, 1908.

Office Supreme Court
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JAMES H. McKE

No. 315.

EDWARD H. HARRIMAN,
Appellant,

vs.

INTERSTATE COMMERCE COMMISSION.

No. 317.

INTERSTATE COMMERCE COMMISSION,
Appellant,

vs.

EDWARD H. HARRIMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF IN REPLY FOR APPELLANT, EDWARD H. HARRIMAN.

JOHN C. SPOONER,
JOHN G. MILBURN,
ROBERT S. LOVETT,
Of Counsel.

C. G. BURGOYNE, 72 to 78 Spring Street, New York.

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BRIEF IN REPLY FOR EDWARD H. HARRIMAN, APPELLANT.

Much of the matter contained in the brief submitted on behalf of the Interstate Commerce

Commission (Appellee in No. 315, and Appellant in No. 317) was anticipated, and is covered, by the main brief submitted on behalf of the Appellant, Edward H. Harriman. It will not, therefore, be necessary in this reply to do more than direct attention to a few specific points.

1. On page 4 the Union Pacific Railroad Company chartered by Act of Congress is spoken of as having been "reorganized" in 1897, and reference is made to the present company as the "successor" of the original company pursuant to a "reorganization." The present company is not, in a legal sense, a reorganization of the old one. It was organized as an entirely new and distinct corporation under the laws of the State of Utah, and acquired by purchase the railroad property of the original company sold at a judicial sale on a foreclosure of liens thereon.

2. It is said on pages 10 and 11 that the Union Pacific purchased $3,690,000 par value of the stock of the Chicago, Milwaukee and St. Paul Railroad Company and $2,572,000 par value of the stock of the Chicago and Northwestern Railroad Company. As the

lines of these companies are stated to be competing lines with those of the Illinois Central it should be added that the total capital stock, common and preferred, of the Chicago, Milwaukee and St. Paul Railway Company was $107,838,300, so that the amount purchased was only 3.42 per cent. of the whole; and that the total capital stock of the Chicago and Northwestern Railroad Company was $99,915,700, so that the amount purchased was only 2.58 per cent. of the total capital stock of that company.

3. It is said on page 11 that the testimony shows that the Union Pacific was using its assets and credit not merely in the business of transportation, "but as a great investment company conducting a stock investment business purely for gain." On page 14 the company is referred to as "an investment company." There is no warrant for these statements. The company purchased in 1901 about 45 per cent. of the capital stock of the Southern Pacific Company to assure the control of the railroad extending from Ogden, the westerly terminus of the Union Pacific, to San Francisco. Had it not done so

the control of that line, so essential to the Union Pacific System, might at any time have passed into the hands of adverse interests. That stock it has continued to own ever since its purchase.

On the distribution of the property of the Northern Securities Company the Union Pacific received, instead of the Northern Pacific stock which it had exchanged for the stock of the Securities Company, in part stock of the Northern Pacific and in part stock of the Great Northern Railway Company. These stocks increased greatly in value so that the return on their market value was less than 3 per cent. (R., p. 979). They were sold by degrees, and with the proceeds the purchases of stock of other railway companies which are set forth in the record were made, thereby doubling the return (R., p. 983). The company is free to sell these stocks and use the money for railroad purposes at any time. In the meantime they represent an interest in railroad lines which are either direct feeders to the Union Pacific System, or which can control the routing of a large amount of freight for its benefit. These are the transactions on which the statement that the company is a "great investment com-

pany conducting a stock investment business purely for gain" is based, and they clearly do not warrant such a description of the company.

4. It is said at the top of page 18, with reference to the refusal to answer the questions propounded, that the "entire inquiry of the Commission on this point was thereby blocked." It is not clear what the point is to which reference is made; but there was certainly no blocking of the inquiry as to what stocks the company had acquired; what it had paid for them; what their value was when purchased or at any other time; or what moneys were used for their purchase, or how the funds originally used in acquiring the Northern Pacific and Southern Pacific stocks were raised. All the information that was requested on these subjects was given.

5. It is said on page 19 that the questions whether any of the $10,000,000 of the Santa Fe stock purchased by the Union Pacific was owned by the Appellant, or Mr. Rogers, or Mr. Frick, and how much of the stock of that company was owned by them were directed "to show the real value of the Santa Fe stock thus pur-

chased." We fail to see how the information which the questions sought to elicit had any bearing whatsoever on the value of the stock. It is a leading railroad stock which is bought and sold daily in the markets of the country, and the price at which it sold for any length of time before or after the purchase was accessible. Whether the gentlemen named or any one else owned the stock was not a material consideration with respect to its "real value."

We will now take up the Points of the Brief in their order.

I.

The first point of the Brief (pp. 21 to 50) is that the Interstate Commerce Commission is authorized to investigate all the financial operations and business of an interstate carrier not only under section 12 of the Act but for the purpose of recommending additional legislation. Most of the discussion is devoted to the latter ground. But the entire contention is that section 12 and section 20,

taken together, authorize the Commission to investigate at any time all the affairs, operations, transactions of every kind and finances of a carrier engaged in interstate commerce whether regulated by the Act or not; and that section 12 and section 21 taken together authorize it to investigate at any time any subject or matter in any way connected with interstate carriers or interstate commerce to enable it to recommend new legislation to Congress.

A. As sections 12, 20 and 21 have separate and distinct functions and separate and distinct purposes this effort to blend them together tends only to confusion (pp. 41–46).

The object and purpose of the Interstate Commerce Act was to regulate the business of carriers engaged in interstate commerce in various particulars. It is not the "general aim of the law" (as is said on p. 25) "to compel interstate common carriers to perform adequately their functions as ministers of interstate commerce." The aim of the Act is declared and measured by the subjects which it regulates. The fact that a subject is not regulated is conclusive evidence that it is not within the aim or purpose of the Act. To enforce the

Act—that is, the regulations of the Act—the Commission was created, and it was invested with the necessary powers to that end. Amongst these powers were those conferred by section 12. Those powers are to inquire into the management of the *business* of common carriers; that is, the business regulated by the Act to the extent that it is so regulated; to obtain from common carriers *full and complete information necessary to enable the Commission to perform its duties;* to execute and enforce the Act; to call upon the district attorneys of the United States to institute the necessary proceedings to enforce the Act; and to compel the testimony of witnesses in connection with its enforcement. The broadest claim that can reasonably be made is that this power to compel testimony is available in any investigation that the Commission may conduct with respect to, or in enforcement of, the regulations of the Act. There is no occasion to infer a power of investigation with the aid of compulsory testimony wider than the subjects regulated by the act.

It is said (p. 43) that as section 13 is concerned with investigations based on violations of the Act, section 12, as we construe it, becomes

useless and superfluous. That is not the case. Section 13 concerns hearings upon charges of specific violations of the Act, whether made by private parties, State commissions or the Commission itself. Section 12 authorizes investigations into the management of the business of common carriers regulated by the Act to ascertain whether or not the Act is being observed, and to that end the Commission is empowered to require the fullest and most complete information. That certainly is a broad, practical and useful power which is not found in section 13. But it is quite a different power from the compulsion of the testimony of individuals, whether officers of the corporation or not, with respect to matters which are not regulated by the Act.

Section 20 deals exclusively with the annual reports which carriers have to make, special reports which the Commission can require them to make, the books they are to keep, and access to those books. It provides the machinery for compelling the carriers to comply with these requirements, and severe civil and criminal penalties for non-performance. It goes no further than this; and the power of investigation with the aid of compulsory testimony is not only an

unnecessary adjunct, but one entirely foreign to its purposes.

Section 21 deals exclusively with the annual report to be made by the Commission to Congress, and the incidental authority to make recommendations as to additional legislation with respect to interstate commerce. It is to be observed that if the power to compel testimony is annexed by construction to the authority to make recommendations as to additional legislation, it is as broad as the whole field of interstate commerce, because the language of the section is that the report shall "contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the *regulation of commerce* together with such recommendations as to such additional legislation *relating thereto* as the Commission may deem necessary." The power of investigation with the aid of compulsory testimony is not at all necessary to this incidental authority to recommend additional legislation.

Each section has its own function, and its operation is to be determined with respect to that function. We see no cogency in the argu-

ment that, because the Commission can require under section 20 reports from a *carrier* touching its financial condition, and because it has to make an annual report under section 21 in which it may embody such recommendations as to additional regulations of interstate commerce as it may deem proper, it is empowered under section 12 to compel testimony to enable it to perform the duties imposed upon it by those sections when its only function as to one is to require reports by the *carrier* and a uniform system of accounting, and its only function as to the other is the making of an annual report. This is particularly true in view of the enormous and far reaching power which is thus sought to be created by implication.

B. It is a significant fact that notwithstanding the amendment of the Act from time to time, and particularly its radical revision in 1906, Congress has not undertaken to regulate the financial affairs of carriers subject to the Act, and therefore to impose any duties upon the Commission with respect thereto.

This is especially significant when it is remembered that the Commission itself had

pointed out that it had no such power, in its report for the year 1900 (p. 10), where it is said:

> "The Commission is given authority 'to inquire into the management of the business of all common carriers subject to the provisions of this Act and to keep itself informed as to the manner and method in which the same is conducted', *but this has never been construed by it to refer to the mere financial operations of railways engaged in interstate traffic.*"

It would seem to be time enough to claim that the Commission may investigate with the aid of compulsory testimony the financial affairs of carriers when Congress has undertaken to regulate them and committed to the Commission the duty of enforcing such regulations.

C. In none of the cases cited on pages 23 and 24 in support of the power of the Commission to investigate in aid of legislation was that question raised; and only in the *Brimson Case* (154 U. S., 474) there cited was its investigating power involved at all, and the investigation with which that case was concerned was one based on charges of a specific violation of the Act.

D. Attention is called on pages 27 to 36 to

various investigations which have been conducted by the Commission under section 12 of the Act; but all the matters so investigated, with a single possible exception, related clearly to the regulative provisions of the Act, and the object of the investigations was to ascertain whether one or more of those provisions were being observed or not. That possible exception is the *Matter of Alleged Unlawful Discriminations*, 11 I. C. C. Rep., 587 (Brief, pp. 27, 28). There was a complaint in that case, and though its subject matter was not one respecting which the Commission had any jurisdiction to make an order, no question was raised by any one as to the power of the Commission to coerce testimony upon such an investigation, and it was simply a case of the Commission receiving testimony of parties willing to give it. That it did so has no bearing on what its powers of compelling testimony are under the Act. We are not aware that in any of the other investigations to which reference is made the question of power with respect to the coercion of any particular testimony was raised or considered.

E. Reference is made to the investigation into the Northern Securities Company (p. 35). We

do not see that it has any pertinency. It throws no light on whether the Commission had the power to investigate the subject matter of the questions propounded to the Appellant, or in aid of legislation by Congress, or any matter not within the regulative provisions of the Act, as no such question was raised, discussed or considered.

F. The joint resolution directing what is known as the "coal and oil inquiry" (34 Stats., 829) is cited in support of the contention on behalf of the Commission (pp. 35–38). The portion of the resolution which confers the power to compel testimony quoted on page 37 of the brief is preceded by the words, "*To enable the Commission to perform the duties required and accomplish the purposes declared herein, the Commission shall have and exercise under this joint resolution the same power and authority, &c.,*" which, though omitted, it will be observed are quite vital. If the Commission has the authority to investigate everything connected with the affairs and transactions of carriers engaged in interstate commerce as argued by its counsel, it was quite unnecessary for Congress to confer this specific power in con-

nection with the investigation under this resolution. It would have been enough to direct the investigation to be made. There could have been no other reason for investing the Commission with the power specifically than that it was without that power under the Interstate Commerce Act with respect to some of the matters which it was directed to investigate, such for instance, as the interests of officers of the corporation in coal or oil properties. Thus the resolution is an argument against rather than in favor of the contention on behalf of the Commission.

G. A supporting argument is sought to be found in the legislation of various states regulating common carriers and creating railroad commissions (pp. 38–41). But the relations of a State to the carrier corporations which it creates are so fundamentally different from the relations of Congress to those corporations that there is no real analogy between their respective powers of regulation and investigation. The State which creates a corporation has full and complete visitatorial jurisdiction over it. All its corporate powers are derived from the State, including the authority to issue stocks or to

mortgage its property to secure its bonds. The entire organization of the corporation, the powers of its officers, and the relation between them and the corporation are matters of State ordinance. The State can proceed against its own corporations and their officers for any abuse of franchises or powers. Necessarily, therefore, State legislation regulating its own corporations in all the ramifications of their powers, functions and internal relations, and investing commissions with executive and administrative functions to enforce its regulations, is entirely different in its scope and effect from the regulative power of Congress under the commerce clause. This is illustrated by the reference to the New York Public Service Commission law quoted on page 40, which extends the jurisdiction of the Commission to the "general condition" of all common carriers subject to the act "their capitalization, their franchises," &c.

It cannot be argued from such statutes that the power of inquiry and investigation under the Interstate Commerce Act has the same scope in view of the relations of the States to their own corporations, any more than it could be argued

that its regulative provisions could have the same scope respecting State corporations engaged in interstate commerce.

H. We are not aware (as stated at p. 48) of having admitted in the court below that the Commissioner of Corporations possesses powers over the business of corporations and persons subject to his jurisdiction similar to the inquisitorial functions of the Interstate Commerce Commission as to the business of corporations and persons subject to its jurisdiction. On the contrary, the inquisitorial powers of the Commissioner and the Commission are in their scope as different as their functions. It is only necessary to read the two Acts creating them to see how radically different their functions are; and that involves a similar difference in their inquisitorial functions. The power to compel testimony is specifically conferred upon both. In the case of the Commissioner this power is conferred with respect to the duties which he has to perform to which it is necessary, and in the case of the Commission it is conferred with respect to the duties which it has to perform to which it is necessary. It follows that the argument that their inquisitorial functions are co-extensive is without any warrant. The

Commissioner's view of his own powers (p. 49) is scarcely an authority on this subject. Moreover, as pointed out in our original brief (p. 170) the Act creating the Bureau of Corporations expressly gave the Commissioner power to inquire into the "*organization*" of corporations.

II.

Point II. of the appellee's brief (pp. 51–83) embodies a view of the power of Congress under the commerce clause of so extreme and radical a character that it would seem to answer itself. It is that, if a common carrier engages in interstate commerce, all its affairs, its relations both internal and external, its activities, and the use and employment of its funds, whether in connection with its operations or in the payment of dividends, are subject to the exclusive regulation of Congress under the commerce clause.

On page 51 of the brief it is said:

> "Pursuant to this power Congress may, therefore, regulate the instrumentalities engaged in interstate commerce and directly or indirectly affecting the same."

On page 52, it is said:

> "If a given subject affects or is connected with interstate commerce Congress can take hold of and legislate in regard to it with the same freedom as if there were no state lines. Its power is complete and dominant."

On page 54, it is said:

> "The *corporation* by which the commerce is conducted, as was decided in the Northern Securities case, is in itself an instrumentality, and all the machinery of such a corporation whenever it enters into interstate commerce Congress can regulate."

On page 68, it is said:

> "Is it possible that it (Congress) may do this (*i. e.*, create corporations to conduct interstate commerce) and yet be impotent to regulate the affairs of corporations created by the states and engaged by consent of the national power in the same national business."

On page 63, it is said:

> "It would seem clear that Congress may as a condition to permitting a state corpora-

> tion to engage in interstate commerce prescribed limitations upon its corporate organization, upon the action of its officers in dealing with the company, and may regulate its dividends, and that this is not such a regulation of the internal affairs of the corporation as is beyond the power of the federal government although it may conflict with that of the states."

It is said on page 80:

> "Congress certainly has power to legislate against the consolidation of lines of railway engaged in interstate commerce and to prevent the common ownership of stock therein by directors and officials of railroads and otherwise to maintain the entire separate management and the competitive condition between such railway lines."

It would be difficult to formulate a more radical theory of federal jurisdiction and power. Its acceptance would reduce the states to what has been aptly termed "a mere geographical expression." It is a forcible illustration of the danger pointed out by Mr. Justice MILLER in his lectures on the Constitution (pp. 24, 25) which it is not amiss

to recall in this connection. That great Judge said:

> "It is not out of place to remark that, while the pendulum of public opinion has swung with much force away from the extreme point of State's Right doctrine there may be danger of its reaching an extreme point on the other side. In my opinion the just and equal observance of the rights of the States and of the General Government, as defined by the present Constitution, is as necessary to the permanent prosperity of our country, and to its existence for another century as it has been for the one whose close we are now celebrating."

Taking up these propositions in detail:

A. The doctrine of this Court is, and it is as well settled as any doctrine can be, that Congress can only regulate interstate commerce itself and matters directly, as distinguished from indirectly, affecting it (Appellant's main brief, pp. 29–45).

B. A *corporation* engaged in interstate commerce, among other activities, is not an "instrumentality" of that commerce within the meaning of the rule regarding the regulation of instrumentalities, and it was not so held to be in the

Northern Securities case (193 U. S., 197). What was held in that case was that the corporation was a mere device of an illegal combination of stockholders to directly restrain commerce among the States, and that Congress could prevent the company from carrying out this purpose of the illegal combination (pp. 346, 347). That is very different from a ruling that a State corporation which engages in interstate commerce is an instrumentality of that commerce and therefore subject to national regulation.

Is an individual who engages in interstate commerce an *instrumentality* of commerce so that all his affairs are subject to the exclusive regulation of Congress? Is a firm similarly engaged also such an instrumentality? A corporation so engaged is no more such an instrumentality than they are, and no more subjects all its affairs and operations to the regulation of Congress than they do. The *Employers' Liability Cases*, 207 U. S., at page 502, is conclusive on this point, as it was there said:

> "It remains only to consider the contention which we have previously quoted, that the Act is constitutional although it embraces subjects not within the power of

Congress to regulate commerce because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it." (See also pp. 496–499.)

The term "instrumentality" is used in the Interstate Commerce Act, and as there used it appears what its true meaning is as applied to common carriers. Section 1 defines "transportation" to include cars and other vehicles *and instrumentalities* and facilities of shipment or carriage. Thus instrumentalities are the means by which transportation is carried on, and not the persons who engage in the business and use them for that purpose.

To treat state corporations, because they are engaged in interstate commerce, as instrumentalities thereof, subject to the exclusive regulation of Congress in all their activities, because those activities in some degree or other affect, is to destroy the established doctrine that Congress under the commerce clause may only regulate interstate commerce and, as incidental to that power, the instrumentalities employed in carrying on such commerce by those engaged in

it ; and it is only by the strict observance of this doctrine that the proper spheres of the National Government and the States are both preserved.

C. Congress may not, as a condition to permitting a State corporation to engage in interstate commerce, impose conditions which it would be beyond its power to embody in direct legislative regulation under the commerce clause.

In the *Employers' Liability Cases* (207 U. S., p. 502), it was said in regard to a similar contention :

> " It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution ; in other words with the right to legislate concerning matters of purely state concern. *It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress.* It is apparent that if the contention were well founded, it would

> extend the power of Congress to every conceivable subject, however inherently local, and would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

It is a misconception of the radical federalism, of which the Appellee's brief is a notable expression, that the right to engage in interstate commerce is subject to the will of Congress. The right is not derived from the Federal Constitution, and the only power of Congress is to regulate the commerce itself, *i. e.*, to prescribe the rules by which it is to be governed. It would not be a regulation of commerce to prescribe that no one may engage in it except by submitting his or its affairs to the control of Congress.

D. In *Mobile, Jackson, &c. R. R. Co. vs. Mississippi* (210 U. S., 202), it is said :

> "Whether corporations shall remain separate or be permitted to consolidate is a matter of state regulation and provision."

Yet it is contended that Congress has the power to legislate against the consolidation of State corporations owning lines of railway engaged in interstate commerce. That is very different from saying that if a consolidation is an illegal combination of stockholders to directly restrain interstate commerce it would be an offence against the anti-Trust Act. That such a consolidation may be an offence against the Act does not involve the proposition that Congress is invested with the power to legislate with respect to the consolidation of lines of railway engaged in interstate commerce, and to prevent the common ownership of the stocks thereof by directors and officials when such conditions do not exist.

E. Assuming that Congress may create commercial corporations it does not follow that it may regulate the affairs of state corporations engaged in interstate commerce. There is a wide and deep difference between the power of Congress over a corporation of its own creation and its power over a corporation created by a state which is engaged in interstate commerce.

If a state corporation engages in interstate commerce it must obey all valid laws enacted

by Congress under the commerce clause; but it does not thereby subject itself to the same power and jurisdiction of Congress that exist with reference to a corporation created by Congress.

F. It is argued (p. 65) that Congress may create commercial corporations; regulate their capital; the duties of their offices; and provide for rates of dividends and the dealings of officials and the company; and that therefore it may inquire into the management of existing corporations created by the States with a view to recommending provisions for such a federal corporation law. It is not necessary to consider in this case how extensive the power of Congress is to create commercial corporations, because we fail to see what connection the questions propounded to the Appellant, relating as they do to specific transactions, have with respect to such legislation. Can it be seriously contended that even if Congress has such a power it is therefore at liberty to compel testimony as to all the transactions of existing corporations, and among them, any transactions between such a corporation and its officers. Apart from all other objections, knowledge of such transactions is not

essential to the enactment of a corporation law from any conceivable point of view.

G. It is argued that because "good credit and an abundant surplus are essential to the conduct of railroad transportation Congress may regulate the use of the assets and credits of such a corporation as the Union Pacific" (pp. 76–80). This subject is sufficiently covered by our main brief (pp. 67–79). The *Baird Case* (196 U. S., 25) cited in support of this proposition (p. 78) has no bearing because the question there raised involved alleged violations of the Interstate Commerce Act with respect to rates and pooling, and the only ruling of the Court was that the matters about which inquiry was made bore upon the alleged violation.

We submit that the entire argument under this point respecting the power of Congress under the commerce clause over State corporations engaged in interstate commerce is unsound and without any warrant in the decisions of this Court.

III.

Under Point III of their brief (pp. 84–94), counsel for the Commission discussed the only cases cited in support of their proposition that Congress itself may compel testimony in aid of future legislation (*In Re Chapman*, 166 U. S., 658; *People vs. Keeler*, 99 N. Y., 463; *People vs. Sharp*, 107 N. Y., 427; *Falvey vs. Massing*, 7 Wis., 630, and *Wilckens vs. Willet*, 1 Keyes, 521).

The *Chapman Case*, which we have fully discussed in our main brief (pp. 113–116) obviously does not support the proposition.

The New York cases so much relied on show unmistakably that the power even of a State legislature to compel testimony in aid of legislation is limited to subjects upon which the legislature has power to enact laws, and that with respect to matters upon which the power to legislate does not exist, the legislature is without jurisdiction to compel testimony.

In *Wilckens vs. Willet*, *supra*, after stating that counsel had admitted that such power existed in Congress, the court said (1 Keyes, 525):

> "The power is rather judicial in its nature, but in a legislative body exists as

an auxiliary to the legislative power *only*. In the earlier history of the country, from which our institutions both of law and legislation are principally derived, judicial and legislative functions existed in and were exercised by the same body. And when they were afterwards separated and each came to be exercised by a separate tribunal or body, the legislative body necessarily retained a sufficient amount of the judicial power to enable it to investigate fully and to comprehend thoroughly, any and every subject upon which the body proposed to act in its legislative capacity."

And in the, perhaps, leading case in that state of *People vs. Keeler*, *supra*, the Court said (99 N. Y., 485):

"We are finally brought to the consideration of the important and more doubtful question, whether the investigation which the committee was conducting was a legislative proceeding which the house was authorized to institute. This is a *jurisdictional question*, for the statute applies only to such proceedings, and if the house had any authority independently of the statute, that must depend upon the question *whether the testimony was sought for the purpose of*

aiding it in the performance of any of its constitutional functions. An investigation instituted for the mere sake of investigation, or for political purposes, *not connected with intended legislation*, or with any of the other matters upon which the house could act, but merely intended to subject a party or body investigated to public animadversion, or to vindicate him or it from unjust aspersions, *where the legislature had no power to put him or it on trial* for the supposed offenses and *no legislation was contemplated*, but the proceeding *must necessarily end with the investigation*, would not, in our judgment, be a legislative proceeding, or give to either house jurisdiction to compel the attendance of witnesses or punish them for refusing to attend."

In *People vs. Sharp*, *supra*, the Committee of the legislature before which the testimony was given was specially investigating a subject upon which the Legislature undoubtedly had power to legislate, and the decision in that case was based on and merely followed *People vs. Keeler* and *Wilckens vs. Willet.*

In *Falvey vs. Massing*, *supra*, the subject of investigation was a railroad corporation created

by the State of Wisconsin, but the Court recognized that jurisdiction to legislate was essential. It said (7 Wis., 630):

> " We are next to determine whether the subject matter of this resolution was a *proper subject* for the investigation of the Legislature."

The court answered this inquiry by saying that the legislature had chartered corporations to carry on certain works, and, therefore, had the right to inquire " into the manner these corporations were managing their roads " and that it possessed a visitatorial power over them and that by the inquiry under consideration

> " information might thus be obtained which would enable the Legislature to remedy defects in existing laws and effectuate the great ends of public justice."

These cases are not authority for the proposition that an administrative commission, such as the Interstate Commerce Commission, may compel testimony to aid it in determining whether it will recommend legislation.

Moreover the cases cited were dealing with the power of state legislatures which have all legis-

lative power not prohibited by state or federal Constitutions, while Congress has only such power as has been delegated to it by the Constitution.

We feel safe in saying that no case, except the decision of the Judge of the Circuit Court in this case, can be found that holds a legislative body may compel testimony about a subject over which it has no power to legislate.

IV.

A. Point IV. (p. 99) of the Appellee's Brief is to the effect that "the standards that guide the Commission and the witness in the inquiry are clear and statutory and involve no unconstitutional delegation of power." Counsel misconceive the position of the Appellant on this subject. Our contention has been and is that if the position of counsel is sound, namely—that Congress, by Section 21 of the Act, has invested the Commission with authority to compel testimony with respect to everything relating to interstate commerce concerning which Congress may legislate, then it is an unconstitutional delega-

tion of power because absolutely lacking in any standard for the guidance of the Commission. (See our main Brief, pp. 134 to 137.) The authority to make recommendations as to additional legislation conferred by section 21 is not restricted to any part of the domain of interstate commerce or to any particular subjects connected with interstate commerce. If, therefore, the power to compel testimony conferred by section 12 can be exercised for the purpose of enabling the Commission to make recommendations to Congress, it extends to the whole domain of interstate commerce and is unrestrained by any limitations or standards. In other words, the Commission may at any time investigate any subject relating to interstate commerce concerning which Congress may legislate that *it* may select, or in *its* judgment deem expedient and appropriate to investigate for the purposes of legislation. This we have all along claimed and do claim to be an unconstitutional delegation of power. Our argument on this point is not answered, and in our opinion, cannot be answered. It is said that investigation is not legislation (p. 98). But to the extent that it exists it is a

power incidental to, and limited by, the power to legislate, and it can only be delegated in connection with some particular subject matter to serve as a standard fixing the scope and extent of the authority. It is further said that the delegation of the broad power claimed on behalf of the Commission has "been expressly sustained by the Court in the *Brimson Case*" (p. 98). We repeat that no such question was involved in, or determined by, that case.

B. The power of Congress itself to compel testimony at all merely in aid of its legislative function is treated as so undoubted as not to require any discussion (p. 97). This is a strange position to take considering that this Court on the only occasion when it was raised in saying that it was not necessary to decide it quite strongly intimated that the power did not exist (*Kilbourne vs. Thompson*, 103 U. S., 189). In *Goodnow on Principles of the Administrative Law of the United States* (p. 446), it is said that "while the Supreme Court has expressly refused to decide whether Congress has the power to force a witness to testify in cases where it desires information for its use in legislation, it seems to

indicate in its opinion that Congress has no such power;" adding "Nothing, however, prevents Congress or its Committees from gathering testimony from willing witnesses."

A question so grave and of such importance, involving as it does a fundamental right of the citizen, may not be summarily dismissed by calling the Court's attention "to the fact that there is an entire chapter of the Revised Statutes relating to the taking of testimony upon congressional investigations" (p. 97). That chapter is made up of section 1 of the Act of May 3, 1798 (1 Stat., 554), authorizing the President of the Senate, the Speaker of the House and Chairman of Committees, to administer oaths to witnesses; the act of January 24, 1857 (11 Stat., 155), making it a misdemeanor for witnesses summoned by the authority of either House of Congress to make default or refuse to answer; and the Act of January 24, 1862 (12 Stat., 333), depriving any such witness of the privilege of refusing to answer upon the ground that his testimony may tend to disgrace him. These Acts constitute the whole of the chapter. That Congress has power to compel the testimony in certain cases quite separate from

its legislative function is undoubted; and the cases are pointed out in our main Brief (pp. 113–116). In such cases it is acting in a quasi judicial capacity. The first section of the Act of 1798 was necessary to prescribe what officers could administer the oath to witnesses. The Act of 1857 was enacted because the only power that Congress had to punish for contempt in case of the refusal of a witness to answer was to commit him until the end of the then pending session. That power being deemed insufficient the refusal to attend and answer was made a misdemeanor (*Senate Misc. Doc.*, 2d Sess. 53d Cong., Vol. 12, pp. 85, *et seq.*).

These provisions throw no light on the extent of the power of Congress to compel testimony; and, moreover, Congress could not itself define the extent of its power under the Constitution as that is a judicial question.

V.

A. The Fifth point of the Appellee's Brief is to the effect that the questions propounded bore upon the reasonableness of the rates in force on the Union Pacific, and therefore upon a matter within the regulative provisions of the Interstate Commerce Act.

This point was elaborately argued in the Court below and made so little impression that it was not assigned as one of the grounds for sustaining the questions. The argument to sustain it is covered at every point by what is said in our main Brief on this subject (pp. 53–60). The fundamental unsoundness of it is the contention that there is or can be a relation between a possible breach of the fiduciary relation of a director to the corporation in the sale to it of stocks of other corporations and the reasonableness of the transportation rates of the corporation. Moreover the value of such property, which is no part of the property employed in the transportation of freight and passengers over the line of the railroad of the company, is not an element in determining the reasonableness of its rates. To say (p. 107) that the stocks of corporations owning other railroads

which were purchased by the Union Pacific are now a part of its general property, like its engines and roadbed, is manifestly absurd. The argument (p. 106) that if these stocks were improvidently purchased, the capital of the company has been inflated by just so much and a "return upon just so much of that capitalization could not properly be considered by the Commission upon a determination of the rates to be charged" by the company is not only true but is short of the fact, because the capital used in the purchase of the stocks could not be considered at all in determining what are reasonable rates. The fairness or unfairness of the price paid for those stocks has nothing whatsoever to do with the rates charged by the company. If the railroad of the St. Joseph and Grand Island Company were a part of the system of the Union Pacific its value could be taken into account in determining what are proper rates over that part of the system. But (p. 113) what bearing has the price which the Appellant paid for the portion of the stock of that company which he sold to the Union Pacific Company when be bought it, and his motives in buying it, upon the value of the railroad of that company? If it is ma-

terial to determine the value of that railroad at any time, it is there to be appraised, and past transactions in blocks of its stock, or a breach of the fiduciary relations of a director, if there was any, would not tend in the remotest degree to show what the value of the property is. So (p. 110) what relation has the fact that the Appellant and other gentlemen who were directors of the Union Pacific road acquired certain shares in the Atchison, Topeka and Santa Fe Company, and requested a representation on its Board of Directors, and were accorded two directors out of fifteen, to the reasonableness of the rates of the Union Pacific? The transactions between the Santa Fe and the Union Pacific concerning the construction of lines in Northern California and the fruit traffic of California to the extent that there were any, were freely disclosed for any action or report that the Commission could make; but we fail to see how, because of any such transactions, the Commission was warranted in inquiring whether the Appellant and Mr. Rogers and Mr. Frick owned twenty-five or thirty millions of dollars of the stock of the Atchison Company. It is a novel suggestion that even if the Commission were in-

quiring, in a proper proceeding, into the reasonableness of the rates of the Union Pacific Company, it would be justified in inquiring as to whether there had been any breach of the fiduciary relation of directors of the company respecting sales to the company of property not used in its transportation business, or an inquiry of the individual stockholdings of the directors of the company in other corporations?

B. Mixed in with this point is the argument that "the impairment of the carriers assets by improvident investments may also affect the existing rates put into effect by the carrier itself" (pp. 115–116). We submit that it is quite clear that such investments have no relation to rates whatsoever. If it had raised capital and made provident investments in the stocks of other railroad companies a reduction of its rates would not be warranted any more than would their increase be warranted if such investments had been improvident.

VI.

The Sixth point of the appellee's Brief (p. 119) is devoted to showing that whether the Appellant had purchased stock of the Union Pacific in anticipation of the increase of the dividends of that company in the year 1906 was pertinent to inform the Commission as to whether the dividends were justified, were fairly declared, and declared in the best judgment of the directors.

We answer :

1. That the dividends of a state corporation engaged in interstate commerce are not within the regulative power of Congress under the commerce clause.

2. That Congress has not delegated to the Commission any power of inquiry with respect to such dividends.

3. That the question whether the dividends were fair and warranted would depend upon the net profits applicable to dividends, and they were freely shown and from them it appeared that the dividend was amply warranted and proper (R., pp. 1122–1131 ; Mahl, Exhibit No. 8, pp. 1356–1357).

4. That whether the Appellant had bought

stocks or not in connection with the declaration of the dividends could have no bearing on whether the dividends were justified or proper.

VII.

Nothing is presented under Points VII., VIII. and IX. of the brief on behalf of the Commission that is not covered and answered by our original brief.

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Of Counsel for Appellant, Edward H. Harriman.

OCT 10 1908

Supreme Court of the United States.

OCTOBER TERM, 1908.

EDWARD H. HARRIMAN, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, APPELLEE. } No. 315.

OTTO H. KAHN, APPELLANT,
v.
INTERSTATE COMMERCE COMMISSION, APPELLEE. } No. 316.

INTERSTATE COMMERCE COMMISSION, APPELLANT,
v.
EDWARD H. HARRIMAN, APPELLEE. } No. 317.

BRIEF FOR THE APPELLEE IN NOS. 315 AND 316, AND FOR THE APPELLANT IN NO. 317.

HENRY L. STIMSON,
U. S. Attorney,
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Counsel for Interstate Commerce Commission.

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BRIEF FOR THE APPELLEE IN NOS. 315 AND 316, AND FOR THE APPELLANT IN NO. 317.

I.

INTRODUCTION.

These appeals involve substantially the same questions and will therefore be argued together.

The appeals of Messrs. Harriman and Kahn are from the judgment of the United States Circuit Court for the Southern District of New York, directing each to answer certain questions propounded in an investigation before the Interstate Commerce Commission (see judgment, Record p. 1444). These questions pertained to the acquisition of a large amount of stock by the Union Pacific Railroad Company in competing and other railways.

The appeal of the Interstate Commerce Commission is from the part of the same judgment (Record, 1448), denying the petition to compel Mr. Harriman to answer certain questions pertaining to his dealings in stock of the Union Pacific and Southern Pacific in anticipation of the increased dividends declared by those companies.

This judgment was rendered in a proceeding instituted on the petition of the Interstate Commerce Commission under section 12 of the Interstate Commerce Act, for an order requiring the said Harriman and Kahn to answer these questions. The application, therefore, constitutes an independent proceeding or case before the Circuit Court, and an appeal lies to this court from the judgment requiring or refusing to require them to answer.

The record in this case contains the petition of the Interstate Commerce Commission, the answers of Harriman and Kahn, and a transcript of the testimony taken before the Commission in the investigation including exhibits.

II.

THE NATURE AND SCOPE OF THE INQUIRY BEFORE THE COMMISSION.

As will be shown below, the statutory powers of investigation of interstate carriers possessed by the Commission are plenary. The purpose of the present investigation was announced in a resolution of the Commission passed on November 15, 1906 (see petition, Record p. 3). Under this resolution the Commission proposed to investigate—

> "consolidations and combinations of carriers subject to the act and the relations now and heretofore existing between such carriers, including community of interest therein and the practices and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor * * * to the end that it may be fully informed in respect thereof and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interest, practices or methods result in violations of said act or tend to defeat its purposes. * * *"

The inquiry thus far has been practically confined to carriers controlled by the appellant Harriman. While one of the ultimate ends of the inquiry was to ascertain the effect upon rates, facilities and movement of commerce which was produced by the so-called policy of "community of interest" mentioned in the above resolution, the inquiry, as it progressed, developed such startling

evidence as to the financial methods which had been used as a means of producing such community of interest as to temporarily overshadow this ultimate end.

The Interstate Commerce Commission has rendered an opinion or report of the results of its investigation thus far, to which we respectfully refer the Court for a luminous exposition of the facts investigated (see 12 I. C. C. Rep. 319). We give an outline of those facts only so far as directly connected with the questions now before the Court.

III.

OUTLINE OF FACTS.

The Union Pacific Railroad Company.

It is a corporation organized under the laws of the State of Utah. A former corporation, chartered by Act of Congress, went through receivership and was reorganized in 1897, the present corporation becoming the owner of a large portion of the property of the old corporation. Its railroad extends from Council Bluffs, Iowa, to Ogden, Utah; from Julesburg to Denver; from Denver to Cheyenne; and from Kansas City to Denver, together with certain branches.

The Union Pacific, as the successor of the old company, pursuant to the reorganization, owns the stock of the Oregon Short Line Railroad Company, the rails of which latter corporation extend from a connection with the Union Pacific at Gran-

ger, Wyoming, to Huntington, Oregon, and from Salt Lake City, Utah, to Butte, Montana. In the same manner, the Union Pacific, as did its predecessor, controls the Oregon Railroad & Navigation Company, the lines of which extend from the terminus of the Oregon Short Line at Huntington, Oregon, to Portland, Oregon, together with a number of branches. Thus the Union Pacific has, by direct and stock ownership, lines of railway from Council Bluffs, Iowa, and Kansas City, Mo., to the Pacific Ocean at Portland. In the same manner it acquired a line of steamships from Portland to San Francisco.

The Southern Pacific Company.

It was chartered under the laws of the State of Kentucky, as a holding corporation, and in this way owns a line of steamships plying between New York, New Orleans and Galveston, and lines of railway from New Orleans to Portland, by way of Los Angeles and San Francisco, and a line from Ogden, Utah, to San Francisco—the latter being known as the "Central Pacific," which, with the original line of the Union Pacific from Council Bluffs to Ogden, constitutes and always has constituted a trans-continental line of railway.

Appellants Harriman and Kahn.

Shortly after the reorganization of the Union Pacific Railroad Company in 1897, Edward H.

Harriman became the dominant spirit in the company. He exercises powers that are well nigh absolute. He has been, during a large part of the time, president of the company; at all times a director and member of the executive committee and since 1898 chairman of the latter.

The by-laws provide that the executive committee shall—

> "when the board of directors is not in session, have all the powers of the board of directors to manage and direct all the business and affairs of the company in such manner as such committee shall deem best for the company's interests in all cases in which specific directions shall not have been given by the board.
>
> "The chairman of the executive committee shall be elected by the board of directors, and subject to the control and approval of the executive committee shall represent it when it is not in session." (Rec., pp. 70-71.)

The chairman is also—

> "authorized to borrow such sums of money as may be required for the uses of this company; to execute in the name and on behalf of this company a note or notes for the amounts so borrowed." (Rec. p. 122.)

The principal transactions of the company have been carried out by Harriman, his acts being subsequently approved by the executive committee or the board. For instance, in the purchase of the Northern Pacific stock, involving nearly $100,000,000, the whole matter seems to have been arranged by correspondence between Harriman and Kuhn,

Loeb & Co., fiscal agents of the Harriman roads. (Record, pp. 1176-1181, 1391-1395.)

In addition to occupying these positions in the Union Pacific, Harriman has filled the same offices, with the same powers, in the Oregon Short Line Railroad Company, the Oregon Railroad & Navigation Company and the Southern Pacific Company; and during the times below mentioned he has also been the dominant figure in the Chicago & Alton Railway Company, being most of the time the chairman of its executive committee. (Record, pp. 972, 999.)

Kuhn, Loeb & Co. have been, since the organization of the present Union Pacific Railroad Company, its fiscal agents; and until the spring of 1906, appellant Kahn, who is a member of that firm, together with one of his partners, Mr. Jacob H. Schiff, were directors of that company, Mr. Kahn being also a member of the executive committee. Kahn was also, up to the year 1906, a director and member of the executive committee of the Southern Pacific Company, of which company, as well as of the Union Pacific, the firm of Kuhn, Loeb & Company have been, since 1901, the fiscal agents. (Record, pp. 1155, 1156, 1161.)

Purchase of Southern Pacific and Northern Pacific Stock.

In the spring of 1901 the Union Pacific Railroad Company issued $100,000,000 of convertible bonds,

all of which have since been converted by the holders thereof into stock. The Union Pacific also caused the Oregon Short Line to issue bonds of which $45,000,000 are now outstanding, known as "four per cent. refunding bonds," secured by the pledge of all the Southern Pacific stock then owned by said company, to-wit, 1,080,000 shares, also 300,000 shares of the Oregon Railroad & Navigation Co., and certain other securities. (Mahl Exhibit No. 7, Record p. 1429.)

With a portion of the proceeds of these bonds, the Union Pacific, in 1901, purchased over forty-five per cent. of the capital stock of the Southern Pacific Company, giving it a control of that company, which it has since exercised without interruption. (Report Commission, 12 I. C. C. Rep. 323; Harriman testimony, Record, pp. 973-977.)

With a portion of the proceeds of these bonds, it also purchased a majority of the then outstanding stock of the Northern Pacific Railway Company —the owner of a line of railroad extending from the Great Lakes to the Pacific Ocean, and which was the joint owner with the Great Northern Railway Company of the stock of the Chicago, Burlington & Quincy Railway Company. This stock of the Northern Pacific was sold to the Northern Securities Company by the Union Pacific, the latter receiving stock of the Securities Company in exchange therefor. After the distribution of the property of the Northern Securities Company, pur-

suant to the decision of this court, the Union Pacific received a large amount of the stock of the Northern Pacific and Great Northern companies, the greater portion of which it has since sold at a large profit over the original investment (see Harriman testimony, Record, pp. 978-980).

Subsequent Stock Purchases by the Union Pacific Company.

With the profits of these sales and out of the general moneys and credits of its treasury, the Union Pacific Company has since purchased enormous quantities of stock in other railroad companies, which it still holds.

In 1904 it purchased from Kuhn, Loeb & Company 103,431 shares of the preferred stock of the Chicago & Alton Railway Company at a cost of $86.50 a share, or $8,946,781.50 in all, (Record p. 1377); acquiring for a time, with the Rock Island a joint control over the said Alton company (Report Commission, 12 I. C. C. 344).

In the summer of 1906 it purchased 281,231 shares of the Illinois Central Railroad Company (or 29.59 per cent of the total stock of that company), at $175 per share. Appellant Kahn testified that under ordinary conditions, in the absence of active contest for control, such percentage was sufficient to constitute a dominant interest in a railroad company (Kahn testimony, Record pp. 1215-17).

Prior to 1906, Harriman and his associates, including Henry C. Frick and H. H. Rogers, had acquired about $30,000,000 par value of the stock of the Atchison, Topeka & Santa Fe Railway Company, and upon demand of respondent Harriman for representation upon the Board of Directors, Messrs. Frick and Rogers, both of whom were, and are, Directors of the Union Pacific, were made members of the Santa Fe Board. In 1906 the Union Pacific purchased $10,000,000 par value of stock in the said Santa Fe company, from Kuhn, Loeb & Co., at a total cost of $10,395,000. Said Santa Fe company is the owner of lines of railway extending from Chicago to Kansas City and thence through the States of Kansas and Colorado and the Territories of New Mexico and Arizona to San Francisco, Cal., and is a natural competitor with the Southern Pacific and Union Pacific railroads. (Record, p. 1375).

In 1906 it purchased from Kuhn, Loeb & Co. preferred and common stock of the Baltimore & Ohio Railroad Company, aggregating about $40,000,000 par value, for which it caused the notes of the Oregon Short Line to be given for over $36,000,000, the total purchase price being in excess of $45,000,000. (Record, p. 1349.)

During the same period of time the Union Pacific has further purchased:

$3,690,000 par value stock of the Chicago, Milwaukee & St. Paul Railway Company, a competing

line with the above mentioned Illinois Central between Chicago and Omaha for which it paid $6,274,500;

$2,572,000 par value stock of Chicago & Northwestern, a competing line with the Illinois Central and Chicago, Milwaukee & St. Paul railways; for which it paid $5,303,673;

$14,285,745 par value stock of the New York Central & Hudson River Railroad Company for which it paid $19,634,324;

And $5,082,200 par value stock of the St. Joseph & Grand Island Railroad Company, for which it paid $2,022,540. The latter stock was purchased from appellant Harriman individually, he being at the time president of the Grand Island company. (Record, pp. 1373, 1374, 1151.)

IV.

THE GENERAL ISSUE BETWEEN THE PARTIES.

The testimony thus shows that the Union Pacific Railroad Company was using its general assets and credit not merely in the business of transportation, but as a great investment company conducting a stock investment business purely for gain.

> "Mr. Harriman: And that when we took over the Great Northern and Northern Pacific in exchange for our Northern Securities stock it was worth in the market about one hundred million dollars. Instead of disposing of it at that time we held it until the market price increased in value somewhere to near one hundred and forty-five million to one hundred and

fifty million dollars. We sold some of it gradually as it went up, but at that value the returns from the Northern Pacific and Great Northern were less than three per cent. on the stock that we held. Therefore, we concluded that it was better to sell those stocks and invest the same money in other securities that would give us greater returns. So that, following out that line we had sold enough of those stocks to realize $116,000,000." (Record, p. 979.)

"Mr. Harriman: I have made many mistakes in my life and I presume you have, but we are using our best judgment. We had this investment in securities. The hundred million more of stock was issued for the purpose of paying for those investments. We realized on those investments to the best advantage we could and reinvested in the securities which we thought were of the highest class and the most interest to the Union Pacific.

Mr. Kellogg: Then the investment of the Union Pacific in stocks depends, like any other stock investment concern, on whether the stocks go up or down, does it not?

Mr. Harriman: I do not think so. I think it is a question of income. It is not always a question of capital, of a question of value." (Record p. 980.)

"Mr. Kellogg: Now you have not been buying securities you say for speculation?

Mr. Harriman: That is right.

Mr. Kellogg: Then do I understand that the stock of the Illinois Central, of the Baltimore & Ohio, of the Chicago & Alton, of the New York Central, and North Western, and Milwaukee, are for permanent investment or control?

Mr. Harriman: *They are certainly not for control.* They could not control, therefore through the reinvestment of the proceeds—

Mr. Kellogg: Are they for permanent investment or for sale again?

Mr. Harriman: *They are for income from the proceeds,* reinvestment of the proceeds of the Great Northern and Northern Pacific.

Mr. Kellogg: I know, but are they for permanent investment or do you expect to sell them again?

Mr. Harriman: *I have no expectation about it.* I never thought of that. It never crossed my mind. *It is for the purpose of receiving six millions and a half of dollars a year instead of three millions and a half.*" (Record, p. 983.)

Mr. Kellogg: Now, Mr. Harriman, it appears in the list of stocks which you bought for the Union Pacific Railroad Company,—I notice that on July 10 the Oregon Short Line Railroad Company purchased $10,000,000 par value of the Atchison, Topeka & Santa Fe Railway Company for $10,395,000. You recall that, substantially?

Mr. Harriman: Yes, sir; no doubt about that.

Mr. Kellogg: What was the object of purchasing that stock?

Mr. Harriman: *To invest some of the money that we had on hand.*" (Record, pp. 1076-77.)

"Mr. Kellogg: Since that time and until June 10, 1906, the Union Pacific itself as a company, or the Short Line, has acquired $10,000,000 of this stock?

Mr. Harriman: *That was .an investment pure and simple in the preferred stock.*" (Record, p. 1078.)

"Mr. Harriman: It was only a coincidence. If the Union Pacific had not disposed of a certain amount of its holdings of securities, and had money to invest in like securities, it never would have acquired the Illinois Central." (Record, p. 1085.)

"Mr. Kellogg: I was asking you if there had been any change in management and what the

reason was for the purchase of the stock by the Union Pacific of the Illinois Central?

Mr. Harriman: *It was an opportunity to obtain a large amount of stock at what we considered a very reasonable price, and to invest the money* which the Union Pacific had, the proceeds of the sale of Northern Pacific and Great Northern.

The Chairman: Was there no other purpose, Mr. Harriman, than a desire to invest the money?

Mr. Harriman: *Absolutely none whatever.*" (Record, p. 1086.)

When the Interstate Commerce Commission sought to inquire into the details of these financial transactions of the Union Pacific Railroad Company as an investment company, and to ascertain whether these investments made with these general funds were prudent, and whether any of these purchases of stock were made from its directors, and if so, whether they were made at a fair price, it was met by the contention that such transactions had nothing to do with interstate commerce, and the witnesses were not permitted to answer on that ground.

"Commissioner Lane: Then it is your position, Mr. Milburn, that when an interstate commerce carrier engages in the purchase of the stocks of other interstate commerce carriers, in that transaction it is not an interstate commerce carrier but may be an investment company?

Mr. Milburn: Let me divide that as the actual facts are. The Union Pacific Railroad Company is a railroad corporation. It is also by the law which creates it authorized and

empowered to invest moneys in the stocks of other corporations. In that sense it is an investment company, if you please. It has that power. Now, if the Union Pacific buys the stock, under that power, of another railroad corporation, it is not interstate commerce at all. If the Union Pacific Company as a carrier, as a transporter of property, is acting in an entirely other and different capacity, if any question of interestate transportation arises in which that road is involved, it arises and is considered and is determined regardless of any condition which exists with respect to its transactions as an investment company.

Comr. Lane: How do you draw the distinction between the bonds that are issued by the Union Pacific Company for railroad purposes and bonds issued for investment purposes?

Mr. Milburn: I do not think that it is necessary to draw any distinction. We know what portion of the funds of this company has gone into securities which it has bought, and what portion has gone into the physical property and the development of the physical property. That all appears. * * *

Comr. Lane: But what does it mortgage in order to get the money to invest in the New York Central?

Mr. Milburn: *Whatever it has power to mortgage.*

Comr. Lane: It mortgages the interstate commerce railway, does it not? * * *

Mr. Milburn: Never with reference to this Illinois Central stock. But suppose it did, *it has power to issue securities, to mortgage whatever it has, for its corporate purposes.*" (Record, pp. 1090, 1091.)

See argument of Mr. Milburn, Record, pp. 1089-1091.

The entire inquiry of the Commission on this point was thereby blocked.

V.

THE SPECIFIC QUESTIONS TO WHICH ANSWERS WERE REFUSED.

(a) *The purchase of the Chicago & Alton stock.*

The Union Pacific company was shown by the evidence to have invested about $9,000,000 of its funds in the preferred stock of the Chicago & Alton *Railway* Company. This latter company was the successor of the Chicago & Alton *Railroad* Company, pursuant to a reorganization which had been conducted by Mr. Harriman and three associates. The methods of the reorganization are severely criticized in the report of the Commission, but are not pertinent to the present inquiry (see 12 I. C. C. Rep. 337.) It is sufficient now to say that this preferred stock of the reorganized company had been, to put it mildly, considerably diluted during the reorganization, and that its value was, to say the least, problematical.

The inquiry developed that the Union Pacific Company purchased this Alton stock from the Harriman syndicate at a price fixed by a committee of three persons of whom Harriman was one. Mr. Harriman was active and influential in the work of this committee, as he himself testified (Harriman testimony, Record, pp. 986, 1051).

As already pointed out, Harriman was at the time president, chairman of the executive committee, director, and virtually autocrat of the Union Pacific Railroad Company, the purchaser. In order to assist in ascertaining the real value of the stock, sold under these extraordinary conditions by Mr. Harriman's syndicate to Mr. Harriman's company, at a price fixed by Mr. Harriman's committee, he was asked whether or not he was personally interested in any of the Alton stock thus sold. He declined to answer. He was also asked how much of said stock, if any, he owned. He declined to answer (see Petition, Record, pp. 7, 19, 20, 21).

The witness Kahn, whose firm of Kuhn, Loeb & Co. acted as depositary of the Alton stock for the purpose of said sale, was asked whether or not any of the directors of the Union Pacific were the owners of the said stock thus sold to their company, and he also declined to answer (see Petition, Record, pp. 26, 27).

(b) *The purchase of the Illinois Central stock.*

The inquiry having developed that 90,000 shares of stock of the Illinois Central Railroad Company were purchased by the Union Pacific Company from Messrs. Harriman, Rogers and Stillman (all of them directors of the Union Pacific Company), and 105,000 shares from Messrs. Kuhn, Loeb & Co. (fiscal agents of the Union Pacific), acting for individual clients, in the summer of 1906, Mr. Harriman was asked:

1. Whether the said 90,000 shares had been held by him and his two associates as a pool.

2. Whether they had acquired it with a view of selling it to the Union Pacific Company.

3. Whether he and his associates had purchased that stock at a much lower price than the price at which they subsequently sold it to the Union Pacific Company, and with the intention of so turning it over to the Union Pacific Company.

4. Whether he had any interest in the 105,000 shares sold at the same time to the Union Pacific Company by Messrs. Kuhn, Loeb & Co.

He declined to answer all of these questions (see Petition, Record, pp. 22, 23).

Mr. Kahn also declined to answer whether any of the 105,000 shares was sold by his firm on account of any of the Directors of the Union Pacific Railroad Company (see Petition, Record, pp. 27, 28, 29).

(c) *The purchase of the Santa Fe stock.*

The inquiry tended to show that Harriman, Rogers and Frick (all of them directors in the Union Pacific), had prior to the year 1906 acquired a large amount of the stock of the Atchison, Topeka & Santa Fe Ry. Co. (Ripley testimony, Record, p. 207.)

The inquiry further disclosed that subsequently the Union Pacific Railroad Company had purchased $10,000,000 par value of Santa Fe stock. Mr. Har-

riman was asked whether any of the stock so purchased was personally owned by him or Rogers or Frick, and he declined to answer (see Petition, Record, p. 21). He also declined to testify as to the amount of Santa Fe stock held by himself and associates (see Petition, Record, p. 21).

It appeared that the Santa Fe road was a competitor of the Union Pacific, and the inquiry thus blocked by Harriman's refusal to answer was therefore directed not only to show the real value of the Santa Fe stock thus purchased, but it was also directed to show that directors of the Union Pacific Railroad Company were largely interested in a competing railroad. This will be dealt with, *infra.*

(d) *The purchase of the St. Joseph & Grand Island stock.*

The inquiry further tended to show that the Union Pacific Railroad Company had purchased $5,082,200 par value stock of the St. Joseph & Grand Island Railway Company, from Mr. Harriman individually, at a cost of $2,022,540. At the time Mr. Harriman was president of the Grand Island Company as well as the Union Pacific. He was asked when he had acquired the stock so sold by him, and how much he had paid for it, and he declined to answer (see Petition, Record, pp. 25, 26; Harriman testimony, Record, p. 1151.)

(e) *Purchase of the New York Central stock.*

The inquiry developed that the Union Pacific Company had since July, 1906, purchased $14,285,745 par value of New York Central stock at a cost of $19,634,324. Harriman was asked whether any of the Union Pacific directors were individually interested in this purchase, and he declined to answer (see Petition, Record, p. 26; Harriman testimony, Record, pp. 1152-53).

(f) *The increased Union Pacific and Southern Pacific dividends of August, 1906.*

The inquiry developed that in August, 1906, the directors of the Union Pacific Railroad Company increased the dividend upon the stock of that company from six per cent. per annum to ten per cent. per annum; and instead of publishing notice of that fact the following morning, as had been theretofore customary, had referred the announcement of the said dividend to the executive committee, of which Harriman was chairman, and that announcement was not made until the second day after the dividend had been voted. Mr. Harriman was asked whether he or any director had purchased stock in anticipation of that dividend, and he declined to answer (see Petition, Record, pp. 23-25; Harriman testimony, Record, pp. 1126, 1136, 1137). At pages 1134, 1137, 1138 members of the Commission give the reasons why such information was sought.

POINT ONE.

THE INTERSTATE COMMERCE COMMISSION, IN MAKING THIS INVESTIGATION, HAD ALL THE POWER OF A CONGRESSIONAL COMMITTEE OF INQUIRY, SO FAR AS INTERSTATE CARRIERS ARE CONCERNED, AND COULD INQUIRE INTO THE MANAGEMENT OF SUCH INTERSTATE CARRIERS AND ALL THE FINANCIAL OPERATIONS AND BUSINESS THEREOF, NOT ONLY FOR THE PURPOSE OF REGULATING RATES, FARES AND CHARGES AS PROVIDED BY THE INTERSTATE COMMERCE ACT, BUT FOR THE PURPOSE OF RECOMMENDING ADDITIONAL LEGISLATION.

See

Sections 12, 20 and 21 of the Interstate Commerce Act.

Interstate Commerce Com. v. Brimson, 154 U. S. 447, 474.

Interstate Commerce Com. v. Ry. Co., 167 U. S. 479, 506.

Texas & Pacific Ry. v. Abilene Cotton Oil Co., 204 U. S. 426, 438.

1. Section 12 of the Interstate Commerce Law provides:

> "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to

> enable the Commission to perform the duties and carry out the objects for which it was created."

One of the objects for which it was created was undoubtedly to inquire into all the financial operations of railways, their acquisition of properties, the cost thereof, their methods of accounting, and all matters necessary to keep the Commission informed, for the purpose of aiding it to carry out the specific provisions of the act in relation to the control of rates, fares and charges, *and also to make such recommendations as to additional legislation as will more effectually accomplish the object of Congress to provide for efficient control of interstate carriers.*

In pursuance of this, section 20 gives the Commission full power to require reports from interstate carriers showing every detail of their operations, including the amount of capital stock issued, amounts paid therefor, manner of payment for the same, dividends, surplus fund, number of stockholders, funded and floating debt, *cost and value of the carrier's property,* franchises and equipment, number of employes and salaries paid, accidents to passengers, and such other information as the Commission may require.

In order to carry out the objects for which the Commission was created, section 21 provides:

> "That the Commission shall, on or before the first day of December in each year, make a

report which shall be transmitted to Congress, and copies of it shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of *questions connected with the regulation of commerce, together with such recommendations as to additional legislation* relating thereto as the Commission may deem necessary * * *."

2. In the case of *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 474, the Commission was pursuing an investigation upon its own motion, and in the course of the inquiry it was deemed important to inquire as to the ownership of stock in the Elgin, Joliet & Eastern Railroad by the Illinois Steel Company. The witness refused to answer. This court said (p. 474):

> "An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce, and with power to call witnesses before it, and to require the production of books, documents and papers relating to that subject, would go far towards defeating the object for which the people of the United States placed commerce among the states under national control. All must recognize the fact that *the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced otherwise than through the instrumentality of an administrative body representing*

> *the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules.*"

The same opinion (p. 473) expressly recognizes that Congress has, by the act in question, given the Commission power—

> "to investigate the whole subject of interstate commerce, as conducted by such carriers, and in that way to obtain full and accurate information of all matters involved in the enforcement of the act."

In the case of *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., at p. 438, this court said:

> "The Commission was endowed with plenary administrative power to supervise the conduct of carriers, *to investigate their affairs, their accounts, and their methods of dealing*, and generally to enforce the provisions of the act."

In the case of *Interstate Commerce Commission v. Railway Co.*, 167 U. S., at p. 506, we find the following definition of the Commission's functions:

> "It is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, *and has the right to compel complete and full information as to the manner in which such carriers are transacting their business.*"

3. It was insisted by counsel in the court below and we understand appellants' position to be, that

Congress has not conferred upon the Commission any power to investigate in relation to the management and affairs of interstate carriers, other than to enforce some specific duty or prohibition now imposed upon carriers by the various provisions contained in the first seven sections of the act, such as the prohibition of discriminations, unreasonable rates, and pooling. This would confine the duties of the Commission to the enforcement of those rules and regulations already laid down by the act for the benefit of shippers, and entirely ignore the administrative and inquisitorial power vested in the Commission, for the purpose of securing information upon which to base recommedations as to additional legislation for the regulation of commerce. The substantive purpose of the act is not confined to a prohibition of discriminations, unreasonable rates, and pooling, as counsel for appellants argued in the court below. The general aim of the law is *to compel interstate carriers to perform adequately their functions as ministers of interstate commerce.* The three evils above mentioned were at the time of its enactment the then prevailing methods in which those functions had been principally thwarted and impaired; but in addition to the prohibition of those evils, the statute contains many affirmative provisions aimed at carrying out its general purpose which appellants completely ignored. For instance:

(a) To maintain their utility as national highways in time of war interstate carriers

must give precedence to war material on the demand of the President (Sec. 6).

(b) They must at all times provide facilities for interchange of traffic between their respective lines (Sec. 3).

(c) They must furnish cars to prospective shippers to the best of their ability, and where the business will justify it, must put in switches (Sec. 1).

(d) Carriage of freights must be continuous from place of shipment to place of destination, so far as possible (Sec. 7).

In addition to the foregoing provisions of the Interstate Commerce Act itself, separate acts have from time to time been passed to accomplish the same general purpose, *and the administration of such laws, so far as administration is necessary, has been vested in the Interstate Commerce Commission.* Such are the Safety Appliance Acts of 1893 and 1903, the Arbitration Act of 1898, the Accident Reports Act of 1901, and the Medal of Honor Act of 1905.

In all this legislation Congress has not only recognized that its duty of regulating commerce was affirmative and not merely negative; it has appreciated that the ultimate object of the interstate commerce laws must be attained by progressive legislation, enacted as its experience with the evils and the methods of the business developed. And to secure these ends, Congress has recognized more and more clearly the increasing necessity of a standing administrative commission.

4. This inquisitorial power of the Interstate Commerce Commission has been fruitfully used An examination of the debates of Congress and decisions of the Courts will show that it was upon information developed by the Commission and reported to Congress, that the Elkins Law, the Safety Appliance Law, the Employers' Liability Act, and the Hepburn Act, were successively based; in other words, the inquisitorial work of the Commission has been the basis of all Congressional legislation affecting interstate carriers during the past twenty years.

5. That the Commission in the present investigation was pressing the questions which the respondents declined to answer, partly at least, for the proper purpose of framing new legislation, was expressly pointed out to the respondents' counsel at the time by Commissioner Clements:

> "Com. Clements: One of the express purposes of the law included in its authority to the Commission, to investigate and keep itself informed in regard to all these matters, is with reference not only to existing laws and existing remedies, *but additional laws for the better direction and remedying of bad practices. Now might that not make it material and within the scope of the Commission's authority?*" (Record, p. 992.)

6. A marked instance of legislation resulting from the investigation of a matter in which the Commission had no power to make an order will

be seen in the report entitled "*Matter of Alleged Unlawful Discrimination*," 11 I. C. C. Rep. 587, 597, which opinion was handed down April 5, 1906, and a provision inserted in section 15 of the Hepburn Act on June 29, 1906, evidently pursuant to the recommendation contained in such report of the Commission. An informal complaint was filed with the Commission by the Enterprise Steamship Company, whose ships ply between Fall River, Mass., and New York City, showing that the rail lines leading from New York declined to extend to it the same rates which they applied to traffic of the same character in connection with its rival, the New England Navigation Company, which was owned and operated by the New York, New Haven & Hartford Railroad Company. We quote from the Commission's report:

> "It seemed, therefore, that the complaint of the Enterprise Company was really that such rail lines declined to enter into through arrangements with it while doing so with its competitor. We accordingly advised the Enterprise Company that the Act to regulate commerce did not require rail carriers to form through routes with water lines and that, therefore, *the Commission could make no order in the premises even if the complaint were sustained; but inasmuch as the subject is one of great practical importance, and since the amendment of the Act to regulate commerce was now under discussion, it seemed suitable to investigate the circumstances surrounding this complaint with a view to making some report for the general information of the*

public. A proceeding of inquiry was, therefore, instituted and the various parties were heard. (p. 588.)

"* * * This investigation was begun upon the understanding that the Commission had no power to grant any relief in the premises. * * *

"At the present time water competition exercises an important influence upon the rail rates of this country. * * * *If the legitimate benefit of such competition is to be had it is evident that some regulating body must exercise in our country, as does the English railway commission in England, the authority to establish through routes between water and rail carriers, or at least to prevent undue discrimination by rail carriers between connecting water lines.*" (11 I. C. C. 597.)

If the position of appellants is correct, the Commission had no power whatever to make this investigation in the *Enterprise Steamship* matter, nor in any other similar case. Enacted in the Hepburn Law, however, less than three months after the filing of this report, we find the following provision:

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be necessary to give effect to any provision of this act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists, *and this provision*

shall apply when one of the connecting carriers is a water line." (Sec. 15.)

7. The importance of the powers of investigation conferred by section 12 was recognized by the Commission from the very first, and they have been with increasing frequency exercised to the present time without challenge, since the decision in the *Brimson* case.

Referring to its power of general supervision, the Commission in its first report, after quoting section 12, spoke as follows through Judge Cooley:

> "*This is a very important provision and the Commission will no doubt have frequent occasion to take action under it.* It will not hesitate to do so in any case in which a mischief of public importance is thought to exist, and which is not likely to be brought to its attention on complaint of a private prosecutor." (p. 25.)

In its Seventeenth Annual Report (1903) the Commission reported as follows:

> Within the last year the Commission has prosecuted upon its own motion and at its own expense a much larger number of inquiries and investigations than formerly. * * * It is a Commission in the nature of an administrative body invested with certain specific powers by the Act which created it. In the exercise of those powers it is required at times to hear and pass upon complaints of individual shippers against interstate carriers. *This, however, is but a small part of its duties,* as an examination of the Act itself conclusively shows. This in terms declares that 'the Com-

mission is hereby authorized and required to execute and enforce the provisions of this Act,' *and the fullest power of inquiry into the methods and practices of interstate carriers is accorded*" (pp. 32, 33).

In its Annual Report filed December 19, 1906, the Commission, speaking of its investigations carried on during the year, had this to say:

"Much time has necessarily been occupied during the last year in conducting special examinations of an important character. The most notable of these inquiries has been carried on pursuant to a joint resolution approved March 7, 1906, commonly known as the Tillman-Gillespie Resolution, for the purpose of determining, among other things, the relations of common carriers to the production and distribution of coal and oil in certain particulars, and the ownership of coal and oil lands by such carriers or by their officers and employees.

* * * * * *

"Another inquiry has been conducted under Senate resolution of June 25, commonly known as the La Follette resolution, relating to the ownership and operation of elevators, the charges and allowances paid thereto, and kindred incidents of the handling and transportation of grain.

* * * * * *

"A third inquiry has been conducted under a joint resolution approved June 30, with reference to the use of block signals in operating railway trains and other appliances and devices designed to promote the safety of employees and the traveling public. * * *

"*In addition to these required investigations the Commission has undertaken several in-*

quiries on its own motion, with the view of ascertaining the facts and conditions now existing in certain matters of public concern. One of these proceedings has been instituted with a view of disclosing the relations between the Union Pacific and the Southern Pacific railway systems growing out of their combined management and control. The preliminary steps in this inquiry have already been taken, and public hearings will begin before the close of the present month.

"Another proceeding of similar character is directed against the relations of the Northern Pacific, Great Northern, and Burlington systems, with the view of ascertaining to what extent they are under unified control and the effect of such control, if it exists, upon their rates and practices.

"A further inquiry has been instituted with reference to the prevailing car shortage, a subject upon which some observations are made in the following paragraphs of this report. * * *

"Without waiting for further authority the Commission has commenced an investigation, *which it has undoubted power to make*, of this subject of car shortage, with the view of ascertaining its causes, the conditions existing in different parts of the country, and the remedies that can be applied either by the voluntary action of the carriers or by the compulsion of suitable enactments. * * *

"To what extent the delegation of authority to the Commission to deal with a situation of this kind would be likely to prove of practical value is a question of great difficulty, but it goes without saying that the best aid that legislation can afford will not meet the present emergency, however useful it might be for future needs of like character. *Until the pending investigation has furnished more com-*

plete knowledge of the existing facts concerning the car shortage now prevailing, including the causes which have brought about present conditions, the Commission is not prepared to recommend a definite scheme of legislative relief; but we are amply warranted in bringing the matter to the attention of the Congress in this general way and to ask that it receive early and careful consideration."

In the last three volumes of the Interstate Commerce Commission's reports we find the following additional investigations, of great public importance, carried on by the Commission, of its own motion, under its general power to examine into the affairs of interstate carriers:

Matter of Through Routes and Rates, 12 I. C. C., 163.

Matter of Differential Rates, 11 I. C. C., 13.

Matter of Charges of Transportation of Fruit, 11 I. C. C., 129; 10 I. C. C., 360.

Matters of Rates on Corn and Corn Products, 11 I. C. C., 212.

Rates from St. Louis to Texas Common Points, 11 I. C. C., 238.

Re Power or Train Brakes, 11 I. C. C., 429.

Re Transportation of Salt, 10 I. C. C., 1.

Re Transportation of Immigrants, 10 I. C. C., 13.

Re Tariffs on Export and Import Traffic, 10 I. I. C. C., 55.

Matter of Allowances to Elevators, 10 I. C. C., 309.

Re Atchison, T. & S. F. R. Co., 10 I. C. C., 473.

8. The bill in equity which was filed in the suit to prevent the common control of the Northern Pacific and Great Northern railways by the Northern Securities Company was based upon an investigation made by the Interstate Commerce Commission into the creation of that company and its attendant circumstances, precisely similar to the one now in question. The Northern Securities investigation was based on no complaint. It was made under the general inquisitorial powers of the Commission. And, in fact, the general subject-matter of law involved in that investigation was primarily a violation of the Sherman Law, and was only connected with the Interstate Commerce Law through the fact that the corporations involved were interstate carriers. It was for these reasons that the evidence there produced by the Interstate Commerce Commission, instead of being used by the Commission as a basis for an order addressed by it to the carriers, was turned over to the Attorney General to be employed in a prosecution under a law which the Commission had no power to enforce.

Since the character of the present investigation bears so close a parallel to the investigation conducted by the Interstate Commerce Commission into the circumstances surrounding the Northern Securities merger, we set out at length the order on which the Northern Securities investigation was

based. The Court will notice how similar it is to the order introducing the present investigation.

"IN THE MATTER OF CONSOLIDATIONS AND COMBINATIONS OF CARRIERS SUBJECT TO THE ACT TO REGULATE COMMERCE, INCLUDING THE METHOD OF ASSOCIATION KNOWN AS THE 'COMMUNITY OF INTEREST' PLAN.

"Whereas the twelfth section of the act to regulate commerce provides that the Commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and requires the Commission 'to execute and enforce the provisions of this act';

"And whereas it appears to the Commission that certain consolidations and combinations of carriers subject to the act, including the method of association known as the 'community of interest' plan, should be made the subject of investigation, to the end that the Commission may be informed as to their formation, purposes and modes of operation, together with their effects upon the movement of interstate commerce and the rates received therefor, and to the further end that it may be ascertained whether such consolidations, combinations, and methods of association are unlawful under the act or have the effect of violating any of its provisions:

"*Ordered*, That a proceeding of investigation and inquiry into and concerning the matters above recited be, and the same is hereby, instituted, and that such proceeding be set for hearing at the United States court rooms, Monadnock Block, in the city of Chicago, Ill., on the 8th day of January, 1902, at 10 o'clock A. M., the further hearing to be continued at such

times and places as may appear to be required."

This order and the testimony taken pursuant thereto, may be found in a pamphlet incorporated in the second volume of the briefs and records in *United States v. Northern Securities Co.*

9. Congress by joint resolution, approved March 7, 1906 (34 Stats. 823) referred to the Interstate Commerce Commission the investigation of questions in regard to other carriers (commonly known as the "coal and oil inquiry") precisely similar to those concerning which the appellants refused to answer in respect to the Union Pacific; with the additional duty of inquiring into a possible violation of the Sherman Anti-Trust Law in connection with the same matter. We quote section 2 of the resolution:

> "Second: Whether the officers of any of the carrier companies aforesaid, or any of them, or any person or persons charged with the duty of distributing cars or furnishing facilities to shippers, are interested, either directly or indirectly, by means of stock ownership or otherwise in corporations or companies owning, operating, leasing or otherwise interested in any coal mines, coal properties, or coal traffic, oil, oil properties or oil traffic over the railroads with which they, or any of them, are connected, or by which they, or any of them, are employed."

In addition to the questions included in section 2 of the resolution, the Commission was directed to inquire—

> "Whether there is any contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states * * *."

In order to give the Commission full inquisitorial powers as to this outside subject beyond its regular jurisdiction, the resolution conferred upon the Commission, in connection with that inquiry—

> "*the same power and authority to administer oaths, to subpoena and compel the attendance and testimony of witnesses, and the production of documentary evidence, and to obtain full information, which the said Commission now has under the act to regulate commerce, approved February* 4, 1887, *and acts amendatory thereof.*" (34 Stats. 824.)

Congress thus formally recognized these regular inquisitorial powers of the Commission, under section 12, as already existing as to matters regularly within its jurisdiction. The debates in connection with this resolution make perfectly clear that the fact that an inquiry was to be made into a possible violation of the Anti-Trust Law was the reason for the express insertion of this inquisitorial power. We quote from Senator Spooner in the debate in the Senate:

> "You attempt to enlarge the Interstat Commerce Act by a joint resolution to include some of the Anti-Trust Act. * * * The Interstate Commerce Commission was never charged with the administration of the Anti-Trust Act, whether the violation of the Anti-Trust Act was by carrier or otherwise. We

> have conferred upon the Interstate Commerce Commission the power to make investigation, with power to compel the attendance of witnesses * * * to discharge the duties imposed by that Act upon it, and no further."
>
> (40th Cong. Record, Part 4, p. 3673.)

Pursuant to the authority of that resolution, extended inquiries were made by the Interstate Commerce Commission into the subject matter above referred to, and we are unaware that any person has questioned the right of Congress, or of the Commission, to pursue such inquiry.

Since ordering such investigation into the coal and oil roads, above mentioned, Congress, by section 1 of the Hepburn Law, has positively forbidden interstate carriers to engage in certain branches of business outside of the business of transportation. In enacting such a statute, Congress must have deemed this question of the right of a railroad carrier to do other than a transportation business to be germane to the subject of interstate commerce.

10. Nor are such powers of investigation, or such investigations, novel outside the sphere of federal jurisdiction. They are precisely the same powers which have been conferred upon similar bodies in the various states of this country, as the only intelligent means of dealing with similar problems.

Massachusetts.—The Massachusetts Railroad Commission has been so widely known and com-

mended for the success which it has attained by the use of the power of investigation alone, not re-enforced by more substantial powers, that we beg particularly to refer to the statutes under which that Commission acts.

Section 12 of the Massachusetts Acts of 1902, Chapter 432, defines the duties of the Board of Railroad Commissioners as follows:

> "The Board shall have *the general supervision* of all railroads and railways, and shall examine the same; and the Commissioners *shall keep themselves informed as to the condition of railroads and railways and the manner in which they are operated* with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of this commonwealth."

Section 17, Chapter 265, provides for investigations into causes of accidents.

Section 19 makes it the duty of railroad corporations to furnish to the Board any information—

> "which may be required by it relative to the condition, management and operation of the road. * * *"

Section 21 charges the Board with the annual examination of the books and accounts, and requires the corporations to keep a uniform system of accounts.

Sections 22 and 23 give a further right of examination into the books and financial conditions of carriers.

Section 25 confers the power of compulsory testimony, in all cases, as follows:

> *"In all cases investigated and inquiries made* by the Board, and in all proceedings before it, any member thereof may summon witnesses in behalf of the commonwealth and may administer oaths and take testimony."

The statutes further provide for the rendering of an annual report and the making of recommendations and suggestions for legislative action.

New York.—We also direct attention to the recent Public Service Commission Law of New York, enacted as it was after the most careful consideration of all similar legislation and the most painstaking deliberation.

Section 45 defines the general powers and duties of the Commission, and the very first paragraph of that section confers on each Commission or Commissioner—

> "Power and authority to administer oaths in all parts of the State to witnesses summoned to testify in any inquiry, investigation, hearing or proceeding."

Paragraph 2 provides that such Commission shall have

> *"General supervision of all common carriers* * * * *within its jurisdiction* * * * *and shall have power to and shall examine the same and keep informed as to their general condition*, their capitalization, their franchises, and the manner in which their lines, owned, leased, controlled, or operated, are managed,

> conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service, but also with respect to their compliance with all provisions of law, orders of the Commission, and charter requirements."

Just as section 48 of the Public Service Commission Law, dealing with investigations into *violations* of the law, is plainly modelled after sections 13 and 14 of the Interstate Commerce Act, *so section 45 (supra)*, as the annotations of the Act indicate, *was plainly based upon section 12 of the Interstate Commerce Act.*

Statutes providing similar broad powers of inquiry exist in many other states.

Congress in dealing with the instrumentalities of interstate commerce, found the same necessity and reason for giving effective means of investigation to the body charged with the general oversight of such carriers, as did the states in creating commissions charged with the oversight of intrastate carriers.

11. Sections 12, 13, 20 and 21 of the Act must be construed fairly in the light of the foregoing. Our opponents' construction of them wholly ignores it. It is undoubtedly true that the rules of conduct laid down by the first seven sections of the Act only partially cover the field of possible regulation. But it is wholly untrue that the Act has no wider purpose of regulation than the enforcement of those

seven sections, and it is a wholly false method of interpretation to limit the scope of the remainder of the Act to such a purpose. On the contrary, it is just *because* those sections were recognized as partial and incomplete that the provisions for investigation were added.

While the quasi-judicial and executive functions of the Commission were necessarily limited to enforcing already prescribed rules of conduct, its inquisitorial power was extended to the entire "management of the business of all common carriers" subject to the Act (sec. 12). And section 20 expressly shows that a large amount of information was to be obtained by the Commission *which had nothing whatever to do with the then prescribed rules of conduct for carriers*—information which related to the carrier's general organization and finances. What else can this mean than that Congress recognized that the rules already adopted would doubtless prove imperfect to accomplish the general aim of the statute, and in this way intended to provide the means for obtaining the information necessary for perfecting them?

Our opponents' analysis of the Act completely ignores the distinction between section 12 and section 13. It is section 13 which relates to the enforcement of the existing rules of conduct—to the investigation and redress of *violations* of the Act. *Section 13 wholly covers that field;* it provides not only for investigations on complaint, but that the

Commission "may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made."

If, therefore, as our opponents contend, the inquiry under section 12 is also limited to an inquiry into actual violations of the law, that section adds nothing to the ground covered by section 13; under such a construction, it is a useless and superfluous enactment.

It will be noticed that in conferring upon the Commission in section 12 the power to require the attendance and testimony of witnesses, the statute uses the broadest language possible. It does not say "for the punishment of all violations of the Act"; it does not even say "for the enforcement of the provisions of the Act" although both of the foregoing expressions are used in other portions of this section. It uses the all-embracing words "*for the purposes of this Act.*" It thereby includes all the general purposes which Congress must be deemed to have had in mind in enacting this statute, as gathered from a consideration of the whole statute, covering not only the first seven sections, but all the remainder of the statute, including sections 12, 20 and 21.

Section 12 says that the Commission

> "shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission *to perform the duties and carry out the objects for which it was created.*"

The appellants' construction limits these "duties" and "objects" to the enforcement of the rules of conduct prescribed in the first seven sections of the Act. But why? Why do not those duties include obtaining the information defined in section 20? Why does it not include the mandatory duty of making recommendations provided for in section 21? Counsel argued in the court below that section 20 is quite independent of section 12 and provides its own remedies and penalties, but in the same breath contended that those remedies are purely criminal or penal, and that they run only against the "carrier, receiver or operating trustee." We are here considering a statute containing a broad power of inquiry and investigation—a power which Congress has deemed so important that by special amendment it has taken away even the constitutional privilege against self-crimination (Act of February 11, 1893). Why should not section 20 be assisted and rendered effective by the application of this broad power of section 12—this power created for all "the purposes of this Act?" Why should the Commission be left powerless to obtain any information except what is shown on the books of the corporation or what can be obtained from its receiver or trustee by threat of criminal process? No rational purpose for such a crippling construction is conceivable. On the contrary, unless the Commission has power to draw upon the officers

and agents of the carrier for the details of its business, the information which it will receive under section 20 will be of little value.

Prior to the amendments contained in the Hepburn Act this court held that while the equity powers of the Commission did apply to section 20, owing to the specific limitations upon the power of mandamus in the old law, the writ of mandamus did not apply. *(Knapp v. Lake Shore Ry. Co.,* 197 U. S., 536). In the new law Congress has removed the limitation on mandamus thus established; it would seem that Congress, therefore, had expressed its intention that section 20 should have the most complete remedies possible for its enforcement.

12. The present efforts of the respondents to substantially nullify section 20 and the powers of the Commission thereunder, are similar to those with which the Commission was confronted immediately after the enactment of the Interstate Commerce Act. At that time the broad purpose of the section and its constitutionality was ably defended by Judge COOLEY, in the Second Annual Report of the Commission (p. 4):

> "In the performance of its duties during the past year it has been made apparent to the Commission that the opinion is prevalent in many quarters that railroad companies whose lines are wholly within a single State and are managed independently are not subject to the act to regulate commerce, except in so far as by entering into joint arrangements with other

companies they engage in interstate traffic, and that even in such cases the regulation to which they are subject is limited to the traffic which is covered by the joint arrangements.

In numerous cases the officers of such companies expressed surprise when they were called upon to make the annual report contemplated by section 20, and were at first inclined to insist upon their legal right to exemption. *But the right of Congress to require from any corporation or organization which to any extent is engaged in interstate commerce a report upon such commerce, and upon all matters respecting the conditions and the work connected therewith which it may be important to have known, in order that the commerce may be most intelligently and effectually regulated, would seem to be very clear.* And if any report may be required it would seem equally clear that it may be made to cover, in the case of a carrier whose line is entirely within a State, all the particulars in respect to organization, capital, debt and working operations, which carriers whose lines are interstate are required to furnish.

In all reports made by interstate carriers to the Commission, including specifically those made by the Union Pacific Railroad Company, such reports have never attempted to distinguish the interstate business of the carrier from its other business. All operations conducted with the carrier's capital and assets have been reported fully to the Commission; and if a carrier is using its funds as an investment company, the plain reading of section 20 requires that a full report of such operations shall be accessible to the Commission.

13. In the Bureau of Corporations of the Department of Commerce and Labor we find an example of a similar standing committee of inquiry exercising virtually the functions of a committee of Congress. The statute creating the Bureau provides:

> "The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several states and with foreign nations, excepting common carriers subject to 'an Act to regulate commerce,' approved February 4, 1887, and *to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce*, and to report such data to the President from time to time as he shall require, and the information so obtained, or as much thereof as the President may direct, shall be made public" (32 Stat., p. 828).

Unlike the Interstate Commerce Commission which reports directly to Congress, the Commissioner of Corporations reports to Congress through the President.

Congress defined and granted the admitted inquisitorial powers of the Commissioner of Corporations, BY REFERENCE TO THE POWERS OF THE INTERSTATE COMMERCE COMMISSION, providing that the Commissioners of Corporations

> "shall have and exercise *the same power and authority* in respect to corporations, joint stock companies and combinations, subject to the provisions hereof, *as is conferred on the Interstate Commerce Commission in said Act to regulate commerce* and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths" (32 Stat., 828).

Counsel for the appellants admitted in the court below that the Commissioner of Corporations does possess inquisitorial powers over the business of corporations and persons subject to his jurisdiction, similar to the inquisitorial functions which we contend are possessed by the Interstate Commerce Commission as to the business of the corporations and persons subject to its jurisdiction; but contended that

> "the fact that Congress sought to confer certain powers upon the Commissioner of the Bureau of Corporations does not prove that Congress conferred similar powers upon the Commission."

That statement, which we have quoted from one of the briefs filed on behalf of appellants in the court below, is unquestionably correct when taken by itself; but when it is considered that Congress expressly excepted from the classes of corporations subject to the Commissioner of Corporations "common carriers subject to 'An Act to regulate com-

merce,'" and that the inquisitorial powers of the Commissioner are defined by reference to the powers of the Interstate Commerce Commission, it would seem to be very clear that Congress regarded the powers of these two agencies as co-extensive, that such agencies were charged with similar functions in their respective spheres, and that it was intended that together they should cover the whole field of interstate commerce.

In the first report of the Commissioner of Corporations, in December, 1904, page 11, we find the following language:

> "The Bureau is in a measure an arm of the legislative branch of Government, charged with the duty of obtaining information to which Congress is entitled on the subject of interstate and foreign commerce. It is placed under the executive branch of the government for the purpose of administration and continuity of action.
>
> *Congress, having the constitutional authority to legislate in regard to interstate and foreign commerce, has the power to obtain all information necessary to make such legislation adequate and appropriate.* Congress has in this case created the Bureau of Corporations as a specific means of carrying out the purpose desired, prescribing the method of investigation by the Bureau and of transmission of the information obtained to Congress through the Executive."

14. The foregoing considerations seem to demonstrate that Congress, in creating the machinery for the regulation of transportation companies,

Hopkins v. United States, 171 U. S., 597.

Northern Securities Co. v. United States, 193 U. S., 344.

Johnson v. Southern Pacific Co., 196 U. S., 22.

Hale v. Henkel, 201 U. S., 75.

Schlemmer v. B. R. & P. R. Co., 205 U. S., 1.

Employers' Liability Cases, 207 U. S., 463.

Stockton v. Balt. & N. Y. R. Co., 32 Fed. 17.

Perkins v. Northern Pac. Ry. Co., 155 Fed. 454.

United States v. Colorado & N. W. R. Co., (C. C. A., 8th Cir.) 157 Fed. 321.

If a given subject affects or is connected with interstate commerce, Congress can take hold of and legislate in regard to it with the same freedom as if there were no state lines. Its power is complete and dominant. It has the full powers of any national legislature acting upon subjects within its jurisdiction.

> "If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several states is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions in the exercise of the powers as are found in the constitution of the United States." (*Gibbons v. Ogden*, 9 *Wheat.*, p. 197.)

> "In *Cohens v. Virginia*, 6 Wheat., 264, 413, this court said that the United States were for many important purposes 'a single nation' and that 'in all commercial regulations we are one and the same people'; and it has since frequent-

ly declared that *commerce among the several states was a unit and subject to national control.*"

Northern Securities Co. v. United States,
193 U. S., p. 336.

"We think that the power of Cogress is supreme over the whole subject, unimpeded and unembarrassed by state lines or state laws; that in this matter the country is one, and the work to be accomplished is national; and that state interests, state jealousies, and state prejudices do not require to be consulted. *In matters of foreign and interstate commerce, there are no states.*"

Justice BRADLEY, in *Stockton v. Baltimore & N. Y. R. Co.*, 32 Fed. Rep., 17.

"It is true that the corporation in this case was chartered under the laws of New Jersey, that it receives its franchises from the legislature of that state; but such franchises, so far as they involve questions of interstate commerce, must also be exercised in subordination to the power of Congress to regulate such commerce, and in respect to this the general government may also assert a sovereign authority to ascertain whether such franchises have been exercised in a lawful manner, with due regard to its own laws. Being subject to this dual sovereignty, the general government possesses the same rights to see that its own laws are respected as the state would have with respect to the special franchises vested in it by the laws of the state. The powers of the general government in this particular in the vindication of its own laws, *are the same as if the corporation had been created by an act of Congress.*"

Hale v. Henkel, 201 U. S., 75.

In *Hopkins v. United States, supra*, it was said of commerce and the commerce clause (p. 597):

> "It comprehends, as it is said, intercourse for the purposes of trade in any and all its forms, including transportation, purchase, sale and exchange of commodities between the citizens of different states, *and the power to regulate it embraces all the instruments by which such commerce may be conducted.*"

In speaking for the court in the *Northern Securities* case, Mr. Justice HARLAN said (p. 344):

> "And all, we take it, will agree as established firmly by the decisions of this Court, that the power of Congress over commerce *extends to all the instrumentalities* of such commerce and to every device that may be employed to interfere with the freedom of commerce among the states and with foreign nations."

2. What, therefore, is an instrumentality of commerce? It is not merely the cars and engines used for transportation, or the roadbed and tracks on which they run. The *corporation* by which the commerce is conducted, as was decided in the *Northern Securities* case, is in itself an instrumentality, and all the machinery of such a corporation, whenever it enters into interestate commerce, Congress may regulate. True, the cars and engines are the direct means by which the freight is carried, but the corporation is no less an instrumentality than the roadbed, the stations, the telegraph instruments, the employes operating trains and many others which may be mentioned. Congress has

passed many laws regulating certain of these instrumentalities more or less remote from the immediate carriage of the goods, such for instance as the Employers' Liability Act, regulating the rules of liability as between the railway corporations and its employes engaged in interstate commerce, which this court has held are subject to regulation. *Employers' Liability cases*, 207 U. S., at p. 494, where this court said:

> "The proposition that there is an absolute want of power in Congress to enact the statute is based on the assumption that, as the statute is solely addressed to the regulation of the relations of the employer to those whom he employs, and the relation of those employed by him among themselves, it deals with subjects which cannot, under any circumstances, come within the power conferred upon Congress to regulate commerce.
>
> "As it is patent that the act does regulate the relation of master and servant in the cases to which it applies, it must follow that the act is beyond the authority of Congress if the proposition just stated be well founded. But we may not test the power of Congress to regulate commerce, solely by abstractly considering the particular subject to which a regulation relates, irrespective of whether the regulation in question is one of interstate commerce. On the contrary, the test of power is not merely the matter regulated, but whether the regulation is directly one of interstate commerce, or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce. We think the unsoundness of the contention that, be-

> cause the act regulates the relation of master and servant, it is unconstitutional, because, under no circumstances, and to no extent, can the regulation of such subject be within the grant of authority to regulate commerce, is demonstrable."

The regulation of the rule of liability between the employe and the corporation for injuries received by the former is certainly as remote from interstate commerce as the regulation of the dealings between the officials and the company in the purchase of property forming the corporate assets.

Another instance of such regulation which may be cited is the Safety Appliance Act, which was held valid in the case of *Johnson v. Southern Pacific Co.*, 196 U. S., 1, in which it was decided that the act applied to dining cars, although at the particular time the car was not making an interstate journey. It was claimed that the dining car could not be considered an instrument of interstate commerce until it was actually engaged in interstate movement or put in a train for such use, under the rule in *Coe v. Errol*, 160 U. S., 571, holding that logs hauled to a river to be transported were subject to local taxation before the transportation had begun. This court, however, said (p. 22):

> "The distinction between merchandise which may become an article of interstate commerce or may not, and an instrument regularly used in moving interstate commerce which has stopped temporarily in making its trip between two points in different states, renders this and like cases inapplicable.

> "Confessedly this dining car was under the control of Congress while in the act of making its interstate journey, and in our judgment it was equally so when waiting for the train to be made up for the next trip. It was being regularly used in the movement of interstate traffic and so within the law."

The scope of the commerce power here urged was sustained by this court in the *Brimson* case, *supra*, in adopting in effect the following contention of Senator Edmunds, the distinguished counsel for the Interstate Commerce Commission, in which he said:

> "If these companies were engaged in interstate commerce there was nothing connected with any part of their affairs that the Commission had not a right and was not bound, in case of complaint, to know, not only who were the owners of their stock and the controllers of their rights, but whether they or their officers were owners or interested in the company whose interstate business they were transacting."

We might cite as another instance in which Congress has legislated upon this subject, the Hepburn Act, which prevents carriers from being interested in the goods transported over their several railways. Whether the act is constitutional as to corporations theretofore owning coal mines is now the subject of litigation, but as to the future there is no question about the validity of the act. If the act had also provided that no official of the corporation should own or be interested in freight transported over the particular

line, would it not be considered a legal regulation of the affairs of the corporation, and if so, is it less a legal regulation to provide that the officials shall not deal with the corporation with which they occupy such a fiduciary relation? Is it not in the interest of good management of interstate railways that their officials should not make contracts in their own interest with the company for which they are acting?

3. But it is said by the counsel that this is a regulation of the internal affairs of the corporation which the states alone may control, and which is not within the constitutional power of Congress, because it is not interstate commerce and that the regulations of Congress may conflict with those of the state where the corporation was created. The answer to this is that within its sphere the power of Congress is supreme. The appellants completely lose sight of the difference between the power of Congress over interstate commerce and the power of the state over intrastate commerce; while, undoubtedly, each is supreme within its own distinctive jurisdiction, if regulations conflict in any degree the action of Congress is controlling under the sixth article of the constitution, which provides that:

> "This constitution and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the consti-

tution or laws of any state to the contrary notwithstanding."

In *Gibbons* v. *Ogden*, 9 Wheat., 1, Chief Justice MARSHALL settled for all time the supremacy of the federal power over interstate commerce. He held that the power was plenary and exclusive of state control or interference; that when necessary to effectuate the regulations adopted by Congress, the exercise of the power does not stop at state lines, nor yield to the power of the state, even though exercised in the regulation of its purely internal affairs; that, while conceding to the states exclusive jurisdiction over their internal affairs—such as municipal control, taxation, the control of purely internal commerce—yet, whenever state laws or regulations come into conflict with the exercise of the power committed to Congress, necessary to the control of interstate commerce, the state regulations must yield. He said (p. 195):

> "The genius and character of the whole government seem to be that its action is to be applied to all the external concerns of the nation, *and to those internal affairs which affect the states generally;* but not to those which are completely within a particular state, which do not affect other states, and with which it is not necessary to interfere for the purpose of executing some of the general powers of the government. The completely internal commerce of a state, then, may be considered as reserved for the state itself. But, in regulating commerce with foreign nations, the power of Congress does not stop at the jurisdictional lines

of the several states. It would be a very useless power if it could not pass those lines."

And again (p. 210):

"Since, however, in exercising the power of regulating their own purely internal affairs, whether of trading or police, the states may sometimes enact laws the validity of which depends upon their interfering with and being contrary to an act of Congress passed in pursuance of the constitution, the court will enter upon the inquiry whether the laws of New York, as expounded by the highest tribunal of that state, have, in their application to this case, came into collision with an act of Congress and deprived a citizen of a right to which that act entitles him. Should this collision exist, it will be immaterial whether those laws were passed in virtue of a concurrent power 'to regulate commerce with foreign nations and among the several states,' or, in virtue of a power to regulate their domestic trade and police. In one case and the other the acts of New York must yield to the law of Congress; and the decision sustaining the privilege they confer, against a right given by a law of the Union, must be erroneous."

In the case of *Kidd* v. *Pearson*, 128 U. S., 1, 18, the Court said:

"Sacred, however, as these reserved powers are regarded, the court is particular to declare with emphasis the supreme and paramount authority of the constitution and laws of the United States, relating to the regulation of commerce with foreign nations and among the several states; and that, whenever these reserved powers or any of them are so exercised as to come in conflict with the free course of the powers vested in Congress, the law of the

> state must yield to the supremacy of the federal authority, though such law may have been enacted in the exercise of a power undelegated and indisputably reserved to the states."

This doctrine is also clearly reaffirmed in *Leisy v. Hardin*, 135 U. S. 100, and *Addystone Pipe & Steel Co. v. United States*, 175 U. S. 211-227.

On the general question of the supremacy of the federal power over that of the state, when the two conflict or overlap, we beg to refer to the authorities cited in the brief filed on behalf of the defendant in error in the case of *Nelson v. United States*, 201 U. S., 92.

The elementary position upon which we stand has rarely been stated more clearly than in the opinion of Judge Sanborn, speaking for the Circuit Court of Appeals for the 8th Circuit in the case of *United States v. Colorado. & N. W. R. Co., supra*, with reference to the Safety Appliance Law:

> "The contention that if a railroad company conducting the transportation of articles of interstate commerce entirely within a single state and independent of other carriers, is held to be subject to the Safety Appliance Acts, it must receive articles of interstate commerce for transportation, and all carriage both interstate and intra-state will thus become subject to national regulation, neither terrifies nor convinces."
>
> "The constitution reserved to the nation the unlimited power to regulate interstate and foreign commerce, and if that power cannot be effectually exercised without affecting intra-state commerce, then Congress may undoubt-

edly in that sense regulate intra-state commerce so far as necessary in order to regulate interstate commerce fully and effectually. The people of the United States carved out of their sovereign power, reserved from the states and granted to the Congress of the United States exclusive and plenary power to regulate commerce among the states and with foreign nations. *That power is not subordinate, but it is paramount to all the powers of the states.* If its independent and lawful exercise of this congressional power and the attempted exercise by a state of any of its powers impinge or conflict, the former must prevail and the latter must give way. The constitution and the acts of Congress passed in pursuance thereof are the supreme law of the land. 'That which is not supreme must yield to that which is supreme.' Brown v. Maryland, 12 Wheat., 419, 448; Gibbons v. Ogden, 9 Wheat., 1, 209, 210; Gulf, Colorado, etc., Ry. Co. v. Heffly, 158 U. S., 98; Int. Commerce Commission v. Detroit, etc., Ry. Co., 167 U. S., 633, 642; State Freight Tax case, 15 Wall., 232, 275, 280; Pensacola Telegraph Co. v. Western Union Tel. Co., 96 U. S., 1, 8; Chy Lung v. Freeman, 92 U. S., 275, 280; Ry. Co. v. Husen, 95 U. S., 465, 471, 472. 473; Hall v. De Cuir, 95 U. S., 485, 488-490, 497, 498-513; Cooper Mfg. Co. v. Ferguson, 113 U. S., 727, 736, 737; Bowman v. Chicago, etc., Ry. Co., 125 U. S., 465, 479, 480, 481 484, 485, 488, 489, 490, 491, 507 508; Welton v. Missouri, 91 U. S., 275, 280; Lyng v. Michigan, 135 U. S., 161, 166; Norfolk, etc., Ry. Co. v. Pennsylvania, 136 U. S., 114, 115, 118, 120; Crutcher v. Kentucky, 141 U. S., 47, 57, 58, 59; Osborne v. Florida, 164 U. S., 650, 655; Caldwell v. North Carolina, 187 U. S., 622, 623."

A petition for a writ of certiorari to review this decision was denied by this court (28 Sup. Ct. Reporter, 570).

4. It would seem clear that Congress may, as a condition to permitting a state corporation to engage in interstate commerce, prescribe limitations upon its corporate organization, upon the action of its officers in dealing with the company, and may regulate its dividends, and that this is not such a regulation of the internal affairs of the corporation as is beyond the power of the federal government, although it may conflict with that of the states.

It was gravely argued in the court below that if Congress could regulate these matters, which are properly subjects of legislation by the states creating the corporation, it could authorize the consolidation of purely intra-state corporations or regulate their domestic affairs and corporate powers, even though they confined themselves to domestic business. There is no foundation for this argument. There is a wide difference between authorizing purely domestic corporations to consolidate, and providing as a condition to permitting them to engage in interstate commerce that when they do so engage in such commerce they shall not consolidate or combine or pay dividends beyond a certain rate, or that the officers thereof shall not deal with such corporations, or that the corporations shall not issue fictitious stock or otherwise imperil their financial standing. These are regulations which Congress may impose as a condition when state corporations project themselves into the domain of interstate commerce.

inquire into the management of existing interstate carriers with a view to recommending similar regulations.

McCulloch v. Maryland, 4 Wheaton, 316, 407-9, 420-2.

California v. Pacific R. R. Co., 127 U. S. 1, 39.

Wilson v. Shaw, 204 U. S. 25, 34.

See charter of Union Pac. Ry., Act of March 3, 1873, 17 Stat., 508, Sec. 4, in which such regulations were made by Congress as to the Union Pacific Railway, after an investigation showing the necessity for the same.

In the case of *Wilson v. Shaw* the Court quoted from the opinion of Mr. Justice GRAY in the *North River Bridge* case as follows:

> "Congress therefore may create corporations as appropriate means of executing the powers of government, as for instance, a bank for the purpose of carrying on the fiscal operations of the United States, or a railroad corporation for the purpose of promoting commerce among the States."

The constitutional history of the national banks affords a striking parallel and convincing authority for the construction of the commerce power for which we contend.

In *McCulloch v. Maryland*, the Chief Justice, in discussing the question of the right to incorporate a national bank, under the implied powers of Congress, said (pp. 408-9):

"The exigencies of the nation may require that the treasure raised in the north should be transported south, that raised in the east conveyed to the west, or that this order should be reversed. Is that construction of the constitution to be preferred which would render these operations difficult, hazardous and expensive? Can we adopt that construction (unless the words imperiously require it) which would impute to the framers of that instrument, when granting these powers for the public good, the intention of impeding their exercise by withholding a choice of means? If indeed such be the mandate of the constitution, we have only to obey; *but that instrument does not profess to enumerate the means by which the powers it confers may be executed; nor does it prohibit the creation of a corporation, if the existence of such a being be essential to the beneficial exercise of those powers.*"

It is worthy of note that under this decision Congress has created national banks, regulated their internal and domestic affairs, rates of discount, the property they shall invest in, dealings and relations of officers with the banks, and other details. Why cannot it apply the same principle to the organization of another great branch of the business of this country?

In *Osborn v. Bank*, 9 Wheat. 738, the court was called upon to reconsider the decision in *McCulloch v. Maryland*, more particularly on the ground that the bank was engaged in local business and therefore subject to regulation of the local authorities, but the Chief Justice reasserted the principles laid

down in *McCulloch v. Maryland*, and held that inasmuch as it was a national agency, all of its affairs were subject to national legislation. The Chief Justice saw with prophetic vision, beyond anyone of his time, a commerce between the states growing to vast proportions until it should become the very lifeblood of a great commercial nation. He saw as to that commerce in this country one great nation,—the products of every state transported and consumed in all parts of the country, and flowing in streams to foreign nations. The time was when transportation was not such a great factor. The principal commerce of the country was the interchange of products in the local market. But today a transportation charge is a legitimate tax upon all commerce. The farmer, the merchant and the manufacturer must pay this tribute to the great transportation lines of this country. And it is a matter of congratulation that in the early history of the government that construction was placed upon the constitution which then and there laid the foundation for the national protection of commerce.

It was conceded by counsel for appellant in the court below that Congress may create corporations to conduct interstate commerce and regulate all their affairs. Is it possible that it may do this and yet be impotent to regulate the affairs of corporations created by the states and engaged, by consent of the national power, in the same national

business? The power to create and regulate national corporations as agencies of interstate commerce is conferred by the same clause of the constitution as the power to regulate state corporations engaged in interstate commerce. Each has the same source, and the congressional power must be the same. Any other construction would permit the states to nullify the plenary power of Congress by the creation of corporations to do that which Congress might do directly. We are not announcing any new doctrine, or advancing one step beyond the construction of Chief Justice MARSHALL, when we say that when the state corporation projects itself across the state line and engages in interstate commerce, it becomes subject to the same regulation, with respect to all its affairs directly or indirectly relating to such business as it would if created by Congress itself.

> "No state can, by merely creating a corporation, or in any other mode, project its authority into other states and across the continent, so as to prevent Congress from exerting the power it possesses under the constitution over interstate and international commerce or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce."
>
> *Northern Securities Co. v. United States*, 193 U. S., 197, 345.

> "The powers of the general government in this particular, in the vindication of its own laws, are the same as if the corporation had been created by an act of Congress."
>
> *Hale v. Henkel*, 201 U. S., 43, 75.

There is a widespread feeling that all future interstate railroads should be chartered by Congress, either by special charter or under a general federal incorporation act. It is quite possible that Congress will consider the adoption of a general statute providing for such incorporation. During the last Congress two bills on this subject were introduced in the Senate and referred to the Committee on Interstate Commerce. One (S. 4471) provided for the creation of a commission to recommend legislation relating to corporations engaged in interstate and foreign commerce and to prevent over-capitalization of the same. The other (S. 6287) called for national incorporation of railroad and navigation lines engaged in interstate and foreign commerce.

In such a statute the question of the rights, the duties, the liabilities, civil and criminal of directors may be treated. Their relations to their company and their right to deal in its stock may be defined. So also the method of the issue of stock of such companies and the declaration and announcement of its dividends. To legislate intelligently, it is essential that Congress be advised as to the present and past practices of railroad companies and their managers. If it be a fact that railroad companies chartered by the states have been turned into speculative investment companies, the Commission might desire to recommend as to

the federal corporations that such use of corporate funds be prohibited, and Congress might reasonably be expected—and would have the undoubted constitutional power—to adopt such recommendations. If it should develop that in the absence of wholesome restraints the directors of the existing state corporations have been in the habit of making purchases from themselves of property, either of the character necessary to railroad operation or of securities for investment of the surplus in the treasury of the companies, and reaping a personal profit from such transactions, which profit was only possible by reason of the control such directors had exercised over the funds committed to their care in their official capacity, the Commission might well consider it necessary to recommend that such general incorporation act contain penal provisions designed to prevent such a *devastavit*.

During the time when the Union Pacific railway was owned by the federal corporation which built it, a committee of Congress investigated that company and its connection with the Credit Mobilier, and reported as follows:

> "Your committee find themselves constrained to report that the moneys borrowed by the corporation (Union Pacific Railroad Company) under a power given them only to meet the necessities of construction and endowment of the road have been distributed among the corporators; that the stock was issued, not to men who paid for it at par in money, but who paid for it at not more than

> 30 cents on the dollar in road making; that of the government directors some of them have neglected their duties and others have been interested in transactions by which the performance of the organic law has been evaded * * *." (Report No. 78, 42d Cong., 3d session, pp. 3 & 4.)

Pursuant to that report the charter of that road was amended by the act of March 3, 1873, above cited, and the amendment contained the following provision:

> "No director or officer of said road shall hereafter be interested directly or indirectly in any contract therewith except for his lawful compensation as such officer."

If Mr. Harriman had been the chief officer of that corporation, such performances as the Commission is here inquiring into would have been, as it would seem clear they ought to be, a direct violation of law. And if this provision of the Union Pacific charter is one that is binding upon the new company—as are other provisions in relation to the use of the railway property (*U. P. R. Co. v. M. C. & F. D. R. Co.*, 199 U. S., at page 170)—then the subject of the present investigation is clearly within the present federal law governing the Union Pacific.

7. *Federal License Law.* As an alternative to such a law as above suggested there is a widespread feeling in support of a federal statute licensing corporations existing under state laws to engage in in-

terstate commerce under the sanction of a federal license. Such a law has already been recommended by the Commissioner of Corporations. Among the conditions which Congress might constitutionally impose for the privilege of obtaining such a license, there could very well be included restrictions such as those above mentioned.

> "Congress would undoubtedly have the right to exact from associations of that kind (those engaged in interstate commerce) any guarantees it might deem necessary for the public security, and for the faithful transaction of business * * *."
>
> *Crutcher v. Kentucky*, 141 U. S., 47, 57.

8. Even without inaugurating either of the systems above mentioned, it would be well within the power of Congress to impose restrictions upon the directors of corporations engaged in interstate commerce, and such restrictions might well include legislation along the lines inquired into by the Commission concerning the Union Pacific.

> "It follows that when a corporation or other person engages in this commerce, *co instanti, the men who control it* and the corps of its employes become subject to all of those legitimate means which Congress may select for its regulation."
>
> *Snead v. Central Ry. Co.*, 151 Fed., 608, 619.

If improper practices have been indulged in, and directors of railway companies chartered by the states but doing interstate business have been thus

profiting by their official position, the Commission may well recommend to Congress the enactment of laws prohibiting such practices in future.

It would seem to be the plain duty of the Commission to recommend, and of Congress pursuant to such recommendation to so legislate, that the funds and assets of interstate railways should be conserved so that the public may be assured of prompt, reasonable and efficient service, which would be impossible if, without let or hindrance, directors were permitted to loot the treasuries of such companies. The fact that the stockholders have the power to call such directors to account furnishes an insufficient remedy for such abuse; it leaves out of consideration the interest of the public to maintain the solvency and efficiency of the corporation operating the highways of commerce. Any person whose property is stolen has a cause of action to recover it from the thief, but that has never been advanced as an argument in favor of the repeal of criminal laws against larceny.

The nation is clearly interested in the solvency of these great lines of transportation. The credit of railroads should be used in their betterment, their extension and in the administration of their carrying business. They are substantially quasi-public institutions. For a great railway system to fail to meet its obligations and to go into the hands of a receiver is almost a national calamity, not only affecting the credit of the country and the

security of investments, but affecting interstate transportation and the ability of the company to perform its duties. Within a year and a half we have had evidence of many of our great transportation lines unable to procure funds with which to acquire necessary facilities for transportation and to extend their lines to accommodate the commerce of the country. In not a few instances, as the record in the present investigation discloses, this is the result of an undue inflation of the securities of the company, notably in the case of the Chicago & Alton, where after an inflation of its securities of over sixty millions of dollars, of which not a dollar was added to its property, it was in financial straits, unable to procure cars, and borrowing money upon short time notes for this purpose (see testimony of Hillard, Comptroller of Chicago & Alton R. R., Record, p. 1248 *et seq.)*

In the *Debs* case, 158 U. S., 564, it was held that Congress and the courts had power to relieve interstate commerce from physical obstructions. Economic obstructions are just as fatal to efficient transportation as physical obstructions; it is immaterial whether the obstruction (as said by Attorney General Knox in the *Northern Securities* case), "be physical or economic, whether it be a sandbar, a mob or a monopoly."

It is a fact that this question is today agitating the public mind, and that the Commission has rec-

ommended to Congress a reasonable limitation upon the issuance of securities by interestate carriers. This is also recommended in the platform of the Republican party, and we understand is advocated by the Democrats.

The laws of many states contain provisions limiting the right to issue stocks, notably Massachusetts and the Public Service law of New York, and in nearly every state the issue of fictitious stocks and bonds is prohibited, but the machinery for limiting and preventing their issue by the examination of a railway commission or other properly constituted board has not been put into practical force by legislation so far as we are aware except in the states of New York, Wisconsin, and possibly Massachusetts.

If it is necessary in the administration of domestic corporations to limit their power to issue stock and securities in order to protect intra-state commerce from economic obstructions and insure the solvency of such corporations, why is it not of equal importance and equally within the power of Congress to apply the same remedies to protect interstate commerce carried on by corporations national in their scope?

9. *The investment business which the Union Pacific is shown by the testimony to have engaged in necessarily and fundamentally affects its conduct of interstate transportation.*

The assets and credit of the Union Pacific Rail-

road Company are involved in this investment business to the extent of hundreds of millions of dollars. One hundred million dollars of stock and forty-five millions dollars of bonds were admitted by Mr. Harriman to have been issued for these purposes and to be now outstanding. Good credit and an abundant surplus are vitally essential to the conduct of railroad transportation. Harriman himself admits this.

> "Mr. Harriman: * * * Every railroad has to have more than its actual earnings from which to pay a dividend. That is it has to have something more. It cannot distribute exactly what its net earnings are. If it did, it would soon go bankrupt. *It has to have a surplus with which to maintain and improve its property and to provide a margin on which it can base a credit in case it has to borrow money in case of some extraordinary emergency.* The old method of distributing whatever earnings they have is what largely led to the bankruptcy or trouble of many of the lines." (Record, p. 1123.)

If the investments of the Union Pacific Company were improvidently made or fraudulently made, its surplus was impaired. If the regular conduct of an investment business by a railroad company involves the temptation of reckless or fraudulent financiering on the part of its directors, its function as an interstate carrier is impaired. The entire surplus may be lost, or in the struggle to save it undue burdens may be placed upon the traffic. Can it be said for a moment that a commission which

ing less than that Congress in regulating interstate commerce must act in subordination to the will of the states when exerting their power to create corporations. No such view can be entertained for a moment. * * *

"We reject any such view of the relations of the national government and the states composing the Union as that for which the defendants contend. Such a view cannot be maintained without destroying the just authority of the United States. It is inconsistent with all the decisions of this court as to the powers of the national government over matters committed to it. *No state can, by merely creating a corporation, or in any other mode, project its authority into other states and across the continent so as to prevent Congress from exerting the power it possesses under* the constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce.

Northern Securities Co. v. U. S., 193 U. S., at pp. 344, 345.

On the contrary in a case like that now before this court, as was said in the passage from *Hale v. Henkel*, quoted above:

"The powers of the general government in this particular, in vindication of its own laws, are the same as if the corporation had been created by an act of Congress."

11. *Congress certainly has power to legislate against the consolidation of lines of railway engaged in interstate commerce and to prevent the common ownership of stock therein by directors and*

officials of railroads and otherwise to maintain the entire separate management and the competitive condition between such railway lines.

It is clearly within the power of Congress to maintain the competitive condition of such lines of railway. In the furtherance of this object Congress may prevent the officers of one interstate railway owning stock in a competing line of railway; it may prevent common directors, management or other control. The questions asked of Mr. Harriman as to the ownership of stock by directors of the Union Pacific in the Santa Fe, a competing line, were therefore not only pertinent to a subject upon which Congress might legislate, but also had a direct bearing upon the question of community of interest in competing lines of railroad and the effect of such interest upon the rates of transportation.

12. During the investigation Mr. Harriman testified that in many instances the Union Pacific Company and other railway companies invested in stocks of other railways for the purpose of obtaining a dominating control in the management of such other companies and thereby achieve the same result in harmony of management as if they were permitted to make direct contracts for the purpose. He himself suggested that Congress should legislate upon this subject.

> "Com'r Lane: What is the law that you would want that would bring about this beneficial result?

Mr. Harriman: A law that would enable corporations to make contracts between themselves under proper regulations just the same as individuals have the right to make contracts; contracts that would be standing and enforceable for a long term of years so that it would enable railroads to establish these lines upon which traffic could be moved at the least cost taking various parts of the lines as they now exist. *If there had been such a right the purchase of the Burlington by the Northern Pacific and the Great Northern might not have taken place.*

Com'r Lane: Would the purchase of the Southern Pacific by the Union Pacific have taken place?

Mr. Harriman: *It might not have. We might have made a contract between the Southern Pacific and the Union Pacific for the use of the Southern Pacific lines so far as they are necessary and absolutely necessary.*" (Record, pp. 1094-5.)

In order to follow out this suggestion of Mr. Harriman as to the propriety and necessity of legislation by Congress, can it be doubted that the Commission had the right and was under the duty to investigate fully all of the evils which were flowing from the present practice of stock investment for the purpose of evading the Sherman Law and the anti-pooling provisions of the Interstate Commerce Act? Was it not the right and the duty of the Commission to ascertain how far such stock investments led to corrupt practices on the part of directors and officers of the carriers? Could the Commission intelligently suggest remedies to Congress without knowing fully the extent of the evils?

13. We have examined the constitutions and laws of some forty states, and in them we find prohibitions against consolidations, ownership and control of competing lines. Many of the states contain provisions against common directors. Is it not as important for these prohibitions to apply to interstate carriers as to carriers entirely within the state? And can it be doubted that Congress may regulate the ownership of stock in competing lines by one another, or control through stock-ownership by officers and directors; the same management and control of competing lines through common directors and officers; the right of railroad directors to speculate in the stock of the companies of which they are directors; the dealings between officials and railway corporations; the subject of dividends and subjects of a kindred nature? And, since Congress has the right to legislate, the Commission has the right and is under the duty to inform itself upon these subjects, so that it may report its conclusions and recommendations to Congress.

POINT THREE.

THE END WHICH CONGRESS IS SEEKING TO OBTAIN BY THE INTERSTATE COMMERCE ACT, NAMELY, THE PROPER REGULATION OF INTERSATE COMMERCE, BEING INDISPUTABLY WITHIN ITS CONSTITUTIONAL POWERS, AND CONGRESS, BY THE SECTIONS OF THE ACT HEREINBEFORE QUOTED, HAVING EMPHATICALLY DECLARED ITS OPINION THAT AN INQUIRY INTO THE FINANCIAL OPERATIONS OF THE CARRIER IS A NECESSRY AND PROPER MEANS TOWARD ACHIEVING SUCH AN END, THE COURTS WILL EFFECTUATE AND NOT HINDER THE PURPOSE OF CONGRESS.

1. The situation is even more serious than when a court is called upon to pass upon the constitutionality of a statute. In such a case the court will not set aside the statute unless the unconstitutionality exists beyond a reasonable doubt.

In the *Legal Tender cases*, 12 Wallace, 531, it was said:

> "It is incumbent, therefore, upon those who affirm the unconstitutionality of an act of Congress to show clearly that it is in violation of the provisions of the constitution. It is not sufficient for them that they succeed in raising a doubt."

Mr. Justice Miller, in the *Trade Mark* cases, 100 U. S. 96, said:

> "When this court is called upon in the course of the administration of the law to consider whether an act of Congress, or any other de-

> partment of the government, is within the constitutional authority of that department, a due respect for a co-ordinate branch of the government requires that we shall decide that it has transcended its powers only when that is so plain that we cannot avoid the duty."

And in Nicol v. Ames, 173 U. S. 514, Mr. Justice Peckham said:

> "It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of Congress of the United States. The presumption, as has frequently been said, is in favor of the validity of the act; and it is only when the question is free from any reasonable doubt that the court should hold an act of the law-making power of the nation to be in violation of that fundamental instrument upon which all the powers of the government rest."

Many other cases might be cited to the same effect.

2. But the case now before the court goes even further. To uphold these appellants in their contumacy is to prejudge Congress and to hold that by no rational possibility could it legislate upon the subject matter at issue; and this without permitting Congress, through the Interstate Commerce Commission, to obtain the facts upon which such legislation could properly be constitutionally based; and without permitting Congress itself after it shall have acquired such facts, within its constitutional powers of debate, to consider them.

3. The cases of *In Re Chapman*, 166 U. S. 668, *People v. Keeler*, 99 N. Y. 463, *People v. Sharp*, 107

N. Y. 427, and *Falvey & Kilbourn v. Massing,* 7 Wis. 630, lay down very clearly the rule which entitles legislative committees to elicit information of the character here sought.

In the *Chapman* case it was held that a committee of the Senate had authority to compel a broker to testify as to whether his firm had bought or sold stocks for any members of the Senate.

In *People v. Keeler,* under resolution of the State Senate of New York, its Committee on Streets was directed to investigate the Department of Public Works of the City of New York, with power to send for persons and papers and with directions to report the result of the investigation with recommendations to the Senate. The court said (482):

> "It is difficult to conceive any constitutional objection which can be raised to the provision authorizing legislative committees to take testimony and summon witnesses. In many cases it may be indispensable to intelligent and effectual legislation, to ascertain the facts which are claimed to give rise to the necessity for such legislation and the remedy required."

At page 483 the court quoted from *Wilkens v. Willett,* 1 Keyes, 521, 525, as follows:

> *"That the power exists admits of no doubt whatever. It is a necessary incident of the sovereign power of making laws, and its exercise is often indispensable to the great end of enlightened, judicious and wholesome legislation."*

At page 486 the court passes on the objection that the investigation which the committee was conducting was one which the House was not authorized to institute:

> "The Department of Public Works was created and its duties prescribed by a statute of the state, and if the system was so defective as to admit of frauds or irregularities which could be guarded against by further statutory regulations, it was in the power of the legislature to enact them. That some action of this nature was in contemplation is indicated by the provision in the resolution requiring the committee to *report the result of its investigation and its recommendations concerning the same.* The legislature had no power to remove the commissioner or any officer of the Department, and the only action the committee could recommend would be appropriate legislation to prevent a recurrence of the frauds or irregularities if they were found to exist and to be of such a nature that they could be prevented or rendered more difficult by legislation. We are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended."

In *People v. Sharp, supra*, the Court of Appeals was reviewing a conviction of the defendant on a charge of bribing an Alderman of the City of New York to influence him upon the application of the Broadway Surface Railway Company for the consent of the Common Council to the construction of its raiway. . On the trial it appeared that the defendant had been subpoenaed as a witness and had

testified concerning the matter before a committee of the State Senate appointed to investigate the methods adopted by the company in obtaining such consent. This testimony, so given, was received in evidence over the objection of the defendant, and in answer to the argument made by him that he was thus compelled to give testimony against himself, the counsel for the People urged that the inquisition by the committee was illegal and void, that Sharp had not testified under compulsion, and that the sittings of the committee were merely meetings of private persons. The Court of Appeals held otherwise and sustained the power of the Legislature and its committee to make the investigation principally upon the ground that a report was required from the committee with recommendations as to the policy of an amendment to the constitution vesting the power to grant such consent in some other authority than had been previously provided.

The court said:

> "It is apparent from their terms that the resolution which permitted the examination of Sharp involved an inquiry which the legislature had a right to make and which, in view of the recitals in the resolution, it was its duty to make in order that the abuses which were disclosed might be cured by further action by the legislature or by the people" (p. 448).

The power of legislative investigation into the conduct of officers of a corporation, which corporation is engaged in a quasi-public function, as is

the interstate railway here in question, was considered by the Supreme Court of Wisconsin in *Falvey & Kilbourn v. Massing, supra.* A joint committee of the Senate and House of Representatives of that State had been appointed to investigate certain alleged frauds and corrupt acts of officers and agents of railroad companies which had secured grants of land to aid in the construction of railways. The witness had refused to testify upon grounds similar to those advanced here. The court sustained the power of inquiry, and among other things said (pp. 637-638):

> "An investigation into these various alleged acts of bribery and corruption might be necessary with a view of adopting some legislation to deter others from like misconduct. Information might thus be obtained which would enable the legislature to remedy defects in existing laws, and effectuate the great ends of public justice. * * * If the objects and results of this investigation may be such, as already suggested, is it not competent for the legislature to make it? Remember we are now only considering the power, the constitutional right, of the legislature to investigate these transactions. The policy, the expediency, of exercising the power, and the manner of conducting the investigation, rests, in my judgment, entirely in the sound discretion of the legislature. * * * For the reasons suggested, and others which might be given, I have no doubt of the power of the legislature to investigate the matters named in the joint resolutions, either by a joint committee, or by a committee of either or both houses acting independently, *or the legislature might have in-*

vestigated into these matters in any other manner which to it might seem most convenient and proper."

It will undoubtedly be claimed by counsel for appellants that the latter case is not in point for the reason that the legislature of Wisconsin was merely exercising a general visitorial power over a corporation of its own creation. But, for the reasons and under the authority heretofore amplified in this brief, Congress has, with reference to any matters affecting interstate commerce, the same powers of investigation and legislation as have the states with reference to matters within their jurisdiction.

4. The basic principle by which the judiciary respects and enforces the determination of the legislative branch of the government is especially applicable to economic legislation like the Interstate Commerce Act. For it is particularly true of such legislation that the constitutionality or non-constitutionality of a given statute will often depend upon the *facts* out of which the general rule of conduct prescribed by the statute has been derived by induction. Thus a proposed exercise of the power of eminent domain may be held constitutional as to some portions of the United States and unconstitutional as to others, by reason of the difference of facts existing in each locality.

Clark v. Nash, 198 U. S., 361-369.

Strickley v. Highland Co., 200 U. S., 527, 531.

In *Holden v. Hardy*, 169 U. S. 366, an eight-hour law was held constitutional for Utah miners; while in *Lochner v. New York*, 198 U. S. 45, a ten-hour law was held unconstitutional when applied to New York bakers; and a similar law of the State of Oregon, applying to women employed in laundries, was in a late case held constitutional (28 Sup. Court Reporter, 324),—the difference arising solely out of the different conditions of fact under which the labor was performed, and the decisions were predicated solely upon the construction of those facts.

As was said by Judge Amidon, of the Federal District Court, in his address before the American Bar Association, in August, 1907:

> "Now, the questions of government are becoming so largely economic, the majority of our so-called constitutional cases turn, not upon the interpretation of the instrument itself, but upon the construction of the living conditions to which it is to be applied."

It is here pertinent to suggest that to foreclose inquiry on the ground that the subject matter has in the past not been regarded as relating to interstate commerce, is to lose sight of the fact that while the nature of the power to regulate commerce does not change, the scope of its operation must often be extended to new matter.

> "Constitutional provisions do not change, but their operation extends to new matters as the modes of business and the habits of life of the people vary with each succeeding year."
>
> *In re Debs*, 158 U. S., at p. 591.

ployed to effect the end contemplated by the legislative department. The judiciary can only inquire whether the means devised in the execution of a power granted are forbidden by the constitution. It cannot go beyond that inquiry without entrenching upon the domain of another department of the Government, and that it may not do with safety to our institutions."

POINT FOUR.

THE STANDARDS TO GUIDE THE COMMISSION AND THE WITNESS IN THE INQUIRY ARE CLEAR AND STATUTORY AND INVOLVE NO UNCONSTITUTIONAL DELEGATION OF POWER.

The appellants argued in the court below that unless the Commission's power of investigation under section 12 is limited to the enforcement of the rules of conduct prescribed in the first seven sections of the Act, the power can be predicated upon and limited by nothing less vague than the general power of Congress over interstate commerce. They asserted with great emphasis that under such circumstances there would be no standard to guide the inquiry or the witness other than the unbridled discretion of the Commission. They argued further that to delegate such unbridled powers to the Commission would be an unconstitutional "delegation" of legislative power by Congress.

Both the premises and the conclusion of this argument are false.

1. In the first place, the argument involves the same fallacy of construction of the Interstate Commerce Act which we have above treated. It ignores wholly the standards laid down in sections 12, 20 and 21, and assumes that the only standards possible are the particular prohibitions upon the acts of carriers which appellants chose to recognize and select from the first seven sections of the Act.

No one contends that in exercising even its inquisitorial powers the Commission is free to wander throughout the whole field of interstate commerce. As we have shown, Congress has apportioned a part of that field to the Bureau of Corporations. And in the Interstate Commerce Act itself, Congress has established a clear statutory standard to guide the investigation. Not a question was asked of Mr. Harriman or of Mr. Kahn which was not clearly within the standards fixed by Congress itself in sections 12 and 20. We stand upon the plain proposition that when Congress authorized a Commission "to inquire into the management of the business" of carriers, and subsequently provided a regular annual method in which they should get information in the form of reports about the "business' of the said carriers (which information was specified in great detail so as to include their "financial operations"), the latter will be taken as a clear statutory definition of the former; Congress will be deemed to have shown in the most convincing manner that it understood "business" to include all such financial details, including among other things "the surplus fund," "the funded and floating debts," "the cost and value of the carrier's property," "the earnings and receipts from each branch of business and from all sources" and "a complete exhibit of the financial operations of the carrier each year."

When Harriman and Kahn were interrogated by the Commission they had before them this clear,

specific and detailed statutory standard of whether or not the questions were such as they should answer. If the Union Pacific Railroad Company was one of the carriers to which the Interstate Commerce Act applies, and if the questions addressed to Harriman and Kahn were inquiries into the business of that corporation, thus defined—if they related to its surplus fund, to the cost and value of its property or to a complete exhibit of its financial operations,—they had a standard as clear and as specific as any standard which ever confronted a witness, and their duty to answer was equally clear. And on their failure to answer any such question, a case is presented for the cognizance of the federal courts containing an issue as specific as that defined in the *Brimson* case.

2. One of the briefs filed by appellants in the court below intimated a doubt as to the power even of Congress to investigate for the purpose of future legislation. We deem it unnecessary to answer this argument any further than to call the court's attention to the fact that there is an entire chapter of the Revised Statutes (Chap. VII of Title 2), relating to the taking of testimony upon congressional investigations. There is also a statute providing for the taking of testimony with similar compulsory process before masters in cases of private claims against the United States (20 Stat., 278). All of this legislation is wholly separate and dis-

tinct from the provisions of Chap. VIII of the said Title of the Revised Statutes which governs the procedure of congressional investigations into cases of contested seats.

3. To invest the Interstate Commerce Commission with this power of investigation is not a delegation of legislative powers. Although the power to legislate involves the power to investigate, investigation is not legislation. In creating the Interstate Commerce Commission, and conferring upon it the powers of section 12, Congress merely created an organ of inquiry and an agency for the collection of information so that Congress might *thereafter be able to exercise its legislative power* to regulate commerce. This was the clear ruling of this court in the *Brimson* case.

4. If, however, there be involved any "delegation" of powers in the creation of "an administrative body with authority to investigate the subject of interstate commerce," then not only has this "delegaion" been expressly sustained by this court in the *Brimson* case, but the standard by which the delegated powers are to be exercised is as definite as that sanctioned in a number of cases.

Field v. Clark, 143 U. S., 649.

Dunlap v. United States, 173 U. S., 65, 74.

Butterfield v. Stranahan, 192 U. S., 470.

Union Bridge Co. v. United States, 204 U. S., 364.

There is not a single case in the United States reports where a congressional statute has been declared unconstitutional on the ground that an improper delegation of power was involved.

5. Our opponents' argument upon the dangers of subjecting the citizen to the inquisitions of a roving commission without the guidance of a contested issue is but a repetition of the argument of Mr. E. Parmalee Prentice in the *Brimson* case which this court rejected. We quote Mr. Prentice's language so that the court can compare it with the suggestions of our opponents:

> "The only possible definition of the duty asserted by counsel for the Commission in this case is that it consisted in delivering to the Commission all books, papers and information which the Commission might see fit to ask for. This is simply arming the Commission with unlimited powers of inquisition. Under the guise of a duty it empowers the Commission to create as many separate duties as it sees fit, and the very act of creation is a legislative act. If Congress can delegate power in these broad terms, it can delegate any power whatever."

POINT FIVE.

THE INFORMATION SOUGHT BY THE COMMISSION AND REFUSED BY THE RESPONDENTS IS MATERIAL AS BEARING UPON THE REASONABLENESS OF THE RATES IN FORCE ON THE UNION PACIFIC.

The Commission sought to ascertain from Harriman and Kahn whether any, and, if so, how much of certain of the stocks purchased by the Union Pacific Company had been purchased from the directors of that company; the price at which such stocks had been bought by the directors when acquired; whether said stocks had been bought and held by such directors as a pool for the manipulation of such stocks; and whether any of such stocks had been bought by such directors with the original intention of turning them over to the Union Pacific Company. All of these inquires were directly and necessarily pertinent to the question of the reasonableness of the rates of the Union Pacific Company.

1. We do not mean to assert that the Commission was at liberty in this investigation to fix any specific rate for the Union Pacific Company. We are willing to assume, for the purpose of this hearing, that the power of the Commission to prescribe specific maximum rates under section 15 of the Interstate Commerce Law is limited to cases where there has been a "full hearing upon a complaint made as provided in section thirteen" of the Act.

But the power of the Commission under the act is not limited to the fixing of a particular rate, on a complaint, under section 15; the power has always been vested in the Commission, after an investigation instituted on its own motion, to declare an entire schedule of rates to be unreasonable, leaving the railroads to substitute reasonable rates in lieu thereof. (See *Cincinnati, N. O. & Texas Pac. Ry. v. Interstate Com. Com.*, 162 U. S., 184.)

And under section 12 the Commission surely did have power to consider the general or average rates in force over the Union Pacific system, to compare those rates with the average rates in force over other systems, to consider the effect upon such rates of the methods and practices of the company and its officers, and to determine whether these methods and practices had the tendency and result of making such general rates unreasonable. (See *Rates from St. Louis to Texas Common Points*, 11 I. C. C. Rep., 238, 240, 275.)

Such an investigation was expressly included within the original resolution of the Commission, and the subject was fully entered into in the examination of Mr. Harriman (see Record, pp. 1100-1105; 1116-1117.)

2. The subject of rates in all its phases was examined into at length in the various cities in which testimony was taken.

At Chicago—Record, pp. 236-239, 241, 247-252, 269-275, 279-283, 333-337, 346-349.

At Portland—Record, pp. 526-529, 533-535, 549-550, 566-569, 571, 573-580.

At San Francisco—Record, pp. 815-822.

At Los Angeles—Record, pp. 871, 924-925, 926-930, 932-933, 934-935, 967-970.

In this examination the Commission went into an exhaustive inquiry as to why the average rates on the Union Pacific per ton mile were higher than such average rates upon other transcontinental western roads; why such rates on the Union Pacific had practically remained stationary although corresponding rates on other roads had almost all been materially reduced; what effect upon such rates the acquisition by the Union Pacific of the stock of the Southern Pacific and other railroads had had; and a large number of cognate questions relating directly to the question of whether or not the Union Pacific was now maintaining a higher average schedule of rates throughout its territory than those which were reasonable or maintained by other similar lines.

To such an investigation the questions under consideration were pertinent in the various ways discussed below.

3. The general principle which should underlie the question of what is a reasonable rate is clear and settled.

> "We hold that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under

> legislative sanction must be the fair value of the property being used by it for the convenience of the public."
>
> *Smyth v. Ames*, 169 U. S., at pp. 546, 547.

The application of this principle to the complex nature of railroad property is, however, not easy or simple. No single method of calculating the fair value can be universally applied and the authorities agree that the best results can be obtained only by a combination of various methods and a consideration of all the various elements which enter into the problem. The capitalization of the company, the original cost of its property the present cost of reproducing it, the earning capacity, etc., should all be considered.

> "And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, *the amount and market value of its bonds and stocks*, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case."
>
> *Smyth v. Ames, supra*, pp. 546, 547.

See, also, the careful opinion of the Interstate Commerce Commission in *Re Proposed Advances in Freight Rates*, 9 I. C. C. Rep., 402; and *Kennebec Water District v. Waterville*, 97 Me. 185, 200.

4. A consideration of the capitalization of a railroad company would, therefore, properly enter into

the determination of the question of the reasonableness of its rates. As a matter of fact it is the consideration usually insisted upon by such companies as the *controlling factor*. This was the contention in *Smyth v. Ames, supra*. It was there contended that a railroad company is entitled to make such a charge for transportation as will enable it at all times not only to pay operating expenses but also to meet interest regularly accruing upon *all* outstanding obligations and justify dividends upon *all* its stock—that the rates must be adequate to meet *all* these ends (p. 543);—but the court held that this contention was grounded on a misconception and that it excluded from consideration *the fair value of the property used* and the right of the public to be exempt from unreasonable exactions.

It is, therefore, well settled that the capitalization may be examined into to see whether it is inflated or otherwise unfair, and unless it represents the *fair* value of the property, it *will* not govern in fixing the rate. As said by Judge NOYES:

> "If stocks were not watered and capitalization fairly represented money invested, the par value of the outstanding stocks and bonds of a railroad would fairly represent the original cost and the expenses of improvements not met from earnings. A convenient basis for ascertaining the value would be furnished. But stocks are watered. Anticipated profits are capitalized in advance. A large volume of the securities is deemed desirable for speculative purposes. *Fictitious capitalization, however, is not an element of value and the amount of*

outstanding stocks and bonds is seldom a true measure of worth. A railroad cannot, by the manufacture of paper securities, impose upon the public the burden of making them pay real profits."

Noyes on American Railroad Rates, p. 27.

In *San Diego v. National City*, 174 U. S. 757, in passing upon the reasonableness of the rates charged by a water company, the court laid down the test by which shall be judged what a public service company is entitled to earn.

> "The basis of calculations suggested by the appellant is, however, defective in not requiring the real value of the property and the fair value in themselves of the services rendered to be taken into consideration. What the company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public. *The property may have cost more than it ought to have cost, and its outstanding bonds for money borrowed and which went into the plant, may be in excess of the real value of the property.* So that it cannot be said that the amount of such bonds should in every case control the question of rates although it may be an element in the inquiry as to what is, all the circumstances considered, just both to the company and to the public."

In *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S., 362, 412, in speaking of a tariff of rates then before it, this court said:

> "There may be circumstances which would justify such a tariff; *there may have been ex-*

> Company to purchase stock of the Illinois Central Railroad Company; that while the Union Pacific line served a large grain producing territory, it had no line from that territory to the Gulf or to Chicago and into the southeast; that the export of corn by the Gulf ports is likely to increase steadily; that the value and importance of the system of railroads extending from the Missouri river at and above Omaha and as far north as Minnesota and Wisconsin, and from Chicago and St. Louis on a low grade to New Orleans, as does the Illinois Central, will be enhanced by the construction of the Panama Canal, and the importance and value of such connections to the Union Pacific will be very great; that, while the Illinois Central was generally recognized as an important and valuable system of railroads, yet he believes its strategic value and importance was but little understood and appreciated even by some of those most active in its management. * * *" (Tr. of Rec., p. 118.)

A committee was appointed to consider the purchase. Mr. Harriman stated that, as he was interested in the stock to be sold, he could not act for the Union Pacific. Among other things, that committee reported. (Tr. of Rec., p. 119.)

> "We have inquired into and considered the expediency of the purchase by this company of capital stock of the Illinois Central Railroad Company, and are of the opinion that closer relations by this company and the Illinois Central Railroad Company will be to the interest of both."

Mr. Kahn testified as follows (Rec., p. 1215):

> "Mr. Severance: I want to ask you one other question about the Illinois Central. You

considered, did you, when you sold this 105,000 shares, and these other gentlemen sold the 90,000 shares, to the Union Pacific, that that gave the Union Pacific a dominating interest in the Illinois Central?

Mr. Kahn: I thought it gave them an interest which, if it wanted to, would practically amount to a dominating interest; yes."

This testimony shows that the purpose for which the Illinois Central stock was purchased was something other than the desire to make an investment of the profits accruing to the Union Pacific from the Northern Securities—Northern Pacific—Great Northern transaction.

Chicago & Alton.—The purchase of the Chicago & Alton stock was approved by the executive committee of the Union Pacific on September 29, 1904 (Tr. of Rec., p. 73); and on October 4, 1904, a contract was entered into by which that stock, together with an equal amount of Chicago & Alton stock owned by the Rock Island interests, was set over to a trustee, under a contract for joint control, by which the Union Pacific and the Rock Island were to elect a majority of the board of directors of the Alton in alternate years (Tr. of Rec., p. 74).

Therefore it is evident that traffic considerations exercised some influence upon the purchase of Chicago & Alton stock.

Santa Fe.—As to the Santa Fe, that is confessedly a competing line with the Southern Pacific and with the Union Pacific.

It appears by the testimony of Mr. Ripley, the president of the Santa Fe, that in the summer of 1904 certain parties interested in the Union Pacific, among whom he named Mr. Harriman and Mr. Schiff (of Kuhn, Loeb & Co., and partner of Mr. Kahn), approached him and asked for a representation upon the board of directors of the Santa Fe company, which request was granted, two members of the Union Pacific board—Mr. Frick and Mr. Rogers—being elected.

After the acquisition of this Santa Fe stock by the Union Pacific interests, the Santa Fe and Southern Pacific companies united in the incorporation of the Northwestern Pacific Railroad Company, which latter corporation took over certain lines of railroad situated north of San Francisco belonging to the Southern Pacific and the Santa Fe, respectively, for the purpose of connecting up such lines and serving the territory in question. A contract was entered into between the Southern Pacific and the Santa Fe, providing for a control of the Northwestern Pacific in alternate years by the two companies in a manner similar to that above referred to relating to the Chicago & Alton.

The fruit traffic from southern California is enormous in volume, and about sixty per cent. is naturally tributary to the Santa Fe. During the year previous to the investigation it was divided substantially forty-five per cent. to the Santa Fe, forty-five per cent. to the Southern Pacific, and ten per cent. to the San Pedro, Los Angeles & Salt Lake

Railroad—in which latter company the Oregon Short Line owns a half interest. (See Record, pp. 966, 967.)

From this it appears that the ownership of stock in the Santa Fe by the Union Pacific interests has had a considerable effect upon the movement of traffic.

St. Joseph & Grand Island.—The resolution of the executive committee of the Union Pacific relative to the purchase of the stock of the St. Joseph & Grand Island Railway Company from Mr. Harriman, embodies the report of a committee of directors appointed to consider said purchase, and is found designated as "Harriman Exhibit No. 1," pages 1370 to 1373 of the transcript of record. The report of the committee, after detailing the lines of railway and equipment owned by the St. Joseph & Grand Island, and its financial status or balance sheet, including a statement of the earnings and operating expenses, proceeds:

> "In the event of the acquisition of the control of this property by the Union Pacific Railroad Company, the surplus for stock would of course be augmented by the profit on such additional traffic as the Union Pacific company could advantageously route via the Grand Island road. * * *
>
> The acquisition of this stock would secure practical control of the property. * * *
>
> After a careful review of such data as we have been able to obtain, it is our judgment that the strategic position of this property, the economies to be effected by its use due to the

> savings in distance and more favorable gradients and curvature, and its entrance into the City of St. Joseph, considered in connection with the plans of the Union Pacific company for the enlargement of its trans-Missouri river system, and the further fact that its acquisition by hostile interests might prove vexatious and costly, fully warrant the Union Pacific company in securing the practical control of the property on the terms suggested."

This "practical control" mentioned by the committee was to be secured by the purchase from Mr. Harriman of certain stock of the different classes into which the capitalization of the St. Joseph & Grand Island is divided, aggregating 37-37/100 per cent. of the total of such capital stock.

Clearly this purchase was not made by the Union Pacific merely in its capacity as an investment company, but was professedly for the purpose of securing control.

As to the four lines above mentioned we have present here not only the spectacle of the president of the road, and a member of the banking firm which was the fiscal agent of that road, selling securities to the corporation, but the purchase of such securities for the purpose of obtaining traffic and the control of railroad property.

It will probably not be claimed by appellants that it is beyond the scope of the Commission's power to ascertain the fairness of the prices paid for corporeal railroad property, with the funds of an interstate railway arising from the sale of its

stock and bonds. It will undoubtedly be conceded that the Commission, under the narrowest construction of its powers, has the right to ascertain the real value of lines of road and equipment used in conducting its business That much must be conceded, or the Commission is without power to execute its admitted functions. And, if it has jurisdiction to make such an inquiry, what reason can be advanced for denying it the same right to inquire into the fairness of purchases of stock, which represents railroad property? The Commission having the right to inquire into the real value of the corporeal property of the St. Joseph & Grand Island, if, instead of purchasing stock, the Union Pacific had taken a deed of the property outright, it necessarily follows that it has an equal right to inquire into the fairness of the price paid for the stock representing the control of such corporeal property.

6. Nor is the fact that this cost price may or may not have corresponded to contemporaneous market quotations conclusive against such inquiry by the Commission. The market value is not necessarily the stock exchange quotation. There may be an artificial market value or a fraudulent market value. Particularly pertinent to these phases of the inquiry are the questions concerning the existence of a pool among the directors to manipulate the stock. If these questions had been answered it might have appeared that certain or all of the directors of the Union Pacific had been for

a year preceding the date of the sale of stock to the Union Pacific, engaged in rigging the market for the purpose of creating a fraudulent or fictitious market value, thus giving an apparent honesty to a transaction which was inherently dishonest.

> "I admit that a mere speculative price of the article, got up by the contrivance of a few interested dealers, is not the true test. The law, in regulating the measure of damages, contemplates a range of the entire market and the average of prices as thus found, running through a reasonable period of time. Neither a sudden and transcient inflation or depression of prices should control the question. These are often accidentally produced by interested and illegitimate combinations for temporary, special and selfish objects independent of the objects of lawful commerce;—a forced and violent perversion of the laws of trade, not within the contemplation of the regular dealer, and not deserving to be regarded as a proper basis upon which to determine the value, when the fact becomes material in the administration of justice."
>
> *Smith v. Griffin*, 3 Hill., 337-8.

> "These general principles in the doctrine of damages and authorities prove that *an inflated speculative market price, not the result of natural causes, but of artificial means to stimulate prices by unlawful combinations for the purposes of gain, cannot be a legitimate means of estimating just compensation.*"
>
> *Kountz v. Kirkpatrick*, 72 Pa. 376, 388.

See, also *Sedgwick on Damages*, 8th Ed., Section 249.

7. The impairment of the carrier's assets by improvident investments may also affect the existing rates put into effect by the carrier itself. If existing railroad rates produce not only sufficient money to cover operating expenses, fixed charges and a fair dividend together with a reasonable reserve for betterments, but produce a substantial surplus besides, the public have a right to insist, and usually effectually do so, that the rates be reduced and that the tax upon commerce be lessened. If, however, this surplus has been diverted into the pockets of the directors under the cover of transactions claimed to be honest on their face, the existing tariffs in force by the carrier may be continued at an unreasonable rate without the likelihood of disclosure or correction. Therefore, when the question of the reduction of such rates comes before the Commission all these matters become relevant subjects of inquiry.

The specific questions which Harriman and Kahn refused to answer were therefore directly relevant to the Commission's inquiry into the possible devastavit of the Union Pacific property.

The general question was, had the assets of the Union Pacific Company been wasted by improvident purchases of stocks from Harriman and its other directors? Take for example, the case of the purchase of the Alton stock. The price of this purchase was 86½. There is no evidence in the record to show that there was any market price of

this stock or to show how near this price corresponded to such market price. On the contrary, the record does show that this price was fixed by a committee of whom Harriman was one and that he was at the same time the president, a director, and chairman of the executive committee of the purchaser, and a member of the syndicate which had reorganized and dealt in the stock thus bought. His testimony in regard to his part in fixing this price of 86½, at which the stock was sold, is as follows:

> 'My part in that negotiation was to acquire the stock at as low a price as I could, and the other members of the Committee in whose charge it was were very much aggrieved because I refused to pay any more. *And the price paid was a compromise between what I thought they ought to sell it at and what they wanted.*" (Record, p. 1051.)

Will any one have the hardihood to maintain that it was not a pertinent subject of inquiry whether Harriman was himself personally interested in the stock thus sold? In making this compromise he was posing as the advocate of a low price. Is it not relevant as bearing upon the efficiency of his advocacy to know whether or not the advocate had a personal interest against his cause? To hold otherwise would be to ignore the most elementary doctrines of the law of trusts.

The situation in the Alton purchase was substantially the same in each of the other purchases.

It is true that in some instances, evidence was introduced to show prices quoted on the market, corresponding somewhat to the price at which the stock was sold by the fiduciary to the railway company. But as we have seen such market price is only *one of the elements* which are taken into consideration in an inquiry as to whether the price paid was the fair value of the property purchased.

8. Appellants' counsel asserted before the Commission that none of the foregoing considerations enter into the making of rates; that rates are fixed by conditions of traffic which have nothing to do with return upon investment (Record, p. 990).

It is undoubtedly true that the traffic manager, when he establishes a particular rate, does not reach it by a mathematical deduction from his capitalization; it is also true that the rates between competitive points (by which we mean, points between which competition exists in the real and not the Harriman sense), are largely independent of these considerations.

But a railroad is necessarily a legalized monopoly, and even under the most favorable circumstances competition does not apply to a very large portion of its rates. And although in one sense it is undoubtedly true that a railroad cannot raise its rates beyond certain limits without eventually assassinating its traffic, it is also true that within those limits its power is monopolistic and it is to

remedy evils within those limits that the Interstate Commerce Commission was created. Mr. Harriman himself, in spite of the contention of his counsel, admitted this on the witness stand, and *he* spoke from the standpoint of the experienced railroad man as well as the financier.

> "Comr. Lane: So that capitalization, when we come to the fixing of a rate, has absolutely nothing whatever to do with it?
>
> "Mr. Harriman: It has in a general way, but in the general management from day to day of the railroad the traffic men know little or nothing about the capitalization of the road. They have to make their contracts to move the traffic under the conditions that then exist and make a rate that will move it.
>
> "Comr. Lane: Are we justified then in excluding from consideration—
>
> "Mr. Harriman: I don't believe you are.
>
> "Comr. Lane: In the making of a rate?
>
> "Mr. Harriman: *I don't believe you are in regulating the rates generally.*"
>
> (*Record*, p. 1092.)

9. It is clear that the testimony should be required also upon the ground that it is pertinent to the matter of rates over the Illinois Central, the Alton, the New York Central, the Santa Fe and the St. Joseph & Grand Island, for the reason that under the authorities cited above the *real*, not the artificial, market value of the stocks of these roads should be shown.

POINT SIX.

THE QUESTION ASKED OF MR. HARRIMAN AS TO WHETHER HE AND HIS CO-DIRECTORS HAD SPECULATED IN STOCK OF THE UNION PACIFIC IN ANTICIPATON OF THE INCREASE OF DIVIDENDS BY THAT COMPANY, WAS A PERTINENT INQUIRY TO INFORM THE COMMISSION AS TO WHETHER THE DIVIDENDS WERE JUSTIFIED, WERE FAIRLY DECLARED, AND AS TO WHETHER THE DIRECTORS EXERCISED THEIR BEST JUDGMENT IN THE DECLARATION AND PAYMENT OF SUCH DIVIDENDS.

1. "The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly construed by technical rules as to admissibility of proof. Its function is largely one of investigation and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law, where strict correspondence is required between allegation and proof."

Interstate Commerce Commission v. Baird, 194 U. S. 25, 44.

The language used by this court in reversing the decision of Judge Lacombe, in excluding certain evidence as not relevant to the issues in that investigation, is virtually an answer to all the contentions now made by the appellants. Their entire case is really a rebellion against the necessary flexibility which must be accorded to an investigation in order to make it effective and keep the Commission informed as to all the details of the management of the business and finances of an interstate carrier.

4. The court should be particularly careful not to rule too technically against the relevancy of these questions in a case like this where the form of the question was so clearly subordinated to the general issue between the parties. It was to the *entire scope of the inquiry* that counsel for the appellants objected. As soon as the subject was approached Mr. Milburn stated his objection to it broadly and at length. The issue was thus sharply delineated by the argument of counsel (see Record p. 987 *et seq.*). Throughout the subsequent investigation, the objection was restated mainly by reference to the original issue thus drawn.

POINT SEVEN.

THE RESOLUTION OF THE COMMISSION WAS AMPLY BROAD TO COVER THE ENTIRE INVESTIGATION; THOUGH IN FACT IT IS IMMATERIAL WHETHER OR NOT THE RESOLUTION RECITED ALL THE SUBJECT-MATTER DEVELOPED IN THE COURSE OF THE INVESTIGATION.

Subdivision 7 of the answer of respondent Harriman (Record, p. 44) attacks the order of the Commission under which the investigation was commenced on the ground that it is so general, vague and indefinite as in its terms to fail to define any matter as being under investigation and hence it is claimed that the questions were not pertinent to any inquiry alleged or claimed to have been authorized thereby. We assume that this point will not be seriously urged. It is clear that if the Commission under section 12 has power to make these inquiries, it cannot oust itself of that jurisdiction by the form of its resolution for investigation. Both the railroad companies and certain of the counsel for these respondents appeared and participated in this investigation not only in New York but in Chicago, Portland, San Francisco and Los Angeles. After the testimony had been concluded they appeared before the Commission at Washington and argued as to the effect of the evidence so taken and as to the nature of the report which the Commission should make upon such record. It seems

rather late in the day to suggest that either the railroad companies or respondent Harriman, who was a director, president and chairman of the executive committee of said companies, or respondent Kahn who was for a long time director and member of the executive committee, and at all times the fiscal agent of the companies, was left in ignorance as to what the investigation was about. This objection seems to have been disposed of in any event by this court in the case of *In re Chapman,* 166 U. S., p. 669, where this court, in answering an objection that had been made to the right of Congress to require answers from the broker, said:

> "Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry *because the preamble and resolutions did not specify that the proceedings were taken for the purpose of censure or expulsion, if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate.* • • • We cannot assume on this record, that the action of the Senate was without a legitimate object, and so encroach upon the province of that body. Indeed, we think it affirmatively appears that the Senate was acting within its right, and *it was certainly not necessary that the resolutions should declare in advance what the Senate meditated doing when the investigation was concluded.*"

POINT EIGHT.

THE CONTENTION THAT THE INQUIRY INVOLVED THE PRIVATE BUSINESS OF THE APPELLANTS IS NO ANSWER TO THE RIGHT OF THE COMMISSION TO HAVE THE INQUIRY ANSWERED.

1. Of course, sales of property by directors to their railroad company are not their private affairs; and any inquiry tending to show that the price of the property so sold was inadequate or fraudulent is not an inquiry into the private affairs of the directors. Nor is an inquiry into the reasons of the directors for withholding publication of a dividend, while they were engaged in private speculation in the stock on which the dividend was declared, an inquiry into the private affairs of those directors. Such transactions are no more private than the business of the railroad company is private.

2. But even if the transactions under inquiry had not concerned men who hold official positions in the company, but were transactions of purely private individuals, being, as they were, relevant to the subject matter under inquiry by the Commission, their privacy was no shield against the Commission's probe.

> "For three hundred years it has now been recognized as a fundamental maxim that *the public* (in the words sanctioned by Lord HARDWICK) *has a right to every man's evidence.* • • •

"When the course of justice requires the investigation of the truth, no man has any knowledge that is rightly private. All that society can fairly be expected to concede is that it will not exact this knowledge when necessity does not demand it, or when the benefit gained by exacting it would in general be less valuable than the disadvantage caused; and the various privileges are merely attempts to define the situations in which by experience the exaction would be unnecessary or disadvantageous. But the duty runs on throughout all and does not abate; it is merely sometimes not insisted upon."

Wigmore on Evidence, Section 2192.

"Undoubtedly the courts should protect non-litigants from unnecessary exposure of their business affairs and papers. But it certainly can be no valid objection to the admission of testimony, otherwise relevant and competent, that a third person is interested in it."

Interstate Commerce Commission v. Baird, 194 U. S., p. 46.

"We know of no rule of law which exempts any person from producing papers material to any inquiry in the course of justice wholly because they are private."

Burnham v. Morrissey, 14 Gray 226 (being an inquiry before a legislative committee).

3. It will be observed that it was particularly stated to the respondent Kahn that it was not desired to interrogate him as to any operations or dealings of his house other than as brokers or agents of directors of the Union Pacific. (See Record, p. 1206.)

4. Within the sphere of inquiry entrusted to the Interstate Commerce Commission the power to investigate the truth has been deemed of such paramount importance to the public that even those privileges which usually maintain in a court of justice have been abolished by statute. No man can assert before the Interstate Commerce Commission or before a court, on an inquiry into matters within the purview of the Interstate Commerce Act, that his answer would tend to incriminate or degrade him; and his refusal to answer inquiries before that Commission not only subjects him to proceedings for contempt, but is expressly made a crime (Act of February 11, 1893; 27 Stat. L. 443).

In the case of *In Re Chapman, supra*, this court disposed of the objection that the inquiry involved business secrets in the following language (668-9):

> "The subject-matter, as affecting the Senate, was within the jurisdiction of the Senate. *The questions were not intrusions into the affairs of the citizen. They did not seek to ascertain any facts as to the conduct, methods, extent or details of the business of the firm in question, but only whether that firm confessedly engaged in buying and selling stocks, and the particular stock named, was employed by any Senator to buy or sell for him any of that stock whose market price might be affected by the Senate's action.* We cannot regard these questions as amounting to an unreasonable search into the private affairs of the witness simply because he may have been in some degree con-

nected with the alleged transactions, and as investigations of this sort are within the power of either of the two Houses they cannot be defeated on purely sentimental grounds."

That a banker enjoys no privilege from withholding information material to a proper inquiry needs hardly a citation of authority.

Lloyd vs. Freshfield, 2 C. & P., 325.

Emmott vs. Star Co., 62 L. J. Q. B., 77.

Hannum vs. McRae, 18 Ont. Pr., 185.

POINT NINE.

NEITHER THE CASE OF *Kilbourn v. Thompson*, 103 U. S., 168, NOR *In Re Pacific Railway Commission*, 32 FED., 241, IS AN AUTHORITY AGAINST THE PETITIONER, AS WAS CLAIMED BY APPELLANTS IN THE COURT BELOW.

1. The case of *Kilbourn v. Thompson*, taken in connection with the *Chapman* case, clearly enunciates the following principle: Congress may not investigate, and may therefore not delegate to a Commission to investigate, a subject beyond the legislative or corrective power of Congress. But, if Congress may legislate or act upon the subject involved, it may clearly investigate the subject itself, or delegate such investigation to a commission. The trouble with the case of *Kilbourn v. Thompson* was that the government was simply a creditor of Jay Cooke & Co., and its rights as such creditor could only be enforced in a judicial proceeding; and Congress had no power to legislate upon the subject or in any possible way to affect the relations between Jay Cooke & Co. and the government. Subdivision 8 of the syllabus is a complete answer to any suggestion that the decision in that case has any application to the questions under consideration. It is as follows:

> "The resolution of the House, under which K. was summoned and examined as a witness, directed its committee to examine into the history and character of what was called 'the

real estate pool' of the District of Columbia; and the preamble recited, as the grounds of the investigation, that Jay Cooke & Co., who were debtors of the United States, and whose affairs were then in litigation before a bankruptcy court, had an interest in the pool or were creditors of it. *The subject-matter of the investigation was judicial and not legislative.* It was then pending before the proper court, and there existed no power in Congress, or in either House thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently no authority to compel a witness to testify on the subject."

2. In *People v. Sharp, supra,* Judge Danforth, of the New York Court of Appeals, very aptly explained the true scope of the Kilbourn decision in the following language:

> "The action of Congress reviewed in that case was in substance *a creditor's bill or effort to impeach a transaction already closed between the United States and one of its debtors.* The Supreme Court of the United States held that as to it Congress had no judicial power and exceeded its authority in the attempted investigation."

3. For many reasons the case of *In Re Pacific Railway Commission, supra,* is not an authority against the position of the petitioner here. In that case the court was considering the act of March 3, 1887, creating the Pacific Railway Commission, which was appointed to investigate the books, accounts and methods of railroads which had re-

ceived aid from the United States. The functions of this Commission were entirely different than those of the Interstate Commerce Commission; the former was an investigating committee appointed by the United States *in its capacity as a creditor of the railroads under investigation.* On the other hand the Interstate Commerce Commission, as we have shown, is an agency of the sovereign, and the investigation in question here is for a sovereign governmental purpose. It was ruled in the case of the Pacific Railway Commission that the application to the court for an order to compel the production of certain books and papers did not constitute a *case or controversy* so as to give the courts jurisdiction.

4. The *Brimson* case, from which we have so often quoted, was heard in the Circuit Court before Judge Gresham, and is reported as *In Re Interstate Commerce Commission,* 53 Fed. 476. Judge Gresham dismissed the case upon authority of the *Pacific Railway Commission,* and upon the specific ground that section 12 of the Interstate Commerce Act was unconstitutional. This court, however, reversed the decision and held that such proceeding did constitute a case or controversy within the meaning of the constitution.

5. Further than that, in the *Pacific Railway Commission* case, the immunity clause was even less broad than the one held insufficient by this court in

the case of *Counselman v. Hitchcock*, 142 U. S. 547. The immunity clause in the Interstate Commerce Act, as the court knows, was amended after the decision in the *Counselman* case, and it was held in *Brown v. Walker*, 161 U. S. 591, that the amended immunity clause was sufficiently broad to protect the witness and he could not refuse to testify. This latter case was followed in *Interstate Com. Com. v. Baird*, 194 U. S. 25, in *Hale v. Henkel*, 201 U. S. 43, and in *Nelson v. United States*, 201 U. S., 92.

Therefore there is nothing in either the *Kilbourn* case or the *Pacific Railway Commission* case—both of which were relied upon by counsel in the court below—which in any way militates against the position of the Interstate Commerce Commission in this case.

We respectfully submit that the order of the court below should be affirmed insofar as it held Messrs. Harriman and Kahn should answer the several questions they are directed to answer; and should be reversed as to the questions propounded to Mr. Harriman with reference to the acquisition of stock in anticipation of the dividends declared in August, 1906.

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Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1908.

EDWARD H. HARRIMAN, *Appellant,* *vs.* INTERSTATE COMMERCE COMMISSION. } No. 315.

OTTO H. KAHN, *Appellant,* *vs.* INTERSTATE COMMERCE COMMISSION. } No. 316.

INTERSTATE COMMERCE COMMISSION, *Appellant,* *vs.* EDWARD H. HARRIMAN. } No. 317.

REPLY BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

FRANK B. KELLOGG,
CORDENIO A. SEVERANCE,
Counsel for Interstate Commerce Commission.

POINT ONE.

THE QUESTIONS ASKED RELATED TO INTERSTATE COMMERCE, AND CONGRESS THEREFORE HAD THE CONSTITUTIONAL POWER TO AUTHORIZE THE COMMISSION TO INVESTIGATE THE SAME.

1. The point urged most strongly by the appellants is that the matters inquired into pertain solely to the internal relations between the corporation and its officers, and are solely within the regulative power of the State. The evident answer to this contention is that while Congress may not grant or repeal the charters of State corporations, yet when those corporations become instrumentalities of interstate commerce and within the regulative power of Congress, it may impose proper restrictions, and where some portion of the corporate activities authorized by the charter are repugnant to the regulation of Congress, prevent the corporations from exercising them, in so far as such exercise bears upon or affects interstate commerce. The cases cited by the appellant to show that the power of one railroad to purchase stock in another, the power to consolidate railroads, and other similar powers, can only be exercised by the States creating the corporation, are not in point in this case. These cases are cited in the brief of counsel for appellant Harriman (p. 30 *et seq.*), and are:

Louisville & Nashville R. Co. vs. Kentucky, 161 U. S., 677, 701;
Ashley vs. Ryan, 153 U. S., 436;
Mobile, Jackson & K. C. R. Co. vs. Mississippi, 210 U. S., 187.

In the case of Mobile, Jackson & K. C. R. Co. vs. Mississippi, the law of Mississippi permitted the consolidation of railways, provided they were not parallel and competing lines, and authorized the railway commission to grant permission therefor. The court held that the refusal of the State authorities to permit the consolidation did not impose any burden upon interstate commerce, although the purpose was to make said consolidated company a through trunk line of railway for interstate commerce and the transmission of the mails. In this connection the language quoted by the counsel in their brief was used, to-wit: "Whether corporations shall remain separate or be permitted to consolidate, is a matter of State regulation and provision." Manifestly this is so, and the mere fact that the consolidated company intended to engage in interstate commerce could not possibly prevent the State from imposing such conditions upon consolidations of its local corporations as it saw fit.

There is a wide difference between Congress affirmatively authorizing State corporations to consolidate, and prohibiting such consolidations of lines of railroad engaged in interstate commerce, when such consolidation would tend to lessen competition and to restrain interstate commerce. We readily concede that Congress cannot authorize the consolidation of the corporate powers of two State corporations. Clearly Congress has no power, by virtue of the commerce clause, to amend the charter of a railroad company and give it additional powers, but if two railroad corporations exist, each under State charters, and by permission of the Federal government they have become engaged in interstate commerce, and are parallel and competing lines, the States can-

not authorize their consolidation, in violation of the laws of Congress. Nor can the States authorize one of the companies to purchase the stock of the other, nor common directors to own the stock, in violation of the laws of Congress. This was the identical question decided in the Northern Securities case, 193 U. S., 197, and in the case of Harriman vs. Northern Securities Co., 197 U. S., 244.

In Northern Securities Co. vs. United States, Mr. Justice Harlan, in the opinion of the court, said:

> "It is said that railroad corporations, created under the laws of a State, can only be consolidated with the authority of the State. Why that suggestion is made in this case we cannot understand, for there is no pretense that the combination here in question was under the authority of the States under whose laws these railroad corporations were created. But even if the States allowed consolidation, it would not follow that the stockholders of two or more State railroad corporations, having *competing lines and engaged in interstate commerce*, could lawfully combine and form a distinct corporation to hold the stock of the constituent corporations, and, by destroying competition between them in violation of the Act of Congress, restrain commerce among the States and with foreign nations."

In the Harriman case this court held that the Union Pacific Railroad Company could not buy Northern Pacific stock, carrying with it a half-interest in the Burlington, for the reason that such ownership would involve a violation of the Sherman Anti-Trust Act. The ample charter powers of the Union Pacific and Oregon Short Line railroad companies, granted by the State of Utah, so frequently

commented upon in the arguments of counsel for appellants, did not, in the opinion of this court, authorize the acquisition of stock in a parallel and competing road in violation of the Sherman Act.

All that was decided in the case of Louisville & Nashville R. Co. vs. Kentucky, 161 U. S., 677, was that the State creating the corporation had a right to impose a limitation against consolidation with parallel and competing lines. We quote from pages 702 and 703 of the opinion:

> "If it be assumed that the States have no right to forbid the consolidation of competing lines, because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation—a proposition which only needs to be stated to demonstrate its unsoundness. As we have already said, the power of one railway corporation to purchase the stock and franchises of another must be conferred by express language to that effect in the charter, and hence if the charter of the L. & N. Co. had been silent upon that point, it will be conceded that it would have no power to make the proposed purchase in this case. As the power to purchase, then, is derivable from the State, the State may accompany it with such limitations as it may choose to impose. It results, then, from the argument of the appellant, that if there be any interference with interstate commerce it is in imposing limitations upon the exercise of a right which did not previously exist, and hence, if the State permits such purchase or consolidation, it is bound to extend the authority to every possible case, or expose itself to the charge of interfering with commerce. This proposition is obviously untenable."

The latter part of this paragraph is not quoted in the brief of counsel for appellant. This assertion of the principle that the State creating the corporation can impose limitations upon the right to consolidate competing lines, is far from an authority that the State may affirmatively authorize acts in contravention of an Act of Congress regulating interstate commerce.

The Louisville & Nashville case was the principal one invoked by the counsel for the Northern Securities Company, and relied on as an authority for the proposition that the right to purchase stock, consolidate railways, and kindred rights, pertained purely to the internal affairs of the corporation, and must be granted by the States, and could not be regulated by Congress. The decision in the Northern Securities case is a complete answer to that proposition which is again advanced in the case at bar.

The case of Adair vs. United States, 208 U. S., 161, simply decided that a law of Congress which prevented a railroad company, engaged in interstate commerce, from discharging an employee because of his membership in a labor organization, was unconstitutional under the fifth amendment to the constitution of the United States, providing that no person shall be deprived of life, liberty or property without due process of law; and that the fact that the employee was or was not a member of a labor organization bore no such direct relation to interstate commerce as to take it out of the effect of the fifth amendment. There is no question that the commerce clause of the constitution does not nullify other provisions of the constitution protecting life, liberty and property.

The distinction between the effect upon interstate commerce of the membership or non-membership of an employee in a labor organization or a particular church or society, and the direct dealings of an officer of a corporation with that corporation, is manifest. The latter bears directly upon the solvency and efficiency of an instrumentality of interstate commerce, and if its officers are permitted to deal with it and loot its treasury, it may render it incapable of carrying on interstate commerce, while as held in the Adair case an employee's efficiency is neither increased nor diminished by his membership in a labor union and therefore interstate commerce is unaffected.

2. At pages 66, *et seq.*, of the brief for appellant Harriman, counsel argue that capital is not an instrumentality of interstate commerce in the sense that Congress may regulate the financial affairs of a State corporation engaged in such commerce. This suggestion of counsel is directly contrary to the language of this court in the case of Crutcher vs. Kentucky, 141 U. S., 47. The court was there considering a statute of the State of Kentucky requiring the agent of every express company not incorporated under the laws of that State to take out a license; and also requiring that there be made and filed in the auditor's office a statement showing that the company was possessed of an actual capital of $150,000, either in cash or in safe investments, exclusive of stock notes. It was held that this statute was unconstitutional as an interference with or regulation of interstate commerce. We quote from the opinion at pages 56 and 57:

> "It is clear, however, that it would be a regulation of interstate commerce in its application to corporations

or associations engaged in that business; and that is a subject which belongs to the jurisdiction of the national and not the State legislature. *Congress would undoubtedly have the power to exact from associations of that kind any guarantees it might deem necessary for the public security and for the faithful transaction of business; and, as it is within the province of Congress, it is to be presumed that Congress has done or will do all that is necessary and proper in that regard. Besides, it is not to be presumed that the State of its origin has neglected to require from any such corporation proper guarantees as to capital and other securities necessary for the public safety.*"

There could not be a clearer statement of the proposition that a requirement of sufficient capital and other securities is necessary in the proper regulation of the business of a carrier, and when this court states that Congress has the undoubted right to exact from such associations guarantees of that character, it would seem that the point made by counsel is fully answered. In that decision this court recognizes, to the same extent that the learned trial court did in this case, that interstate commerce cannot be properly carried on without the requisite capital, and unless the corporation engaged in such interstate commerce remains solvent and thereby efficient, so that the public can safely deal with such carrier, and can be assured that it has the financial ability to furnish and maintain sufficient facilities to perform its functions of common carrier.

But counsel argue (p. 70) that if there is a waste of the funds of the company through dealings with its directors, the national government is without power to compel restitu-

tion or to apply any other remedy, and therefore Congress or the Commission cannot inquire into such waste; that relief from such a state of things is judicial, at the instance of the stockholders, and cite the case of United States vs. Union Pacific Railroad Co., 98 U. S., 569. While Congress could not pass a law directing restitution, nor could the United States bring a suit in the name of the corporation for restitution, Congress has a clear right to inquire into such abuses for the purpose of legislating against a recurrence thereof, as we have shown by undoubted authority in our main brief.

The argument advanced by appellant would apply to an investigation by the State of Utah, where this corporation was created. The result of the counsel's position would be that because the State of Utah could not maintain a suit against Mr. Harriman to compel restitution, therefore, its legislature could not inquire into the abuses for the purpose of amending the charter to prevent a recurrence thereof. The predecessor of the present Union Pacific Railroad Company was a Federal corporation; Congress did inquire into such abuses; and the result of the report of its committee, finding that they existed, was the passage of a law by Congress making it a criminal offense for any director to be interested in any contract whatsoever with the corporation, save only as to his salary, as we have shown in our main brief.

The only point decided in the case of United States vs. Union Pacific Railroad Co., 98 U. S., 569, was that the United States could not maintain a suit against the directors to compel them to restore to the corporation funds unlawfully taken; that this right belonged to the corporation and was not vested in the United States as a creditor thereof.

But that is far from deciding that Congress cannot inquire into the abuses of officers, for the purpose of legislating against the recurrence of such frauds.

POINT TWO.

AS WE HAVE SHOWN IN OUR MAIN BRIEF, CONGRESS HAS THE UNDOUBTED POWER TO MAKE INQUIRY INTO ABUSES THAT EXIST IN CONNECTION WITH INTERSTATE COMMERCE OF THE CORPORATIONS ENGAGED THEREIN WITH A VIEW TO ENACTING LEGISLATION TO PREVENT RECURRENCES OF SUCH ABUSES.

Counsel for the appellant Harriman, while compelled to concede that Congress has power in certain cases to subpoena and compel the attendance of witnesses, either before one of the branches of Congress or a committee thereof, makes the broad claim (under Point Three, at p. 85, *et seq.*) that Congress has no power under the Constitution to compel testimony in aid of its legislative functions. Counsel cite no authority for this position except the argument of Senator Sumner in the case of Thaddeus Hyatt; and even Senator Sumner does not advance views so extreme as the statement of their position by counsel. In that case Thaddeus Hyatt had been subpoenaed for the purpose of obtaining information as a basis of legislation. Upon his refusal to answer questions, he was committed for contempt, and served two months. On a motion to discharge him, Senator Sumner submitted the argument quoted in the brief of counsel. The Senator argues that the power is undoubtedly convenient

but in his opinion it is not necessary. He apparently concedes, however, that if necessary, the Congress might execute it. It would seem that it is necessary for Congress to have information about abuses before it can intelligently legislate. Moreover it should be recalled that the Senate at that time (1859-1860) had many able lawyers. Most of them did not agree with Senator Sumner, because by a vote of 44 to 10, Hyatt was actually committed.

The suggestions made by Senator Sumner were offered at the time a motion was unanimously adopted discharging Hyatt. This was not done by reason of any doubt on the part of the Senate as to its right to enforce its orders against contumacious witnesses, but solely for the reason that Hyatt had remained in jail until the investigation had been concluded and the report of the committee submitted to the Senate. Thereupon, Senator Mason, Chairman of the Committee, moved that Hyatt be discharged. Two months previously, however, the question of the right of the Senate to send Mr. Hyatt to jail was debated and decided adversely to the views of Senator Sumner. The investigation in which Hyatt was subpoenaed related to the John Brown raid on the arsenal at Harper's Ferry, and the resolution appointing the committee to conduct the investigation directed it after ascertaining the facts to report what legislation was necessary for the preservation of the peace of the country and the safety of public property. Hyatt refused to obey a subpoena to testify before the committee conducting the investigation, upon the ground, as stated by him in writing, that it was "not within the range of the legislative branch of government as a power incident to legislation" to coerce

testimony. The debate will be found in the "Globe" of March 12, 1860, pages 1102, *et seq.*

Senator Fessenden of Maine, in the course of an argument in favor of the power of the Senate, said:

> "Having no doubt myself of the general power of the Senate as a legislative body to make the inquiry, I voted for the resolution, as did we all. Having voted for the resolution, I have voted also without hesitation for the measures which have been taken since with reference to the witnesses. I have done so having no doubt whatever of the power which has been spoken of."

At a further point in his remarks, after stating that the great purpose of the creation of the Senate was legislation, he proceeded:

> "Now, what do we propose to do here? We propose to legislate upon a given state of facts perhaps, or under a given necessity. Well, sir, proposing to legislate, we want information. We have it not ourselves. It is not to be presumed that we know everything, and if anybody does presume it, it is a very great mistake as we know by experience. We want information on certain subjects. How are we to get it? The Senator (Sumner) says, 'Ask for it.' I am ready to ask for it, but suppose the person whom we ask will not give it to us, what then? Have we not power to compel him to come before us? Is this power which has been exercised by parliaments and by all legislative bodies down to the present day without dispute—the power to inquire into subjects upon which they are disposed to legislate—lost to us?"

Senator Crittenden in the course of the debate said:

> "I say it is for the Senate to determine what inquiries into matters of fact are necessary to enable them to exercise most judiciously their powers of legislation. That is a proposition that can not, I think, be successfully disputed."

Senator Doolittle of Wisconsin made a strong argument as to the power and necessity of inquiries by committees to secure information upon which to base legislation.

An inspection of the vote by which the Senate held that it possessed this power shows that political considerations did not enter into their opinions, but that the matter was decided as a legal question pure and simple. To illustrate, Senator Trumbull of Illinois, and Senator Davis of Mississippi, voted with the majority, and Senator Toombs of Georgia was one of the small minority who voted with Senator Sumner.

For over a half century there has been upon the statute books a law, cited in our main brief (p. 97) which makes it a criminal offense to refuse to answer any pertinent question upon any matter under inquiry before a committee of Congress.

The Interstate Commerce Law was passed after a most elaborate investigation by a committee of the Senate. On March 16, 1885, a resolution was passed appointing a committee of five Senators to investigate interstate commerce, and empowering them to subpoena witnesses and to compel the production of papers and documents (Vol. 17, Cong. Record, p. 45). Pursuant to this resolution the committee made an investigation into the abuses by railroads en-

gaged in interstate commerce, showing rebates paid and discriminations in favor of certain shippers, and reported the Interstate Commerce Act (see Senate Report No. 46). Before this committee witnesses were subpoenaed, and particular cases of discrimination, and violation of the common law rights of shippers, were shown.

So far as the Interstate Commerce Commission is concerned, this court, in the Brimson case, settled the question of the right of the Commission to thus inquire, and this of necessity involved the right of Congress itself to make the same inquiry. The power of Congress, in making inquiries concerning subjects upon which it has the right to legislate, cannot be distinguished from the power of the State legislatures in cases committed to their jurisdiction, and the decisions of the State courts sustain this power to the full extent. In addition to People vs. Keeler, 99 N. Y., 463; People vs. Sharp, 107 N. Y., 427; Falvey & Kilbourn vs. Massing, 7 Wis., 630, and Burnham vs. Morrissey, 14 Gray, 226, cited in our main brief, we call attention to Hovey vs. Foster, 118 Ind., 508, and the very elaborate opinion of Mr. Justice Hoffman in Wickelhausen vs. Willett, 10 Abb. Prac., 164. The latter case involved the right of Congress to commit for contempt, in the case of the contumacy of a witness subpoenaed to appear before its committee; and in the opinion (at p. 174) the learned judge has the following to say about the case of Thaddeus Hyatt, in connection with which Senator Sumner submitted the observations quoted by counsel for appellants:

> "Since the argument in this cause, the Senate of the United States has, in the case of Thaddeus Hyatt,

claimed and insisted upon the right in question. He had been summoned to attend as a witness before a committee of the Senate. Upon his refusal to attend, the committee reported, and a warrant was by order issued, signed by the vice-president, directing the sergeant-at-arms to arrest him. Under this he was brought before the Senate, and his defense, consisting of an argument against the jurisdiction of that body, was read. He was remanded to the custody of the sergeant-at-arms, time being taken for consideration. On a subsequent day (March 12, 1860), the subject was discussed at length, and a resolution that he be committed until he should appear and submit to an examination, was adopted by a vote of 40 to 10."

In this same opinion Mr. Justice Hoffman, after reviewing at length the history of parliaments and legislatures and discussing their power to require witnesses to attend and give evidence before their committees, and citing authority in support thereof, says (pp. 173-74):

"Has the Constitution of the United States, or any other law, placed either branch of the Congress of the United States in a different position as a legislative assembly, and forbidden it the exercise of this ordinary power? * * * * * * * *

"In my opinion, the legality of the proceeding in question here may be rested upon principles which cannot be shaken. The government of the United States is supreme within its sphere of action. It is the government of the people, and emanated from them. Its powers were delegated by all, it acts for all, and it represents all. What is thus true of the aggregate is true of each component part of that government in its appropriate sphere. What is necessary to enable either

branch to fulfill its functions and discharge its duties is impliedly vested in that branch by the will of the people. 'What is necessary does not import an absolute physical necessity, so that one thing cannot exist without the other. It stands for any means calculated to attain the end, appropriate and plainly adapted to it, and not prohibited.'

"Now, the power of investigation through a committee is essential to wise legislation. The power to call for information from others flows from this necessity. Hence the old formula of authority to send for persons and papers. But to rob the process of such a committee of all compulsory effect, to reduce it to a request, to deny all means of enforcement and all power to punish for disobedience, would be to render inquiry often fruitless, to exclude sources of information, and to impair or defeat the objects of legislation.

"In my judgment neither branch of Congress has the right to disclaim the power I deem it to possess, and which in this instance the House of Representatives has exercised. It is a power clothed with a trust, and vested for the fulfillment of a trust. It is identical with, or manifestly important to the discharge of, that trust. It cannot be renounced without impairing the means of duly executing the office committed to the body, and therefore may not be relinquished without a breach of duty.

"The possession of the authority in question is vindicated by the ablest of our jurists and commentators. Chancellor Kent treats it as undeniable. (Com., Vol. 1, 236.) Justice Story reasons upon it with his usual fullness and force, and cites examples of its exercise. (Com., Vol. 2, 305, 317. See also Rawle on the Const., Ch. 4, p. 48.)"

It will be noted that the other cases cited from New York involved the right of the legislature to compel the attendance of witnesses upon investigations being conducted as a basis of future legislation, and in one case for the purpose of considering whether a constitutional amendment should be submitted to the people.

POINT THREE.

AN ANSWER TO THE QUESTIONS ASKED WOULD NOT DEPRIVE THE APPELLANTS OF THEIR LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW.

No claim is made that the commerce clause of the Constitution limits the right of a party to invoke the fifth amendment to the Constitution for the protection of his personal and property rights. What we do assert is this:

1. That the Brimson case settled that the Commission has a right to investigate for the purpose of recommending legislation; and that the statute requiring a suit to compel a witness to answer, in which suit the defendant may invoke his personal rights, is not only a case and controversy within the meaning of the judiciary act but is a proceeding in court and constitutes due process of law.

2. That, in order to constitute due process of law, it is not in the first instance necessary that there should be a proceeding in court, with pleadings and a definite issue formed; all that is essential is that at some time in the course of the proceedings the party shall have his day in court, where he may invoke the provisions of the Constitution for the protec-

tion of his liberty or make such other defense as he may have. The suggestion of counsel that there must be a judicial or quasi-judicial proceeding, with an issue formed, would nullify all of the provisions of the Interstate Commerce Act authorizing the Commission, of its own motion, to investigate any subject pertaining to interstate commerce. This same ground was urged in the case of Hale vs. Henkel as to the proceedings before the grand jury, and the question was there settled adversely to appellants' contention here.

POINT FOUR.

THE CLAIM URGED IN THE BRIEF FOR APPELLANT KAHN (at p. 35) THAT THE COMMISSION'S AUTHORITY TO INQUIRE INTO THE MANAGEMENT OF THE BUSINESS OF CARRIERS, IS AN AUTHORITY TO OBTAIN INFORMATION ONLY FROM THE CARRIERS THEMSELVES AND NOT FROM PRIVATE PERSONS, IS NEGATIVED BOTH BY THE EXPRESS LANGUAGE OF THE LAW AND BY THE RULING OF THIS COURT IN THE BRIMSON CASE.

Section 12 provides, among other things, as follows:

> "For the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses, and the production of all books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation."

And, to that end—

> "may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers and documents, under the provisions of this section.
>
> "And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, *or other person*, issue an order requiring such common carrier *or other person* to ap*pear* before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question."

It will be noticed that the act specifically states that *other persons than carriers* can be required to give testimony. And in the case of Interstate Commerce Commission vs. Brimson, 154 U. S., at p. 476, the court, in discussing the above provision of the law authorizing the Commission to summon witnesses, uses this language:

> "Upon every one, therefore, who owes allegiance to the United States, or who is within its jurisdiction, enjoying the protection that its government affords, rests an obligation to respect the national will as thus expressed in conformity with the Constitution. As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon *any one*, summoned by that body to appear and

> to testify, the duty of appearing and testifying, and upon *any one* required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused on some personal ground from doing what the Commission requires at his hands. These propositions seem to be so clear and indisputable that any attempt to sustain them by argument would be of no value in the discussion."

All through the briefs of appellants there are reiterated references to this proceeding as an attempt to pry into the private affairs of the witnesses. The court will see by the record that the private business of the parties was expressly excluded from the questions. Certainly the dealings between the chief managing officer of an interstate carrier and the corporation that he controls, can in no sense be deemed private business. The inquiries related solely to dealings between Mr. Harriman and the railroad company, or between Mr. Kahn as the agent of one or more of the directors and the railroad company. If, as we have shown, the testimony sought to be elicited was with reference to matters that the Commission ought to know, in order to properly execute its functions either of administering the law as it stands or recommending suitable additions or amendments thereto, then it is the duty of every citizen, as said in the Brimson case, to appear and testify.

POINT FIVE.

THE QUESTIONS ASKED OF MR. HARRIMAN IN RELATION TO THE OWNERSHIP OF SANTA FE STOCK BY DIRECTORS OF THE UNION PACIFIC DIRECTLY BORE UPON THE QUESTION OF COMMON CONTROL AND SUPPRESSION OF COMPETITION.

Appellants claim that Mr. Harriman did not refuse to answer the questions as to the ownership of Santa Fe stock by the directors of the Union Pacific. We refer the court to the testimony of Mr. Harriman, pp. 1076 to 1078, inclusive, wherein it appears that he did refuse to so testify. Mr. Ripley, president of the Santa Fe, had testified that Harriman had arranged with him to have certain Union Pacific directors on the Santa Fe board, in view of the purchase by him and his associates of something like twenty-five or thirty million dollars of stock in that company. When Mr. Harriman was asked about it, he explained the reason for the demand for directors as follows:

> "To establish a better relationship between all the railroads, in the line that we should deal more frankly with each other, more publicly and more frankly, and not operate our lines for the purpose of destroying each other, but for the purpose of helping each other, and for developing the territory served by each, and to that extent I even went so far with Mr. Morawetz as to tell him that as far as the Southern Pacific was concerned, I would be willing to even put him on the executive committee of the Southern Pacific so that he might know what our intentions were, if he chose to."

Mr. Harriman was then asked the following questions:

"Mr. Kellogg: Was that stock acquired by you and Mr. Frick and Mr. Rogers before Mr. Rogers and Mr. Frick were elected to the board?

"Mr. Harriman: Oh, yes, a long time before.

"Mr. Kellogg: And that stock amounted to over $30,000,000, as Mr. Ripley stated, about one-seventh of the capital stock?

"Mr. Harriman: Did Mr. Ripley state that?

"Mr. Kellogg: That is my recollection.

"Mr. Harriman: I don't know how he knew, I don't know that I ever told him.

"Mr. Severance: He said he looked you up.

"Mr. Harriman: It was only an estimate on his books.

"Mr. Lovett: I think Mr. Ripley testified that he did not know how much, but he assumed it was $25,000,000 to $30,000,000.

"Mr. Harriman: Suppose he did; that does not bear on this question.

"Mr. Kellogg: Well, had these parties acquired from $25,000,000 to $30,000,000?

"Mr. Harriman: I don't know that you can inquire into that.

"Mr. Kellogg: Since that time and until June 10, 1906, the Union Pacific itself as a company, or the Short Line, has acquired $10,000,000 of this stock?

"Mr. Harriman: That was an investment pure and simple in the preferred stock.

"Mr. Kellogg: Was that a part of the stock which had been previously acquired by you, Mr. Rogers and Mr. Frick?

"Mr. Harriman: I think not—

"Mr. Milburn: No—

"Mr. Kellogg: Well, do you know it was not?

"Mr. Harriman: Well, I received a shock; I don't think I can answer.

"Mr. Kellogg: I suggest you gentlemen let Mr. Harriman go ahead, and he will clean this whole thing up. Do you know that it was not, Mr. Harriman?

"Mr. Milburn: Mr. Harriman, I am going to draw, as far as you will allow me, the lines I drew yesterday. I think this question is within the objections I made at that time, and I would like the same proceedings taken in reference to this question as were taken to the other.

"Mr. Severance: Do you want to withdraw the answer?

"Mr. Milburn: We will let stay what is in, but I do not think it is proper to pursue it further.

"Mr. Kellogg: Of whom did the Union Pacific buy that $10,000,000 of stock?

"Mr. Harriman: Kuhn, Loeb & Co.

"Mr. Kellogg: Was it or any part of it at that time owned by any of you three gentlemen?

"Mr. Milburn: That I object to.

"The Chairman: You object to his answering the question on the same grounds as stated to the similar question asked yesterday?

"Mr. Milburn: Yes, and could we have the record contain the same proceedings, without going over it?

"The Chairman: The objection is overruled and the witness is directed to answer.

"Mr. Milburn: Yes, and the witness declines to answer on the grounds assigned to a similar question, yesterday, as repeating what is on the record.

"The Chairman: Precisely.

"Mr. Milburn: That is understood.

"Mr. Kellogg: Is that your position, Mr. Harriman?

"Mr. Harriman: Absolutely."

The Commission had a right to know whether the Union Pacific Railroad Company, by direct stock ownership, or stock ownership through its directors, was controlling or having an influential voice in the management of the Santa Fe and suppressing competition between these lines. It appears by the evidence in the record that even on the surface there is little if any competition. Is it possible that the Commission cannot find out how much Santa Fe stock the Union Pacific directors own? To ascertain this important fact Mr. Harriman was asked whether the $10,000,000 was a part of the $25,000,000 or $30,000,000 theretofore owned, and he declined to answer. Counsel now say the question was not pressed. This was not one of the first refusals, but occurred after Mr. Harriman had refused to answer many questions, and as we have shown by the quotation from the record Mr. Milburn included this matter in his general objections, which appear at pages 1089 to 1091 of the Record.

A suit is now pending in which the United States is complainant, involving among other things the right of the Union Pacific to own this stock in the Santa Fe.

POINT SIX.

THE QUESTIONS ASKED HAVE DIRECT RELATION TO THE REASONABLENESS OF THE RATES OF THE UNION PACIFIC.

The counsel for appellant Harriman in their brief (p. 54) argue that the questions asked of Mr. Harriman as to the ownership of stock sold by him to the Union Pacific Company bore no relation whatever to the reasonableness of rates,

and cite extreme cases, and suggest that what property cost the vendor can never be a material inquiry with respect to rates. For instance, the counsel say:

> "Because rolling stock, steel rails and supplies are property used in the business of transportation, would that justify an inquiry into their cost to the manufacturer to show his profits, and that on the basis of his profits their cost to the company was excessive?"

For the purposes of this argument we may concede that it would not be material. But, suppose the manufacturer was the president, the chairman of the board, a director, and the controlling power of the railroad, would not testimony tending to show that he had made enormous profits by dealing with his company while occupying these fiduciary relations, have a direct bearing upon the cost and value of the carrier's property? It comes squarely within the rule laid down by Mr. Justice Brewer in Reagan vs. Farmers Loan & Trust Co., 154 U. S., 362:

> "There may be circumstances which would justify such a tariff. There may have been extravagance and needless expenditure of money. There may be waste in the management of the road, enormous salaries, unjust discrimination as between individual shippers, resulting in general loss."

Cannot the Commission show that the railroad company paid Mr. Harriman an unreasonable and absurd salary, or that it paid him an unreasonable price for property which forms a part of the assets of the company and for which the railroad is mortgaged? Is that not a "waste in the manage-

ment of the road?" Suppose, as we have suggested in our main brief, Mr. Harriman instead of buying the St. Joseph & Grand Island stock, had acquired the railroad for the purpose of turning it over to the Union Pacific, and had sold it to that company for several times its cost, would the Commission be bound by the price he had so charged? Or, in determining the value, could it not, as a part of its investigation, ask Mr. Harriman if he had not owned the property, and if it did not cost him far less than the sale price? An officer, dealing with his corporation, is not entitled in a court of equity, to urge the arguments about the sanctity of the private affairs of the citizen that are advanced to support the claim of the appellants in this case.

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CORDENIO A. SEVERANCE,
Counsel for Interstate Commerce Commission.

Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 316.

OTTO H. KAHN,
Appellant,

vs.

THE INTERSTATE COMMERCE COMMISSION,
Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF APPELLANT.

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Supreme Court of the United States.

OCTOBER TERM, 1908.

No. 316.

OTTO H. KAHN, APPELLANT,

vs.

THE INTERSTATE COMMERCE COMMISSION,
APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF APPELLANT.

Statement.

This is an appeal from a final order directing appellant, Otto H. Kahn, to appear before the Interstate Commerce Commission (hereinafter called the Commission), and answer certain questions of the Commission inquiring into the private affairs of the firm of Kuhn, Loeb & Co., private bankers, of which firm Mr. Kahn was, and is, a member.

1. THE STATUS OF KUHN, LOEB & CO. AND THEIR BUSINESS TRANSACTIONS AFFECTED BY THE QUESTIONS ASKED.

The firm of Kuhn, Loeb & Company is a partnership. Its members at the time of the Commission's inquiry, were Jacob H. Schiff, Felix M. Warburg, Paul M. Warburg, Mortimer L. Schiff, Louis A. Heinsheimer and Otto H. Kahn (Transcript,

p. 26). For many years the firm has been engaged in the private banking business in the City of New York, and as part of such business has bought and sold railroad and other stocks on its own account and also for numerous clients and customers (Transcript, p. 46).

Kuhn, Loeb & Co. by public advertisement in December, 1903, invited deposits with them of the preferred stock of the Chicago & Alton Railway Company (hereinafter called the Chicago & Alton), under an agreement authorizing them to sell the stock so deposited. All holders of the preferred stock were given the privilege of joining on equal terms in the deposit and sale (See Transcript, p. 1380, for copy of deposit agreement).

About $10,000,000 par value of such stock, or a little over half the amount outstanding in the hands of the public, was deposited accordingly with Kuhn, Loeb & Co., and in September, 1904, ten months after the original publication inviting deposits was sold by them on behalf of the depositors to the Union Pacific (Transcript, p. 1191). Nearly fifty per cent. of the holders of Chicago & Alton preferred stock chose to hold their stock instead of so disposing of it (Transcript, p. 1051).

At the time of such sale, Mr. Schiff and Mr. Kahn were members of the Board of Directors of the Union Pacific, and Mr. Kahn was a member of the Executive Committee of the Board of Directors (Transcript, pp. 1161, 1162, 1196). Both Mr. Schiff and Mr. Kahn, on the ground of their personal interest, which was fully disclosed and entered on the record, declined to vote as directors of the Union Pacific with reference to the purchase, but each of them acted in the matter solely as a member of the firm of Kuhn, Loeb & Company (Transcript, p. 1161). No other member of Kuhn, Loeb & Company had any official relation as director, or otherwise, to the Union Pacific and the firm itself had no official relation to the Union Pacific.

In the summer of 1906, Kuhn, Loeb & Co. sold to the Union Pacific 105,000 shares of stock of the Illinois Central Railroad Co. (hereinafter called the Illinois Central), which stock, it was represented, Kuhn, Loeb & Co. held or controlled (Transcript, pp. 118-120, 1209, 1210).

At that time Mr. Schiff and Mr. Kahn had resigned from the positions, above referred to, on the Board of Directors and Executive Committee of the Union Pacific, and no member of

Kuhn, Loeb & Co. sustained any official relation to the Union Pacific, and the firm itself had no official relation to the Union Pacific (Transcript, pp. 1161, 1162, 1212).

References occur in the record to Kuhn, Loeb & Co. as the bankers or fiscal agents of the Union Pacific, but the record shows, without contradiction, that this characterization means only that the Union Pacific bought and sold securities through Kuhn, Loeb & Co., provided they offered satisfactory terms; and that, while (in accordance with the usual practice in the case of a large railroad company, to have its principal dealings with one particular banker), a large percentage of the securities bought and sold by the Union Pacific was bought and sold through Kuhn, Loeb & Co., they never sustained any official relationship as bankers or fiscal agents to the Union Pacific, but that each transaction wherein the firm acted as such banker or fiscal agent was the result of a separate and independent arrangement for that occasion only (Transcript, p. 47).

With respect to these sales of Chicago and Alton stock and Illinois Central stock, the firm of Kuhn, Loeb & Co., and all of its members, occupied towards the purchasing railroad company the same character of relation that would have been occupied by any individual making, in the course of his private business, a sale of stock to any railroad company.

2. THE ACTION OF THE COMMISSION AND THE QUESTIONS ASKED.

On November 15, 1906, the Commission adopted the following order:

> "Whereas the act to regulate commerce provides that the Commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and also requires the Commission 'to execute and enforce the provisions' of this act;
>
> "And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such

carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practices or methods result in violations of said act or tend to defeat its purposes;

"It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby instituted, and that the same be set for hearing at United States Court rooms in the city of New York, N. Y., on the 28th day of December, 1906, at 11 o'clock A. M., the further hearing to be continued at such times and places as may be required" (Transcript, p. 2).

No order was ever adopted by the Commission designating the carriers whose business was to be so investigated by the Commission, but on January 4, 1907, the Commission began a hearing which the Chairman of the Commission indicated was in pursuance of the order above quoted and was for the purpose of investigating the relations between the Union Pacific and the Southern Pacific and other systems of railroads (Transcript, p. 51).

No statement of charges had been filed with, or formulated by, the Commission setting forth that either the Union Pacific or any other carrier had done or omitted anything in contravention of the act to regulate commerce and no carrier had been called upon to answer any such statement of charges. Acting solely under the general order of November 15, 1906, which was avowedly based upon the Commission's general administrative authority to inquire into the management of the business of all common carriers subject to the act to regulate commerce, the Commission held a large number of sessions and inquired into the relations existing between the Union Pacific and Southern Pacific and other carriers and into the effect of such relationships upon the practices, methods, rates and facilities of such carriers.

In the course of this investigation it appeared from information furnished to the Commission that the Union Pacific had purchased from Kuhn, Loeb & Co., and at the time of the investigation held, the Chicago and Alton preferred stock,

above referred to, and the 105,000 shares of Illinois Central stock, above referred to, and, in addition, had purchased from three of its directors—E. H. Harriman, H. H. Rogers and James Stillman—90,000 shares (30,000 from each) of Illinois Central stock, such directors fully disclosing their interest and declining on that ground to act for the Union Pacific in deciding upon the purchase of such stock or its price. The facts as to the purchases, the dates of purchase and the prices paid by the Union Pacific were fully disclosed (Transcript, pp. 118-120, 1088, 1191, 1193, 1205, 1207).

Mr. Kahn testified before the Commission as to various facts bearing upon the relation between the Union Pacific and the Southern Pacific and other carriers (See Transcript, pp. 1155-1232). In the course of Mr. Kahn's testimony it appeared that there was in the banking house of Kuhn, Loeb & Co. a paper containing a list of the persons and firms who had accepted the invitation of Kuhn, Loeb & Company and had deposited with them the Chicago and Alton preferred stock which Kuhn, Loeb & Co. thereafter sold to the Union Pacific, and Mr. Kahn was thereupon asked in behalf of the Commission the following questions:

> "Now, will you state whether any of the directors of the Union Pacific Railway Company were the real owners of the shares so deposited with you and sold to the Union Pacific Railroad Company?"
>
> "The question I asked you was whether any of your fellow directors were owners of any of that stock?" (Transcript, pp. 1195, 1196).

These questions Mr. Kahn declined to answer.

In the course of Mr. Kahn's examination before the Commission, Mr. Kahn was asked the following questions relating to the Illinois Central stock above referred to:

> "Then I will ask you the direct question, Mr. Kahn: Of the 105,000 shares of stock which you sold—of Illinois Central stock which you sold on the 9th of August, 1906, to the Union Pacific Railroad Company, and for which you were paid $175 a share—will you please state how much, if any, of that stock, was held by you in the interest of or for the benefit of any or all of the directors of the Union Pacific Railroad Company?" (Transcript, p. 1206).

"You decline to state in whose interest you held that stock, or who owned the stock which you offered to sell?" (Transcript, p. 1207).

"And you decline to state whether that 105,000 shares of stock, or any part of that stock which you sold to the Union Pacific for $175 a share, really, equitably belonged to or was held by you for any person or any number of persons who were at any time directors of the Union Pacific Railroad Company." (Transcript, p. 1207.)

"Did you also buy, at the same time, for Messrs. Harriman, Rogers and Stillman, the stocks they sold at the same time you sold yours?" (Transcript, p. 1213.)

"Was this 105,000 shares of Illinois Central stock, and the 90,000 shares turned in by Stillman, Rogers and Harriman, all of it bought through your instrumentality for a pool of which these gentlemen and yourself were members, that were operating in Illinois Central stocks during the period of several months, at least, prior to July, 1906?" (Transcript, p. 1213.)

These questions Mr. Kahn declined to answer.

3. THE PROCEEDINGS IN COURT AND THE ASSIGNMENTS OF ERROR.

On August 10, 1907, the Commission filed in the court below a petition (Transcript, p. 1) against E. H. Harriman and Mr. Kahn, respondents, praying that Mr. Harriman be required to answer various questions which he had declined to answer, and that Mr. Kahn be required to answer the questions quoted above. No joint relief against respondents was sought, and the proceeding, as far as Mr. Kahn is concerned, relates exclusively to the above quoted questions.

To this petition Mr. Kahn filed a separate response (Transcript, p. 45) denying the Commission's authority to ask the questions which he declined to answer.

On January 15, 1908, the court below delivered an opinion (Transcript, p. 1434) deciding that the Commission had authority to ask the questions which Mr. Kahn declined to answer, and that Mr. Kahn should answer them. On February 13, 1908, the court below made a final order (Transcript, p. 1444) directing Mr. Kahn to appear before the Commission and make answer to the questions above quoted. From this order Mr. Kahn has prosecuted this appeal. The

order allowing the appeal will be found on page 1457 of the Transcript and the assignment of errors will be found on page 1458 of the Transcript.

The effect of the judgment of the lower court is that in the purely administrative proceeding above described the Commission has the statutory authority to compel a public disclosure of the business of Kuhn, Loeb & Company respecting the details involved in the questions above quoted.

The Assignments of Error on behalf of appellant consist of a separate assignment with respect to each of the questions above quoted that "the court erred in ordering and directing this respondent to answer the question," and, in addition, of a general assignment that "the court erred in granting the petition of the Commission and in ordering and directing the said Otto H. Kahn to answer each and every of the questions which he is in and by said order or decree directed to answer."

The inquiry thus presented to this court is whether in the administrative proceeding above referred to the Commission is authorized by the act to regulate commerce to compel the disclosures of Kuhn, Loeb & Company's business affairs in the respects required by the questions above quoted.

ARGUMENT.

I.

The statutory provisions involved and their construction up to this time by this court.

The first three paragraphs of section 12 of the act to regulate commerce are as follows:

> "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.
>
> "Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.
>
> "And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried

on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question ; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying ; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding."

The remaining paragraphs of section 12 deal with the taking of testimony by deposition and need not be quoted.

Section 13 of the Act to regulate commerce is as follows :

" That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts ; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

" Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

> "No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

The powers of the Commission under these sections first came before this court in Interstate Commerce Commission vs. Brimson, 154 U. S., 447.

In that case it appeared that, in accordance with section 13 of the act, the Commission, on its own motion, had instituted a formal inquiry to ascertain whether the Illinois Steel Company by certain devices had secured an undue preference in rates for transportation of interstate freight *in violation of the act*; statement of the charges had been forwarded to the carriers involved; they had answered in writing; and a hearing upon the issues thus formed was being conducted by the Commission. Witnesses refused to answer questions relevant to these issues, and the Commission instituted a proceeding in court in pursuance of section 12 of the act to compel them to answer. Defense was made on the ground that the statute requiring the courts to aid the Commission in obtaining testimony was unconstitutional, because constituting the courts a mere ancillary agency to an administrative board and, therefore, imposing on them a non-judicial function.

This court held that by the act to regulate commerce Congress had constitutionally prescribed rules to prevent unreasonable charges and unjust discriminations in interstate transportation, and, for the purpose of enforcing those rules, had conferred upon the Commission its power of investigation; that it was a judicial function for the courts to compel answers to the Commission's inquiries within the scope of its power, because the statute created a duty upon the part of the witness to answer the questions, and such a duty was capable of judicial enforcement when the question was presented to the court in a proceeding where distinct issues could be formed with respect to such duty, for then there would be before the court a "case" within the meaning of the constitution, wherein the court could determine whether the investigation was within the scope of the Commission's power, and whether the questions asked were pertinent to the investigation.

The statutory power of the Commission to ask the questions was clear, and the only question considered by this court

was as to the constitutional power of the court to aid the Commission to obtain answers to the questions.

The next and only other time the powers of the Commission under sections 12 and 13 came before this court was in the case of Interstate Commerce Commission vs. Baird, 194 U. S., 25.

In that case it appeared that, in accordance with section 13, W. R. Hearst had filed with the Commission a complaint against various railway companies, claiming that their rates on anthracite coal were unreasonable and unduly prejudicial and were in violation of sections 1 and 3 of the act to regulate commerce; statement of the charges had been forwarded to the carriers who were made respondents; they had answered the same in writing; and a hearing upon the issues thus formed was being conducted by the Commission. In this inquiry witnesses refused to produce certain contracts and answer certain questions, and the Commission instituted a proceeding in court under section 12 to compel answers to the questions and production of the contracts. Defense was made on the grounds that the Commission had no right to investigate because Hearst, the complainant, had no interest; the information sought did not relate to any issue which the Commission had the right to investigate; and the contracts related to the private business of persons not parties to the proceeding before the Commission.

This court held that the Commission had the right to investigate the issues formed, even if complainant had no interest; that the information sought was relevant to the subject matter of the complaint; and that it is not a valid objection to the admission of testimony, otherwise relevant and competent, that a third person is interested in it. The court declined to consider the Commission's contention that the questions were within its general powers under section 12, saying:

> "But, in the present case, whatever may be the right of the Commission to carry on an investigation under the general powers conferred in section 12, this proceeding was under the complaint filed, and we will examine the testimony offered with a view to its competency under the allegations made by the complainant" (pp. 40, 41).

Therefore, the most that can be said to have been established by this court in the only two cases on this subject before it is:

First, that the provisions of section 12, requiring the courts to aid the Commission in obtaining testimony are constitutional;

Second, that in a formal proceeding, *under and in strict accordance with section 13 of the act*, to inquire whether carriers subject to the act *have violated the act in specified particulars*, witnesses may be compelled to answer questions *relevant to that inquiry*, and may be so compelled to answer such relevant questions, even though the answers would relate to the private business of the witnesses.

In the case at bar, the proceeding was not under Section 13, but rests entirely upon the general powers of the Commission under Section 12, which powers have never been examined by this court, and the questions do not relate to specified violations, or to any violations, of the act to regulate commerce. The court is, therefore, called upon in this case to consider important and novel questions of statutory construction.

The scope and limits of the Commission's power of compelling the production of evidence are the same as when the act to regulate commerce was passed in 1887, and have not been enlarged or modified by any of the numerous amendments to that act. It will be found convenient in the course of the argument to refer to some sections of the act in their original form. Therefore, in Appendix I. we set out sections 12, 13, 14, 15, 16, 20 and 21 of the act to regulate commerce in the form in which they were adopted in 1887.

Before presenting in detail our argument respecting the construction of the statutory grant of investigating power to the Commission, it is important to emphasize the true character and effect of the proposed inquiry into Kuhn, Loeb & Co.'s business.

II.

The Commission's authority, if it exists, to compel answers to these questions must rest on a basis broad enough to authorize, in a purely administrative inquiry, disclosure of any private detail of any private business, whenever tending to raise presumptions or suspicions as to the value or desirability of securities owned by a carrier subject to the act.

1. THE RIGHT TO ASK QUESTIONS AS TO CONDUCT OF DIRECTORS RESTS ON NO SPECIAL AUTHORITY, BUT SOLELY ON SUCH AUTHORITY AS THE STATUTE GIVES TO MAKE ANY INQUIRY CALCULATED TO DEVELOP A PRESUMPTION OR SUSPICION AS TO THE VALUE OF ANY PROPERTY OF THE CORPORATION.

The fact that the questions asked of Mr. Kahn (or rather part of those questions) relate only to an inquiry whether directors of the Union Pacific were interested in certain transactions as customers of, or participants with, Kuhn, Loeb & Company, does not distinguish the questions from any other inquiries into the private affairs of that firm.

The act to regulate commerce does not regulate the relations between the railroad company and its directors, and the Commission has no jurisdiction over such relations. The fact that a director of a carrier subject to the act bought of, or sold to, the carrier cannot legitimately be the ultimate object of any inquiry the Commission may make. Such conduct *per se* is as completely beyond the scope of the act to regulate commerce, as would be the conduct of the trustee of a railway mortgage, or the conduct of an organization of railway trainmen.

Such an inquiry into the conduct of directors of a carrier subject to the act, if legitimate at all, must be legitimate solely because the fact inquired about has a tendency to prove some other fact with respect to which the Commission has a statutory authority to inquire. In the present case all the reasons for asking these questions of Mr. Kahn reduce them-

selves to the ultimate contention that answers to those questions would throw light upon the value or desirability to the Union Pacific of the shares of Chicago and Alton and Illinois Central stock, to which the questions relate. The Commission's counsel in their brief say that the inquiry was to ascertain whether these investments were prudent and made at a fair price (page 14) and to assist in ascertaining the real value of the stock (page 17).

The Commission claims that if it should be disclosed that directors of the Union Pacific were engaged in a pool in the stock market for the purpose of raising the market price of the shares in question, such conduct would throw light upon the real value of those shares. To precisely the same extent would the conduct of any other individuals engaged in a pool in the stock market with respect to such shares illuminate the value of those shares. Hence there can be no greater right to inquire of Kuhn, Loeb & Company respecting an alleged pool participated in by directors of the Union Pacific than there is to inquire of any private banker or broker with respect to any alleged pool participated in by anybody.

The Commission also claims that sales of securities by directors to the corporation might create a motive to cause the corporation to buy the securities at an over-valuation or when undesirable as an investment, and hence that such motive would raise a presumption, or rather a suspicion, of over-valuation or undesirability. But such reasoning justifies inquiries into a private business respecting the interest of directors in such sales only to the same extent that it justifies all other questions into private affairs answers to which would raise some equally plausible presumption or suspicion as to over-valuation or undesirability of things purchased.

For example, if the Commission be engaged in estimating the present value of the rolling stock of the railroad company, the Commission, after ascertaining the cost of the rolling stock, would have an equal right to inquire into any conditions of the business of the vendors of the rolling stock tending to show the real value of the property, such as the profit the vendor made, or the existence of a combination in restraint of competition between the vendor and other vendors of rolling stock.

2. THE QUESTIONS AS TO CONDUCT OF DIRECTORS INVOLVE PRECISELY THE SAME QUALITY OF INVASION OF THE PRIVATE AFFAIRS OF KUHN, LOEB & COMPANY AS WOULD BE INVOLVED IN AN INQUIRY INTO ANY OTHER DETAILS OF THEIR PRIVATE BUSINESS; AND MIGHT NECESSITATE DISCLOSURE OF OTHER DETAILS OF THEIR BUSINESS.

The questions relate to the details of the business of Kuhn, Loeb & Company. They were called upon, as to the Chicago and Alton transaction, to say whether certain persons were their customers, and, as to the Illinois Central transaction, to say whether they acted only for themselves, or wholly, or in part, for certain other persons. The information sought was just as much a part of the private affairs of Kuhn, Loeb & Company as any other detail of their business would have been.

It is an important right of the individual engaged in a strictly private business to keep to himself (unless legally compelled to disclose) the character of his transactions, whether solely for his own account, or partly, or wholly, for undisclosed principals or participants, and also to keep to himself the names of his customers. This right is just as important to the private business, when the inquiry applies to directors of interstate railroad companies as possible participants or customers, as when the inquiry applies to other individuals

Moreover, the Commission, if it has the power to probe a private business for information concerning railroad directors, is not limited to mere formal questions asking only about those directors, but has the power to select its own method of satisfying itself that the information it obtains is complete and accurate. Instead of asking merely if the directors have participated in the transactions in question, the Commission would have the right to compel the production of a list of the participants for its inspection. The best evidence may be a writing which shows the transaction fully, not only as to directors of a railroad company, but as to all participants, and if the Commission has the power at all, the power must extend to the inspection of such a writing, regardless of the fact that such inspection might make public the affairs of customers who are not directors of railroad companies. Moreover, the Commission would have an equal

right to ascertain all the participants, and to investigate the facts as to those participants who are not directors of the railroad company, in order to ascertain whether the nominal participants in turn represent such directors.

As to the Chicago and Alton transaction the preliminary questions related specifically to the possession by Kuhn, Loeb & Company of a list showing the names of all depositors, and if the Commission has any power in the premises, it has the power to insist upon the production of that list. Whether the Commission should do so, or not, would depend upon its consideration or courtesy, and not upon any limitation of its power.

The questions as to the Illinois Central stock specifically inquired as to participation in a pool not only by directors of the Union Pacific, *but by Kuhn, Loeb & Company themselves.*

The Commission's counsel assume that the whole question of privacy is disposed of by the following quotation from *In Re Chapman*, 166 U. S., 661, 668:

> "The subject matter, as affecting the Senate, was within the jurisdiction of the Senate. The questions were not intrusions into the affairs of the citizen; they did not seek to ascertain any facts as to the conduct, methods, extent or details of the business of the firm in question, but only whether that firm confessedly engaged in buying and selling stocks, and the particular stock named, was employed by any Senator to buy or sell for him any of that stock whose market price might be affected by the Senate's action. We cannot regard these questions as amounting to an unreasonable search into the private affairs of the witness simply because he may have been in some degree connected with the alleged transactions, and as investigations of this sort are within the power of either of the two Houses they cannot be defeated on purely sentimental grounds."

This assumption of counsel begs the question. In the Chapman case the court, holding that the Senate had the right to conduct the inquiry (in order to vindicate itself from aspersion and to deal with guilty members of the Senate) and the right to obtain from every source information pertaining to such inquiry, proceeded to show that the questions did not go beyond what was appropriate to the inquiry, and, therefore, were not "intrusions" or "an unreasonable search" into

the private affairs of the witness. We are now considering whether the Commission has the power to conduct the present inquiry to the extent of compelling answers to these questions into Kuhn, Loeb & Company's affairs. No light is thrown upon this subject by showing that if the Commission had the power to prosecute such an inquiry into all sources of information, the questions would not be "an unreasonable search" into private affairs. We must first find whether the Commission has such a power, and to do so, we must face the situation as it is, and realize that the inquiry is into strictly private affairs, and not merely an inquiry into the business of a common carrier.

3. NEITHER MR. KAHN, NOR KUHN, LOEB & CO. OCCUPIED ANY RELATION TO THE UNION PACIFIC TO DISTINGUISH THEIR CASE FROM THAT OF ANY OTHER BUSINESS MAN ENGAGED IN A STRICTLY PRIVATE BUSINESS.

Although at the time of the Union Pacific's purchase of the Chicago and Alton stock, Mr. Kahn was a director of the Union Pacific, yet with respect to that transaction he did not act for the Union Pacific. He acted only as a member of, and on behalf of, Kuhn, Loeb & Co., and he declined to vote or take any other action with respect to such transaction as a director of the Union Pacific. The situation was the same as to Mr. Schiff, the only other member of the firm of Kuhn, Loeb & Co. who was a director of the Union Pacific.

Where a man engaged in a private business becomes a director of a railroad company, he does not give up his character as a private business man, and if the railroad company elects to deal with him in his private business capacity, especially with a full understanding of his relation to the transaction, and in that transaction he represents himself and not the railroad company, there can be no basis for claiming that his general relation to the railroad company as a director lays bare his private business affairs to a tribunal having administrative supervision over the railroad company.

A fortiori is it true that the mere personal relationship sustained to the Union Pacific by two of the members of the partnership, could not impress any official relations or legal

obligations upon the partnership itself. The questions asked Mr. Kahn did not relate to his individual private business, but to the private business of Kuhn, Loeb & Co. The affairs of that partnership cannot be subject to disclosure by an administrative board having supervision over railroad companies, simply because one or two out of a large number of members of the partnership are directors of a railroad company.

At the time of the sale of the Illinois Central stock no member of the firm occupied any official relation as director, or otherwise, to the Union Pacific. The firm itself never had any official relation to the Union Pacific. From time to time it transacted business for the Union Pacific, but each time was the result of a separate arrangement for that occasion only. The legal status of such relationship cannot be affected by the fact that there was a considerable number of different business transactions. Kuhn, Loeb & Co. occupied toward the Union Pacific the same relation that any other private banker, or any other business man, would have occupied who had sold to the Union Pacific, on a single occasion, a security or a commodity.

It is not believed that any legal principle can be formulated which would justify these inquiries into the business of Kuhn, Loeb & Co., and, at the same time, would deny authority for similar inquiries into the business of any banker or other business man who had never sustained any official relation, or even a casual prior business relation, to the railroad company, the vendee of the property to which the inquiries might relate. If the Commission has the power to make public in this proceeding the private business matters of this private firm, then it must have an equal power with respect to every strictly private business in the country.

4. THIS INQUIRY WAS PURELY ADMINISTRATIVE AND NOT AN EXERCISE OF THE COMMISSION'S QUASI-JUDICIAL FUNCTION.

The act to regulate commerce confers upon the Commission two very different functions—one, the administrative function of supervising the activities of carriers subject to the act, and the other, the quasi-judicial function of hearing and determining complaints under section 13 alleging violations of the act. The Commission's action involved here was not taken

in the discharge of this quasi-judicial function, but in the course of its general administrative supervision over carriers themselves. The proceeding, therefore, raises the important question as to how far the Commission may project into strictly private affairs its general administrative power of supervising the carriers themselves, which are quasi-public institutions and appropriate objects of mere administrative scrutiny. This is all the more important, because by the Hepburn Act of June 29, 1906, the following provision was placed in section 20 of the act:

> "And to carry out and give effect to the provisions of said acts, or any of them, the Commission is hereby authorized to employ special agents or examiners, who shall have power to administer oaths, examine witnesses, and receive evidence."

5. Substantial Importance of the Principles Involved on this Appeal.

The question of authority here presented is one of great importance to every business man. A large percentage of the private commercial and industrial enterprises in the country have some relation to, and some dealings with, railroad companies and come as much within the scope of the Commission's administrative authority as do private banking houses. Practically every private business in the country has some relation to, and some dealings with, some character of business which has been, or may be, subjected to Federal control and to the investigating process of some administrative tribunal. In its broadest aspect the question here presented is one of far-reaching importance.

From the immediate standpoint of Kuhn, Loeb & Co. the question is important, not merely to preserve the privacy of their own concerns, but to protect the confidence of their customers, and not merely such customers, if any, as happen to be directors of railroad companies, but all customers, for the logical results of the Commission's claims might lead, either directly or incidentally, to publicity as to the affairs of any or all customers, whether sustaining any relation to railroad companies or not.

That Mr. Kahn's refusal to answer the questions was not prompted by any spirit of captious opposition to the Commission is shown by the fact that he answered without objection all the Commission's questions which related alone to Kuhn, Loeb & Company's affairs and gave the Commission all the aid which he could give without opening up the question of Kuhn, Loeb & Company's relations with their customers.

In Interstate Commerce Commission vs. Brimson, 154 U. S., 447, this court indicated that when the courts are called upon to aid the Commission in compelling the production of testimony, it is incumbent upon the courts to determine the questions whether the proceeding of the Commission is legal and whether any duty rests upon the witnesses to answer. Mr. Kahn, by refusing to answer the questions, has made it possible to bring the matter into court in the only manner prescribed by statute, and he submits these questions to the court for decision for the protection of a principle vital to every business man.

The briefs upon Mr. Harriman's appeal coming up on the same record discuss fully the proposition that Congress has no power under the Constitution to ask or authorize questions into the relations between a railroad company and its directors. This brief is devoted to the proposition that Congress has not authorized the Commission to ask the questions involved on this appeal because the act to regulate commerce, to which alone we must look for the Commission's powers, contains no grant of investigating power which would justify these questions.

III.

The questions asked Mr. Kahn are not material to any inquiry as to compliance with the act to regulate commerce.

We discuss below (page 80) the proposition that a citizen cannot be interrogated by the Commission about private affairs except in a proceeding under section 13 of the act, and show that there is a well defined distinction between the Com-

mission's quasi-judicial function of determining in a formal proceeding under section 13 whether the act has been violated in a specified particular and the Commission's purely administrative function of scrutinizing the business affairs of the carriers themselves and supervising their activities.

For the present we wish to point out that the Commission has no authority to ask the questions involved on this appeal, even if we assume that the Commission has as broad powers of investigation into private affairs when acting in its capacity of administrative supervisor of the carriers as it has when acting in its quasi-judicial capacity. We therefore proceed to discuss the theories upon which the Commission seeks to justify these questions, and, first, the Commission's theory that it is Mr. Kahn's duty to answer these questions because they relate to an inquiry which the Commission was conducting to ascertain whether the act to regulate commerce was being obeyed.

1. THE ONLY PROVISION OF THE ACT TO WHICH THE QUESTIONS ARE CLAIMED TO RELATE IS THE PROVISION AS TO REASONABLENESS OF RATES, AND THE COMMISSION WAS NOT AUTHORIZED TO ACT UPON THIS SUBJECT IN ITS PENDING PROCEEDING.

The Commission does not suggest any proovision of the act to which the questions could relate, except the provision of section 1 of the act which declares that "every unjust and unreasonable charge for such (transportation) service or any part thereof is prohibited and declared to be unlawful."

The only specific function conferred upon the Commission with respect to a violation of this provision of section 1 of the act is the function conferred by section 15 of the act which authorizes the Commission, "*after full hearing upon a complaint made as provided in section thirteen of this Act*, or upon complaint of any common carrier," and after it determines that any rate is in violation of section 1, to prescribe a maximum rate for the future. The Commission concedes that it was not engaged in the performance of this function. Moreover, if it had been engaged in the performance of this function, the questions involved here would not have been relevant even on the Commission's own theory, for the Commission merely claims that these questions relate to the value

of the *entire property* of the Union Pacific, and it is apparent, and the Commission has declared, that such inquiries as to value throw no light upon the reasonableness of specific rates, but only upon the reasonableness of an entire system of rates. (Central Yellow Pine Association vs. Illinois Central R. Company, 10 Int. Com. Rep., 505, 538, 539.)

The Commission's counsel, however, claim (p. 101 of their brief) that "the power has always been vested in the Commission after an investigation instituted on its own motion to declare an entire schedule of rates to be unreasonable, leaving the railroads to substitute reasonable rates in lieu thereof," and cites for this proposition C. N. O. & T. P. Ry. vs. Int. Com. Com., 162 U. S., 184.

This proposition is not sustained by the case cited. In that case, after an investigation of a complaint filed under section 13, and in the performance of the quasi-judicial function, the Commission condemned a specific alleged violation of the long and short haul clause and a specific alleged violation of section 1 of the act, the latter violation being an unreasonable rate on first-class freight from Cincinnati to Atlanta.

The only power the Commission ever had to condemn any rates as being unreasonable, leaving the railroads to substitute reasonable rates in lieu thereof, was the power which existed under section 15 of the act as originally passed. A consideration of section 15 in connection with sections 13, 14 and 16 (see Appendix I.) makes it clear that this power could be exercised only in a quasi-judicial proceeding under section 13.

The Commission has never declared in any proceeding, either quasi-judicial under section 13, or administrative under section 12, the entire schedule of rates of any railroad to be unreasonable, leaving the railroad to substitute reasonable rates in lieu thereof. Any proceeding with such a purpose in view would be so extraordinary that its existence would be apparent from the Commission's resolution and proceedings and would not need to be established by mere inference.

But the power the Commission had under the old section 15 to declare rates unreasonable and leave the railroad company to substitute reasonable rates in lieu thereof has been repealed by the Hepburn Act of June 29, 1906, which, for the old section 15, substitutes a new section 15 which does not authorize any such proceeding, but which authorizes *and requires* the Commission

whenever it finds an existing rate unreasonable, to prescribe in lieu thereof a reasonable maximum rate, and specifically provides that this can be done only upon a complaint filed under section 13.

2. EVEN ON THE COMMISSION'S THEORY THE QUESTIONS ARE NOT RELEVANT UNLESS THEY RELATE TO THE VALUE OF THE PROPERTY EMPLOYED BY THE UNION PACIFIC FOR THE PUBLIC CONVENIENCE, AND THEREFORE THROW LIGHT UPON THE REASONABLENESS OF THE UNION PACIFIC RATE SCHEDULES CONSIDERED AS A WHOLE.

The Commission's suggestion is that it was considering the general schedule of rates on the Union Pacific; that in such an inquiry it is appropriate, on the principles of Smyth vs. Ames, 169 U. S., *466,546*, to consider the capitalization of the carrier and the value of the property of the carrier; and that the questions asked Mr. Kahn related to the matters of capitalization and value of property. These contentions must be analyzed.

The doctrine of Smyth vs. Ames upon which the Commission relies is stated in the following language:

> "We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the *property being used by it for the convenience of the public.* And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property. *What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience.* On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth" (169 U. S., 546).

This doctrine has been summarized by the Commission in the Central Yellow Pine Association vs. Illinois Central R. Company, 10 I. C. Rep., 505, 539, as follows:

"Where an entire system of rates is involved, the principal, if not the only question, is, whether the revenue yielded by the rates on all traffic is a fair return ON THE VALUE OF THAT WHICH IS 'EMPLOYED FOR THE PUBLIC CONVENIENCE.'"

The Commission's proposition then reduces itself to the contention that the Commission was engaged in ascertaining the *value of the property employed by the Union Pacific for the convenience of the public*, and that the questions asked Mr. Kahn related to that subject.

3. THE QUESTIONS DO NOT RELATE TO THE VALUE OF THE PROPERTY EMPLOYED BY THE UNION PACIFIC FOR THE PUBLIC CONVENIENCE, WHETHER REGARDED AS BEARING UPON CAPITALIZATION OR UPON ANY OTHER FACTOR.

The property employed by the Union Pacific for the convenience of the public consists of the Union Pacific's railroad and equipment. The property to which the questions asked Mr. Kahn relate consists of shares of the stock of the Illinois Central and Chicago and Alton. These shares of stock were not employed "for the convenience of the public," while held by the Union Pacific, any more than similar shares are employed "for the convenience of the public," when held by any natural person. When it comes to a valuation for rate purposes of the property employed by the Union Pacific for the convenience of the public, the Union Pacific can claim no consideration whatever for items of property which are in no sense used by it "for the convenience of the public."

But the Commission contends that capitalization of the Union Pacific may be considered in arriving at the value of the property employed by the Union Pacific for the convenience of the public; that the capitalization of the Union Pacific covered these investments in the Illinois Central and Chicago and Alton stocks; and that, therefore, it is necessary to inquire into the value of these stocks. We shall dispose of this contention without stopping to elaborate the points that the questions asked of Mr. Kahn had no substantial bearing upon the value of the Chicago and Alton and

Illinois Central stocks, that all the usual tests of value were available and sustained the valuation at which the Union Pacific bought, and that the Commission itself habitually condemns any resort to capitalization for the purpose of ascertaining the value of property employed for the public convenience.

If capitalization of the Union Pacific is to be considered in order to arrive at the value of the Union Pacific's railroad, and if that capitalization in part covers outside property such as stocks in other corporations, then the only object in considering the value of such stocks would be to eliminate from the Union Pacific's capitalization that part attributable to those stocks. For example, if the capitalization of a railway company is ten million dollars, and only three-fourths of that capital has been expended upon the railway and the other fourth has been expended on outside property, it is clear that one-fourth of the capitalization should be eliminated before viewing the capitalization as a factor bearing upon the value of the railway.

It would be difficult under any circumstances to believe that the Commission in valuing a railroad would enter upon the task of valuing outside property merely for the purpose of arriving at the net amount of capitalization attributable to the railroad itself, in view of the Commission's frequent declarations that in any event capitalization is an unreliable factor in ascertaining the value of railroad property. But even if the Commission had been engaged in such a process of inconsequential circumlocution, it is clear that the questions asked Mr. Kahn were not material to the alleged process.

The Commission already knew the *cost* to the Union Pacific of the Illinois Central and the Chicago and Alton stocks, and, therefore, knew the amount of Union Pacific capital expended for such stocks. The questions asked Mr. Kahn had no bearing on such *cost*. The object of the questions, according to the Commission's theory, was to show that the *stocks were worth less than they cost*. In other words, reduced to its last analysis, the Commission's contention is that it was engaged in an effort to show that, for rate purposes, *less ought to be eliminated from the capitalization of the Union Pacific on account of the Illinois Central and Chicago and Alton stocks than those stocks cost the company!*

Of course, the less the cost or value of the stocks to be eliminated, the greater the remaining portion of the capitalization to be considered as giving value to the railway. For example, if a railway company with a capitalization of $10,000,000 expended of that capitalization $2,500,000 for stocks in other companies, only $7,500,000 of the capitalization would remain as a factor bearing upon the value of the railway itself; but if the tribunal dealing with the subject held that the value rather than the cost of the stocks should be deducted and that the value of the stocks was only $2,000,000, then $8,000,000 of capitalization would remain as a factor to assist in ascertaining the value of the railroad. Therefore, the Commission in claiming that it was endeavoring to show that the Chicago and Alton and Illinois Central stocks were worth less than they cost puts itself in the position of striving to increase, as much as possible, the amount of Union Pacific captalization, attributable to the property employed by the Union Pacific for the convenience of the public; the only tendency of such a step would be to make a relative increase in the value of that property, *the necessary result being to justify higher rates than the Union Pacific could justify on its own showing!*

The Commission knew the cost of the Illinois Central and Chicago and Alton stock to the Union Pacific; the income derived from that stock by the Union Pacific; the history of the issue of additional capitalization by the Union Pacific. The Commission needed no further information to enable it to eliminate wholly from consideration those stocks and their income and an appropriate part of the capitalization of the Union Pacific, in order to determine the value of the property being employed by the Union Pacific for the convenience of the public, and the amount of capitalization fairly attributable to such property.

The Commission's counsel suggest that if the Union Pacific instead of acquiring stocks of other railroad companies had "taken a deed to the property outright," the question of the value of such property would have been pertinent to an inquiry into the value of the property employed by the Union Pacific for the public convenience, and that it would be equally pertinent to such an inquiry to make an examination in the present case into the value of the stocks of other railroad companies held by the Union Pacific. In the case supposed

the railroad property so acquired would have been employed by the Union Pacific for the public convenience and the rates for transportation over such railroad would have been part of the Union Pacific schedules ; but in the actual case such property was employed not by the Union Pacific but by the Chicago & Alton and the Illinois Central, respectively, and the rates prevailing thereon were Chicago & Alton and Illinois Central rates, respectively, and not Union Pacific rates. The Union Pacific held less than 17 per cent. of the total capitalization (stock and bonds) of the Chicago & Alton, and less than 12 per cent. of the total capitalization (stock and bonds) of the Illinois Central. It seems unjust to the Commission to urge on its behalf that it was engaged in such an absurd task as that of endeavoring to ascertain the reasonableness of rates fixed by the Union Pacific for transportation over the Union Pacific by ascertaining the value of entirely separate railroads, separately operated, and having separate schedules of rates.

The Commission's counsel further suggest that to ascertain the reasonableness of existing rates it is important to see whether the surplus realized from the operation of the property has been improperly diverted, as otherwise existing tariffs may be continued at an unreasonable figure without the liklihood of disclosure or correction. The profitableness of a given schedule of rates upon a railway is determined by the results of operation, that is, by the balance remaining after deducting from the gross earnings the operating expenses, the taxes, and any other deductions from income which apply to the railway. Such a calculation is not affected and cannot be confused by what the railway company may do with its surplus. In the present case there was no claim that the Union Pacific had included in its operating expenses, or in any deductions from current income, the amounts expended by it for stocks in any other companies. There was no concealment whatever. The amounts expended and the stocks acquired were fully shown and had been properly charged on the books. There was no possible way by which such transactions could cause any doubt or concealment as to the profitableness of the operation of the Union Pacific railroad under existing rates.

The Commission's contention that Mr. Kahn should be required to answer these questions because they related to the question whether rates of the Union Pacific violated the

act to regulate commerce was pressed in the court below, but apparently that court did not regard the contention as worthy of consideration, for in its opinion it holds that the Commission's resolution was broad enough to cover the questions asked Mr. Kahn, solely upon the ground that those questions might aid in disclosing improvident investments by the Union Pacific which might have the effect of preventing the Union Pacific from giving adequate and economical service to the public, and, in that way, might tend to defeat the purposes of the act to regulate commerce.

4. THE COMMISSION WAS NOT ENGAGED IN ANY INQUIRY AS TO THE VALUE OF THE PROPERTY EMPLOYED BY THE UNION PACIFIC FOR THE PUBLIC CONVENIENCE.

As illustrating the disingenuous character of the contention that the questions asked Mr. Kahn related to a valuation of the property employed by the Union Pacific for the public convenience and that the Commission was engaged in such an inquiry, we further call the court's attention to the fact that the Commission was not engaged in any such inquiry at all.

The lengthy investigation which the Commission made into the affairs of the Union Pacific, as shown by the record, related to its alleged control of, and alleged community of interest with, various other railroad companies, and to the supposed effect of such control and community of interest in suppressing competition in rates and service. There is no suggestion in the record of a purpose to ascertain the value of the property employed by the Union Pacific for the convenience of the public, in order to consider the reasonableness, as a whole, of the Union Pacific's schedule of rates.

The Commission, in its annual report for 1903, discussed the various methods of valuing railway property and said :

> " Of the various methods of valuing railway property the one which seems the most reliable involves a complete and detailed inventory of both physical and non-physical values " (p. 29).

In the same report the Commission described the " inventory method " of valuation as follows :

> "The first step in the application of the inventory method would be an investigation and an appraisal by competent engineers of every physical element that goes to make up a railway property; the second step would be an analysis of operating accounts and a study of the history of the property, so far as this may be necessary to a just estimate of its commercial condition and business prospects" (p. 31).

This language illustrates the magnitude of the task of making any valuation of the property employed by a railroad company for the public convenience, and, in the light of this illustration, the complete absence from the record of any sign of activity with respect to any such task becomes all the more significant.

5. THE THEORY OF A DIVERSION OF ASSETS TENDING TO MAKE RATES UNREASONABLE OR SERVICE INADEQUATE HAS NO RELEVANCY TO ANY VIOLATION OF THE ACT, BUT MERELY TO A "TENDENCY TO DEFEAT THE PURPOSES OF THE ACT," WHICH IS DISCUSSED BELOW.

Another theory suggested by the Commission is that the questions asked Mr. Kahn might have disclosed conditions leading to a wasting or diversion of the assets of the Union Pacific, and that the ultimate result might be to increase rates, or prevent the reduction of rates. It is not claimed that such diversion of assets would in itself be a violation of the act but merely that it might lead to a future violation of the act. It is clear that an inquiry into actions not violating the act, but tending to produce conditions which in the future might violate the act, must be justified, if at all, on the distinct ground that the Commission has authority to inquire into matters not violating the act, but merely tending to defeat its purposes.

No claim is made that the questions asked Mr. Kahn related to any violation of any provision of the act requiring carriers to furnish adequate service. The act's only requirement about adequate service is the provision in the first section, after a definition of the word "transportation", "it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor." There is no claim that the Union Pacific

failed to comply with any such request. No violation of the act in this respect was under consideration. The only theory for connecting the matter of adequacy of facilities with an inquiry into a wasting of assets would be that such wasting of assets might lead to a violation of the act in the future, and thus involve a tendency in the future to defeat the purposes of the act.

We discuss below the proposition that the Commission has no power to make inquiries of a person not connected with a carrier which have no relation to any violation of the act, but relate merely to tendencies to defeat the purposes of the act.

IV.

The Commission has no power to ask questions of persons not connected with carriers, except to ascertain whether or not the act has been obeyed.

A portion of section 12 of the act to regulate commerce reads as follows :

> "and for the purposes of this Act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation."

If the language quoted be regarded as in itself a grant of investigating authority, we insist that, except as to information from carriers themselves (which is provided for by a preceding clause in sec. 12), the only investigating power of the Commission is to compel the production of evidence for the purpose of ascertaining whether the act has been obeyed.

The language quoted says that the Commission may require the attendance and testimony of witnesses and the production of books, etc., "for the purposes of this Act." What are "the purposes of this Act"?

The first seven sections of the Act prescribe for carriers subject to the act rules of conduct in the interstate transportation of passengers and property. Sections 8 and 9 of the act deal with the liability of carriers for the violation of those rules, and with the remedies of individuals aggrieved by such violations. Section 10 prescribes penalties for the violations of those rules. Section 11 creates the Commission, and section 12 imposes upon the Commission and upon the district attorneys the duty of enforcing the provisions of the act. Sections 13 to 16, both inclusive, make further provision for action by the Commission in case of violations of the act. Sections 17 to 21, both inclusive, deal with the mere administrative features natural to the functions already outlined for the Commission. All other provisions of the act to regulate commerce, and of the amendments and supplements thereto, relate specifically to the enforcement of the rules prescribed by Congress for the government of interstate transportation.

The purposes of the act were set forth by the Commission in its Ninth Annual Report (1895), where, in connection with recommendations for additional legislation to effectuate the provisions of the act in regard to reasonable and non-discriminating rates, the Commission indicated that *the purposes of the act were declared in the first three sections thereof*, and added :

> " These sections declare the purposes and objects of the act, while the subsequent sections supply, or are intended to supply, the means for making it effective, afford remedies for its infraction, and provide penalties for violating its requirements. If the carriers made no other than reasonable and just transportation charges, as by the first section they are required to do ; if they made equal charges for equal services, did not unjustly discriminate and charge some persons more than others for like service, which is forbidden by the second section, and would give no unfair preference and advantage and would afford equal treatment, as they are enjoined to do by Section 3, the subsequent sections of the act might well be dispensed with " (p. 6).

Again in its Sixteenth Annual Report (1902) the Commission said :

> " All the details of regulation incorporated in the act, its requirements as to publishing and filing tariffs

> and making annual reports, its methods for presenting complaints and conducting their investigation, its criminal remedies, the authority of the Commission to make orders founded on ascertained wrongdoing, and various other administrative features, *were designed solely to give effect to its substantive provisions and thereby secure to the public reasonable charges and impartial treatment*" (p. 6).

The purposes of the act are to enforce certain rules for the government of interstate transportation. The Commission is charged with the duty of enforcing the act, and is given investigating authority to be exercised " for the purposes " of the act. The natural conclusion is that the investigating authority so granted is confined to obtaining evidence relating to inquiries whether the act has been obeyed.

Both in Interstate Commerce Commission vs. Brimson, 154 U. S., 447, and in Interstate Commerce Commission vs. Baird, 194 U. S., 25, the court considered exclusively the right of the Commission to have the courts aid in compelling answers to questions *which related to violations of the act to regulate commerce.* The court did not have before it, and did not consider, in either of these cases any contention that the Commission had any further power of investigation.

The only other reported case in which the courts have been called upon to aid the Commission in obtaining evidence is Interstate Commerce Commission vs. Reichmann, 145 Fed. Rep., 235. In that case, the Circuit Court required Reichmann, an officer of a private car line company, to testify whether he had given to shippers any part of the mileage which his company had collected from the railroad companies for the use of its cars. The only question the court considered was whether the action inquired about *would violate the act to regulate commerce.* Among other things the court said :

> "The purpose of the enactment of the statutes relating to interstate commerce was to give to all shippers of property uniform treatment in the matter of transportation, and the Interstate Commerce Commission was created to secure the enforcement of those statutes. In the discharge of this duty, the Commission *is authorized to procure information from any person whatso-*

ever tending to show whether those laws are being obeyed" (p. 237).

Again, the court said:

> "I am of the opinion that the law prohibits the car company from giving to any shipper of property a favor or advantage not publicly offered to all shippers by the published tariffs issued by the carrier, and *therefore*, that a reply to the question which the witness refused to answer would give the Commission information respecting a matter as to which it is charged with the performance of a duty" (p. 242).

But the Commission further claims that it was Mr. Kahn's duty to answer these questions, because they relate to the business of a corporation which is a common carrier subject to the act; because they relate to matters upon which the Commission might desire to recommend additional legislation; and because they relate to matters which might have a tendency to defeat the purposes of the act, though not violating any of its provisions.

We now proceed to consider each of these contentions.

V.

The general power of the Commission to inquire into the management of the business of common carriers does not authorize these questions.

The Commission contends that the act creates the express duty and power to inquire into the management of the business of carriers subject to the act, that the questions asked Mr Kahn relate to the business of a corporation which is a carrier subject to the act, and that, therefore, by the very letter of the statute, the Commission has the power to ask the questions.

1. THE QUESTIONS RELATED TO THE PRIVATE BUSINESS OF KUHN, LOEB & CO., AND NOT TO THE BUSINESS OF THE UNION PACIFIC.

The Commission insists upon the letter of the provision that it "shall have authority to inquire into the management of the business of all common carriers subject to the provisions" of the act. We likewise invoke the letter of that authority and say that it relates to the business of the carrier and not to the business of those with whom the carrier does business.

Every purchase by a railway company of labor, and every purchase or sale by such company of property of any character, whether land, equipment or material, stocks or bonds, and every borrowing of money by it is the business of the railway company; but to every such transaction there is another side which equally constitutes the business of the person with whom the railway company deals. The private side of these transactions is of the deepest interest to the railway company, but such fact does not make the business of the person with whom the railway company deals its business. An authority to inquire into the business of the corporation, and nothing more, is not an authority to go beyond the corporation's side of these transactions and into the other side, involving the affairs of the laborers who work for the corporation or of the private institutions which sell or rent or loan to the corporation or which buy from the corporation.

Even if the Commission's power, under section 12 to examine the business of common carriers subject to the act authorizes it to examine all books and papers of the Union Pacific pertaining to the purchase by it of the Chicago and Alton and Illinois Central stock, that power does not authorize the Commission to go into Kuhn, Loeb & Company's private books and papers and examine the list of the persons who, as clients of Kuhn, Loeb & Co., deposited with them for sale the shares of the Chicago and Alton stock, or examine the list, if any, of persons who may have participated with Kuhn, Loeb & Co. in the sale of the Illinois Central stock.

Nor would the business of a labor organization or an equipment or material company or a bank be any less the business of such institution because of the possibility that

such business may include activity by a director of a railway company dealt with by such institution. Such activity might, or might not, be of interest to the railway company, but the fact of such interest would not turn that portion of the business affairs of the private institution into the business of the railway company any more than its vital interest in any other element of a private institution's business would turn such element into the railway company's business. The private institution may have been guilty of some unfair or oppressive or illegal arrangement to suppress competition or to increase prices, or may have violated some statutory or contract duty to the great detriment of the railway company. Such action would be of the greatest interest to the railway company and, if disclosed, might throw much light upon the value of its purchases or the efficiency of its management, but such considerations do not turn the business of a private institution into the business of a railway company, or open up the private institution's affairs and papers to the administrative inquiries of the Commission.

The theory that under section 12 the Commission has authority to go into the private side of transactions with a railroad company on the idea that both sides of the transaction—the railroad company's side and the opposite or private side—are both the railroad company's business, is opposed not only to the letter, but to the spirit, of the statute, and to the policy of our government. It is natural to permit an administrative board, created to supervise quasi-public corporations, to inquire in a purely administrative way into the affairs and papers of such corporations; but it is preposterous to permit such mere administrative inquiry to be extended into the affairs and papers of those private institutions with which the railroad company may do business.

2. THE COMMISSION'S AUTHORITY TO INQUIRE INTO THE MANAGEMENT OF THE BUSINESS OF CARRIERS IS AN AUTHORITY TO OBTAIN INFORMATION FROM CARRIERS THEMSELVES, BUT NOT FROM PRIVATE PERSONS.

The provisions of section 12 relating to inquiry into the management of the business of common carriers is as follows:

> "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain *from such common carriers* full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created."

We submit that this language means that the Commission's authority to inquire into the management of the business of common carriers subject to the act is an authority to require information on this subject from carriers themselves. This is the natural meaning of the clause, and on no other theory can any effect be given to the words "from such common carrier."

It is true there also appears in section 12 the following language:

> "*and for the purposes of this act* the Commission shall have the power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation."

One of the purposes of the act is that the Commission shall have the right to obtain *from carriers* information as to the management of their business, but the act does not indicate any purpose that the Commission shall have any right to obtain such information from persons not connected with the carriers.

Whatever may be the power of the Commission to compel persons not connected with carriers to testify as to matters bearing upon compliance with the requirements of the act, it seems clear that the Commission has no power to compel such persons to testify concerning matters which have no such bearing, but which merely relate to some phase of the carrier's business. If the Commission had such power, a very large percentage of all the private business in the country would be under the administrative espionage of the Commission.

3. THE COMMISSION'S AUTHORITY TO REQUIRE INFORMATION FROM THE CARRIERS THEMSELVES DOES NOT EXTEND TO MATTERS HAVING NO CONNECTION WITH THE GENERAL SUBJECT MATTER OF THE ACT TO REGULATE COMMERCE, AND THE QUESTIONS ASKED BY MR. KAHN HAVE NO SUCH CONNECTION.

The principal common carriers, to which the act to regulate commerce relates, are railroad companies. The business of a railroad company is exceedingly complex, and in addition to relations with the shipping public, involves among other things relations with the company's stockholders and bondholders, with employees and labor organizations, with manufacturers of, and dealers in, materials, supplies and equipments of all sorts, and with bankers and other business institutions having capital to invest in railroad undertakings. The conduct of a railroad company respecting all these matters and various others is comprised in the term "management of the business of a railroad company," when that term is used in its widest significance.

There is nothing, however, in the act to regulate commerce which confers upon the Commission the power or duty to investigate the management of all these phases of the railroad business. Whether the railroad companies are unbusinesslike or improvident, or unjust or oppressive in their relations to labor, or to persons supplying materials or supplies or equipment, or to investors or stockholders, is no concern of the act. The subject matter of the act is the relation between the carriers and the shipping public. In the light of these considerations the Commission's powers must be construed.

The language of the act is in accordance with this subject matter. Section 12 authorizes and requires the Commission to investigate "the business of all common carriers subject to the provisions of this Act." The rational meaning of this language is that the business to be investigated is the business of carriers *as interstate carriers*. The whole first paragraph of section 12 is a single sentence designed to create the duty and power and the machinery for the performance of the administrative functions appropriate for carrying out the regulations prescribed by the act with respect to the relations between carriers and the shipping public, and is not designed to create forms of supervision not adapted to that act.

The carrier's operating expenses and capital disbursements are within the scope of the Commission's investigating powers, because bearing upon the questions of rates and facilities for the shipping public which arise under the act; but the wisdom, policy and details of the business transactions which produced these operating expenses and capital disbursements are wholly outside of the subject-matter of the act and of the Commission's investigating powers.

At the time of the passage of the act to regulate commerce, and ever since, the interstate railroad business of this country has been conducted principally by corporations created by the States. These corporations have had such powers as the States saw fit to give. Many of these corporations have had powers to engage in other sorts of business in addition to the business of common carriers. The act to regulate commerce does not seek to prevent this, and contains nothing which evinces a purpose to entrust to the Commission any general administrative power of inquiry into those forms of business engaged in by railroads other than the business of *carrier*. The Commission's counsel declare that the Union Pacific was acting not merely in the transportation business but "as a great investment company conducting a stock investment business purely for gain." This investment business was authorized by the State of Utah and was not prohibited or in the slightest measure regulated by the act to regulate commerce. No jurisdiction whatever respecting this investment business was conferred upon the Commission.

The Union Pacific under its charter has power to buy and sell stocks of other corporations, and it was by virtue of this power that it engaged in the transactions concerning which Mr. Kahn was asked to disclose the private affairs of Kuhn, Loeb & Co. Whatever may be the power of the Commission to investigate the management of the carrying business of the corporation, the Commission certainly has no general administrative power to investigate the details of the non-carrying business of the corporation. To be sure, if the corporation so mingles the carrying business subject to the act with the non-carrying business as to render impracticable the investigations which the act requires the Commission to make of the carrying business unless reference is made to the non-carrying business, the Commission must have power to

refer to the latter, when necessary to segregate it from the former. But this power of investigation for the purpose of segregating the non-carrying business from the carrying business does not extend to an investigation of the details of the non-carrying business wholly unnecessary to any such segregation.

In the present case the Commission was given full information as to the securities acquired by the Union Pacific and the prices paid for those securities; as to the income received therefrom and the extent to which the capital obligations of the Union Pacific could be regarded as representing such securities; as to the character and extent of the influences which by virtue of holding such securities the Union Pacific exercised over the management of the corporations to which those securities pertained. Here was all material necessary for the purposes of segregating the Union Pacific's carrying business from the business of buying and selling railroad securities. Nothing further respecting those securities was necessary for the purpose of information as to the "carrier's" business. Inquiry as to further details was entirely outside of the subject matter of the act.

It would be an unwarrantable extension of the Commission's authority and an impracticable extension of its duty to hold, as the Commission now seems to suggest, that the Commission has authority by virtue of the language of section 12 to conduct administrative investigations into every phase of every branch of the necessarily complex activities of a railroad company and of every non-carrying business in which a corporation may engage in addition to the railroad business, even where such non-carrying business is primarily of a private character.

4. THE PROVISIONS OF SECTION 20 DO NOT ENLARGE THE COMMISSION'S INVESTIGATING POWERS OR AUTHORIZE THESE QUESTIONS.

But the Commission urges that the provisions of section 20 requiring annual reports from carriers show that Congress contemplated that the Commission's inquiries into the management of the carrier's business should extend to other things. The language of section 20, which is relied on for this argument, is as follows:

> "Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources, the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet."

Section 20 deals exclusively with information which the *carrier* is required to furnish and does not authorize any inquiry of a private person.

Section 20 must be construed in the light of the act's subject matter, with which the language of the section is entirely consistent. Throughout the section deals with information as to the details of the *carrier's* business, and does not justify the theory that by virtue of that section information may be required which relates only to non-carrying business, and is not necessary for the purpose of segregating mingled information relating both to the carrying and non-carrying business.

Section 20 calls for details which, in one aspect, relate to the subject matter of the act, but that fact does not authorize or require the Commission to investigate aspects of those details which do not relate to the subject matter of the act. The Commission has no authority, for example, to investigate the business relations between the carriers and employees which affect the wages paid merely because the number of employees and wages paid each class must be shown in the annual report.

As pointed out below (pp. 51, 54), the Commission has proceeded on the theory that it was not its duty to investigate the circumstances surrounding the relations of stockholders to the carrier or the causes producing surpluses or deficits or the mere financial operations of the carrier, although some details concerning those subjects are required to be reported under Section 20.

VI.

The Commission has no power to make inquiries of private persons merely for the purpose of considering the propriety of recommending additional legislation when such questions have no relation to any inquiry as to violations of the act.

The Commission further suggests that by virtue of section 21 of the act, when construed in connection with section 12, the Commission has an additional general power of administrative inquiry for the purpose of considering the advisability of the enactment of additional legislation and of making to Congress recommendations and reports of the facts in regard thereto.

Section 21 of the act reads as follows:

> "That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission."

As originally enacted, section 21 required this report to be made to the Secretary of the Interior, to be by him transmitted to Congress (see Appendix I.). A subsequent change requiring the report to be made directly to Congress did not enlarge in any way the purposes of the act.

Section 21 of the act naturally assumes that in the discharge of its functions the Commission will collect much "information and data" and provides that the Commission in its annual report to Congress shall include such "information and data" as the Commission considers of value in the determina-

tion of questions connected with the regulation of commerce. Section 21 does not, however, impose upon the Commission any duty to collect any information or data other than that which it is specifically directed to obtain by other provisions of the act. The section does not enlarge the Commission's *duty* to investigate and consequently cannot, even by implication, enlarge the Commission's *power* to investigate. The section also provides that the Commission's annual report shall contain "such recommendations as to additional legislation" as the Commission may deem necessary, but does not impose upon the Commission any duty to *ascertain* what additional legislation may be necessary, or to make any investigation whatever with respect thereto. The utmost duty which section 21 can be regarded as creating, in addition to the duty of filing an annual report, is that the Commission shall include in that annual report such information as it may think important, and such recommendations as it may deem necessary, but the section presupposes that the possession of the information and the conclusion as to what additional legislation is necessary, are the result of the exercise by the Commission of the powers and duties already conferred upon the Commission.

The theory of section 21 is that the Commission, as the result of its experience in the enforcement of the act and of the information received in the course of the investigations conducted for the purpose of enforcing the act, will find it proper to make recommendations, from time to time, as to additional legislation. Accordingly, the Commission has made frequent recommendations for additional legislation without ever attempting to compel the giving of testimony relating to matters not involved in the enforcement of the act.

Section 21, if construed as authorizing the Commission to inquire into all subjects upon which Congress could legislate under the commerce clause, would become the predominant and overshadowing feature of the act as far as the Commission's powers of investigation are concerned, whereas, that section in reality is, and has always been regarded as, a mere incidental provision. The real scope and purpose of the act to regulate commerce were stated in the Commission's Ninth Annual Report (1895). In connection with recommendations

for additional legislation to effectuate the provisions of the act in regard to reasonable and non-discriminating rates, the Commission indicated that the purposes of the act were declared in the first three sections thereof and added:

> "*These sections declare the purposes and objects of the act, while the subsequent sections supply, or are intended to supply, the means for making it effective, afford remedies for its infraction, and provide penalties for violating its requirements.* If the carriers made no other than reasonable and just transportation charges, as by the first section they are required to do; if they made equal charges for equal services, did not unjustly discriminate and charge some persons more than others for like service, which is forbidden by the second section, and would give no unfair preference and advantage and would afford equal treatment, as they are enjoined to do by section 3, *the subsequent sections of the act might well be dispensed with* (page 6).

Again in its Sixteenth Annual Report (1902) the Commission said:

> "*All the details of regulation incorporated in the act, its requirements as to publishing and filing tariffs and making annual reports, its methods for presenting complaints and conducting their investigation, its criminal remedies, the authority of the Commission to make orders founded on ascertained wrong doing, and various other administrative features, were designed solely to give effect to its substantive provisions and thereby secure to the public reasonable charges and impartial treatment*" (p. 6).

In this connection the Commission appears to attach importance to the following language of the court in the Brimson Case, 154 U. S., 447:

> "All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced, otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules" (154 U. S., p. 474).

It must be remembered that in the Brimson case the court considered exclusively the right of the Commission to have the court's aid in compelling answers to questions *which clearly related to a violation of the act to regulate commerce.* The court did not consider any contention that, in addition to the powers of investigation necessary for the enforcement of the act, the Commission had a further power of investigation for the purpose of informing itself as a preliminary to considering the making of recommendations for other legislation.

The natural construction of the language quoted is that full information as to the operation and enforcement of the rules actually established for the regulation of commerce is needed, not only for the enforcement of those rules, but also for the future use of Congress. So understood, the sentence merely expresses an additional reason to support the power which Congress expressly conferred upon the Commission of making investigations with reference to the enforcement of the act. No other construction is compatible with the idea underlying the entire opinion that the Commission was created to enforce the act, and was given its investigating powers for that purpose. It would be inconsistent with the whole tenor of the opinion to assume that the court, by the language just quoted, meant to hold that, in addition to conferring full power of investigation for the purpose of enforcing the act, Congress had also made the Commission virtually a Congressional Committee of Inquiry, and authorized it to investigate any subject upon which Congress could legislate under the commerce clause. If, however, such intention should be attributed to the court, the expression would be an extreme illustration of a dictum with respect to a question not before the court in any way and to which the court had no occasion to give attentive consideration.

The Commission's counsel claim that the Commission's powers of investigation have been "fruitfully used" as a basis for recommending additional legislation. All of this "fruitful use," however, has been confined to inquiries relating to the enforcement of some of the rules prescribed by the Act. The very fact that such use has been "fruitful" is an additional justification for the natural construction of section 21 of the act, and corroborates the view that Congress did not intend

the Commission to exercise any inquisitorial powers in addition to those incident to the enforcement of the Act itself.

The Commission's counsel suggest that the joint resolution of March 7, 1906, directing the Commission to make the so-called "coal and oil inquiry," and the Act creating the Bureau of Corporations, show that Congress understood the Commission to possess the general power of conducting compulsory inquiries for the purpose of recommending future legislation. We submit that the true conclusion to be drawn from these illustrations is directly contrary to that attempted to be drawn by the Commission's counsel.

We quote the first sentence of the amendment of March 21, 1906, to the joint resolution referred to, placing in italics the portion omitted from the quotation on page 37 of the brief of Commission's counsel.

> "*To enable the Commission to perform the duties required and accomplish the purposes declared herein, the Commission shall have and exercise under this joint resolution* the same power and authority to administer oaths, to subpœna and compel the attendance and testimony of witnesses, and the production of documentary evidence, and to obtain full information, which the said Commission now has under the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof" (34 Stat., 824).

We quote the provision empowering the Commissioner of Corporations to compel the production of evidence, placing in italics the portion of it omitted by the Commission's counsel:

> "*In order to accomplish the purposes declared in the foregoing part of this section the said Commissioner* shall have and exercise the same power and authority in respect to corporations, joint stock companies and combinations, subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said Act to regulate commerce and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpœna and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths" (32 Stat., 828).

The Commission's counsel seem to contend that because the language quoted speaks of the investigating powers the Commission "now has" and of "the same power" as is conferred on the Commission, there is a legislative recognition of the idea that the powers possessed by the Commission under the act to regulate commerce include the power to compel the production of evidence merely for the purpose of recommending additional legislation. But clearly the language quoted referred to the character of authority to compel the attendance of witnesses and the production of documents and the machinery by which that authority was to be exercised through the aid of the courts. The purposes for which the authority and machinery were to be employed were necessarily different in each of the three cases and the investigating power in each instance was expressly limited accordingly. The joint resolution expressly directed the Commission to make an investigation for the purpose of obtaining evidence to be used in the consideration of additional legislation, and the act creating the Bureau of Corporations expressly directed the Commissioner to make investigations for the same purpose. There is no corresponding direction in the act to regulate commerce. The act to regulate commerce announces no purpose that the Commission shall compel the production of evidence for the purpose merely of considering additional legislation, and the power under that act to compel the production of evidence is limited to "the purposes of this Act."

If the Commission under the act to regulate commerce had the power now claimed for it to investigate for purposes of any legislation under the commerce clause, the amendment of March 21, 1906, to the joint resolution directing the coal and oil inquiry would have been unnecessary.

VII.

The Commission has no power to make inquiries of private persons merely for the purpose of considering whether there is any "tendency to defeat the purposes of the act" when the inquiries have no bearing upon any violation of the act.

Another of the Commission's theories is that it has the power to make inquiries of private persons relating to any matter which may involve a "tendency to defeat the purposes of the act," although having no relation to any violation of the act.

1. THE LOWER COURT PROCEEDED ONLY ON THE THEORY THAT THE QUESTIONS SHOULD BE ANSWERED BECAUSE THEY MIGHT DISCLOSE AN INFLUENCE TENDING TO PROMOTE INSOLVENCY, AND THEREFORE TENDING TO DEFEAT THE ACT'S PURPOSE OF COMPELLING ADEQUATE SERVICE.

A consideration of this theory is especially important because it is the sole theory upon which the lower court held that the Commission had the right to ask these questions under the resolution governing the proceeding. The lower court pointed out that one of the objects of the Commission's resolution was to ascertain whether certain practices of carriers "tend to defeat" the purposes of the act. The court held that one of the purposes of the act "is to compel interstate carriers to perform their commercial functions adequately," and asserted that through improvident investments an interstate carrier might ruin itself and become wholly unable to fulfill its carrying functions. The court stated with respect to the questions asked Mr. Kahn that "the evident object of all these questions is to confirm or dissipate the suspicion that Mr. Harriman and other directors of the Union Pacific expended the funds of their company in purchasing stocks at prices higher than should have been paid—or in buying stocks that should not have been purchased—being moved thereto by the private profits arising from the

transactions," and reasoned that answers to the questions would throw light upon the carrier's tendency to "ruin itself through improvident investments," which, in turn, might render it unable to fulfill its carrying functions and thereby defeat the purposes of the act.

We shall pass to a discussion of this theory of the Commission's statutory power, without elaborating upon the point that no possible answers to the questions asked Mr. Kahn could either "confirm" or "dissipate" any suspicion as to the value or desirability of Chicago and Alton or Illinois Central stocks.

However, we call the court's attention to the fact that, as a result of the very investigation in which Mr. Kahn was asked these questions, the Commission gave its unqualified assurance as to the ability and disposition of the Union Pacific to maintain and improve the property and service. The Commission said:

> "It has been, however, no part of the Harriman policy to permit the properties which were brought under the Union Pacific control to degenerate and decline; as railroads they are better properties today, with lower grades, straighter tracks, and more ample equipment than they were when they came under that control. Large sums have been generously expended in the carrying on of engineering works and betterments which make for the improvement of the service and the permanent value of the property" (12 Int. Com. Rep., p. 282).

2. THE UNDEFINABLE SCOPE OF THE INVESTIGATING POWER WHICH THE LOWER COURT ASCRIBES TO THE COMMISSION.

Section 1 of the act, after defining what is included in the term "transportation," says "it shall be the duty of every carrier subject to the provisions of this act to provide and furnish such transportation upon reasonable request therefor." This is the only provision in the act concerning adequacy of transportation. There is no pretense that answers to the questions asked Mr. Kahn would have any relation to any violation of the provision quoted, or that any such violation was under investigation. The proposition is that answers to the questions

might disclose a situation which, while not violating any provision of the act, might involve a possibility of producing financial conditions which might lead to an inability to supply such service as might be demanded by virtue of the provision quoted, and hence, that the questions have a bearing upon a possible "tendency to defeat the purposes of the Act."

This theory introduces an element of uncertainty which would rob the statute of any semblance of definiteness with respect to the Commission's investigating power. Any such construction would defy every principle which should govern the framing of a statute conferring investigating power upon an administrative board. There would be no standard to control the Commission and no law other than the will of the Commission to define the duty of the citizen with respect to the statute. Therefore, the courts would be a mere appendage to the Commission to carry out its will, and there would be the widest possible opportunity for the exercise of arbitrary power by the Commission.

The reasoning of the lower court shows the lengths to which this theory would carry us. The lower court says private interest on the part of the directors in purchases made by the company may result in impairment of the company's solvency and, therefore, such private interests may be investigated by the Commission. Let it be observed that the primary factor which brings this subject within the Commission's powers and duties of investigation is the tendency to impair the solvency of the company. The relations of directors to the company may be investigated merely because such relation happens to be a link in the chain of evidence which establishes such a tendency. Any other link having a similar tendency is equally within the Commission's power and duty. The power and duty do not depend upon any illegality in the mere act of a director selling property to the company, for such an act is not made illegal by the act to regulate commerce. The logic of the lower court's position is that anything that tends to impair the solvency of the company tends to defeat the purposes of the act and, hence, may be investigated by the Commission through inquiries of private persons.

A combination of the manufacturers of steel rails to suppress competition or to raise prices may have a very serious effect upon the solvency of interstate carriers or upon

their ability to make needed replacement or betterments or extensions, so as to give adequate service. Therefore, such combination may tend to prevent adequate service and, hence, "to defeat the purposes of the Act", in precisely the same sense in which that term was used by the lower court. But is such a combination, therefore, a subject about which the Commission may compel the manufacturers to furnish information?

A contest between a railroad company and a labor union may involve such large expenditures as to cause postponement or abandonment of important repairs or improvements, and therefore, may tend to impair adequate service, and hence, to defeat the purposes of the act. But is such a contest, or the policy of entering on it, therefore, a subject about which the Commission may compel the labor union or its members to furnish information?

The ordinary and necessary financial transactions of a railroad company are of great importance and an unwise financial scheme or the entering upon a financial scheme at an inopportune time may seriously impair the company's ability to supply adequate service. But are such financial matters, for that reason, a subject about which the Commission may compel the bankers to furnish information?

The constructions of extensions or branches and the acquisition of connecting lines already constructed, if improvidently entered upon, may entail much loss on the part of the railroad company, and either lead to its insolvency or greatly impair its ability to supply adequate service. But are such matters, for that reason, the subject of investigation by the Commission?

Every important step which a railroad company may take is calculated either to promote or impair its ability to continue to supply adequate transportation facilities and, in that broad sense, tends to promote or defeat the "purposes of the Act." If the Commission has the power to investigate all these things, it certainly rests under the general duty to investigate them. It would seem that, in the twenty-one years of the Commission's existence, numerous cases would have arisen when the performance of this duty would have been imperative. Yet not a single occasion has arisen when the Commission has undertaken any investigation on the ground that any action would tend to impair the carrier's solvency

or financial condition so as to impair its ability to supply adequate service.

To create such a power in the Commission is to give it, by unwarrantable implication, an inquisitorial power into private affairs over which it was never intended that the Commission should have any supervision. The Commission's investigating power is given "for the purposes" of the act. "The purposes" of the act are to be found alone in the requirements expressed in the act. Those requirements can be construed and understood and applied. To go beyond that is to go into a realm of endless speculation and uncertainty.

The Commission's duty and authority are sufficiently broad and sufficiently difficult of effective and impartial discharge when confined to the things which Congress has required, and should not be extended to those things which Congress did not require, but which the Commission may assume that Congress hoped to accomplish.

3. THE COMMISSION HAS DISCLAIMED ALL DUTY OR JURISDICTION WITH RESPECT TO SOLVENCY OF CARRIERS.

The conservation of the assets of a railroad company is a subject with which the act to regulate commerce does not deal. It is a subject concerning which the Commission has no responsibility, and concerning which it has disclaimed responsibility. One of the most obvious ways in which a railroad company's assets could be wasted would be in the establishment of ruinously low competitive rates, which might lead ultimately to a serious impairment of service or to a necessity for increased rates, if practicable. It was formerly contended that it was the duty of the Commission in the public interest to see that the rates were reasonably high, as well as to see that the rates were reasonably low. This matter was discussed in the Thirteenth Annual Report of the Commission (1899) as follows:

> "It is certainly not the duty of the Commission to prevent railroads from reducing their rates in the manner required by the act, whatever may be the effect of such reductions on their revenues. The Commission took occasion to emphasize this view as long ago as 1888 when it said, *In re* Chicago, St. Paul & Kansas City Railway Company (2 I. C. C. Rep., 231):

> " 'The act to regulate commerce assumes that the carriers in their power to make rates, have ample remedy to protect themselves against rates which are unreasonably low.'
>
> " Substantially the same thing was again said in 1898 in the case of New York Produce Exchange (7 I. C. C. Rep., 612) :
>
> " 'Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby, and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine ; *the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the act to regulate commerce.*' " (p. 10).

In its Fourteenth Annual Report (1900) the Commission said :

> "The Commission is given authority, 'to inquire into the management of the business of all common carriers subject to the provisions of this Act, and to keep itself informed as to the manner and method in which the same is conducted,' but this has never been construed by it to refer to the mere financial operations of railways engaged in interstate traffic" (p. 10).

4. SUCH AN INDEFINITE INVESTIGATING POWER WOULD EXTEND, AND WAS EXTENDED BY THE LOWER COURT, BEYOND THE CARRIERS THEMSELVES, AND TO INQUIRIES OF PRIVATE PERSONS.

It must not be forgotten that this power to investigate things "tending to defeat the purposes of the Act" but not violating its provisions, as applied to the affairs and papers of Kuhn, Loeb & Co., means a power to inquire into the private affairs, books and papers of all those dealing with railroad companies, and is entirely different from any power to inquire into the business, books and papers of the carriers themselves. This latter power we have already discussed under proposition IV. The power now under consideration is in effect asserted to be a power to call upon any private citizen to disclose any of his private affairs which in the opinion of the Com-

mission shows, or throws light upon, any practice of a railroad company which may be said to impair its financial standing or affect unfavorably its future prosperity. It is a power which is undefined and indefinable. There is no inquiry the Commission might choose to make into the affairs of labor unions, manufacturers, merchants, investors, brokers or bankers, in their dealings with railroad companies, but what would have some bearing upon the promotion or impairment of some of the general purposes of the act.

5. THE EXERCISE OF SUCH A POWER COULD LEAD TO NO OFFICIAL ACTION EXCEPT RECOMMENDATIONS TO CONGRESS RESPECTING ADDITIONAL LEGISLATION.

The further question arises, if, as the result of some investigation, the Commission should determine that something not in violation of the act tended "to defeat the purposes of the Act," what action could the Commission take? The Commission could take no step to "execute and enforce the provisions" of the act, for no provisions of the act would have been violated. All that the Commission could do would be to report to Congress and suggest the advisability of additional legislation. In other words, this alleged power to inquire into anything that tends "to defeat the purposes of the Act" is in substance the same as the other alleged power already discussed to inquire into any matter not connected with the enforcement of the act which the Commission may think it advisable to investigate for the purpose of submitting suggestions concerning future legislation.

VIII.

The Commission's long practical construction of its powers would necessitate a denial of its present contentions, even if otherwise there were basis for such contentions.

1. THE COMMISSION HAS DECLARED FREQUENTLY THAT ITS POWERS ARE CONFINED TO THE ENFORCEMENT OF THE ACT AND DO NOT EXTEND TO INVESTIGATING FINANCIAL OPERATIONS OR MATTERS WHICH MAY INJURIOUSLY AFFECT THE CORPORATIONS.

In the Commission's Second Annual Report to Congress (1888) the Commission discussed the declaration of dividends not earned as one of the devices, to which persons who were at once managers of roads and stock jobbers resorted, and said:

> "But in existing legislation we find nothing which seems to contemplate that special investigation will be entered upon with no other purpose than to prevent wrongs to the corporation itself or its stockholders" (p. 21).

In the case of *New York Produce Exchange vs. Baltimore and Ohio Railroad Company*, 7 Int. Com. Rep., 612, 658, decided in 1898, the Commission used this language:

> "The railways may make whatever rates, form whatever lines, establish whatever differentials they may deem best for the purpose of securing and conducting that transportation. *Whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, we do not inquire. Our only inquiry is does the situation which the carriers have created violate the Act to Regulate Commerce.*"

In its Thirteenth Annual Report (1899) to Congress, page 10, the Commission reiterated this position and quoted with approval the language just set forth.

In the Commission's Fourteenth Annual Report to Congress (1900), the Commission, in commenting on railway combinations, said :

> " With respect to many of these combinations, the Commission has and can have no official knowledge. A lease or a consolidation proper would appear from the financial reports made by carriers annually, but the method employed for accomplishing the purpose is not always by lease or by consolidation ; more often the result is expressed by the statement that the acquiring company has ' obtained the control ' of the acquired line, and of such arrangements we have no particular information. The Commission is given authority ' to inquire into the management of the business of all common carriers subject to the provisions of this act, and to keep itself informed as to the manner and method in which the same is conducted,' *but this has never been construed by it to refer to the mere financial operations of railways engaged in interstate traffic.* We should, however, hardly discharge our duty in a report to Congress upon the railway operations of this country if we did not call attention to these combinations and the effect which they are likely to produce " (p. 10).

If the Commission had the power to investigate every phase of the business of railroad companies subject to the act and not merely those phases connected with the subject matter of the act, it would have been the Commission's power and duty, ever since the adoption of the act, to investigate " wrongs to the corporation itself or its stockholders ", to investigate whether the railroad companies " act wisely or unwisely, fairly or unfairly between themselves " and to investigate " the mere financial operations of railways engaged in interstate traffic ; " because all those matters are portions of " the business of railroad companies subject to the act."

If the Commission had the power to investigate all the matters concerning which it might choose to consider the advisability of recommending additional legislation, although not pertaining to violations of the act, it would have claimed the power to investigate all things with respect to which, in its reports, it has indicated that it has no jurisdiction.

If the Commission had the power and duty to investigate all matters which might " tend to defeat the purposes of the

Act," and especially matters impairing the solvency of railroad companies or their ability in the future to provide adequate facilities, the Commission would have had the power to ascertain whether wrongs were inflicted upon the corporation and whether the relations between interstate railroad companies themselves were such as to be disastrous to their credit and whether "the mere financial operations" were such as to waste the assets or impair the solvency of the railroad companies.

Thus, the present contentions of the Commission are wholly at variance with its own construction of its powers. With a full understanding of that construction Congress has been content to leave the investigating powers of the Commission unchanged.

2. THE COMMISSION'S CONSTRUCTION HAS BEEN REGULARLY REPORTED TO CONGRESS, HAS BEEN RELIED UPON BY CONGRESS, AND, THEREFORE, SHOULD CONTROL, EVEN IF THE LANGUAGE OF STATUTE WERE DOUBTFUL.

The declarations above quoted were made by the Commission after long consideration of the act and experience in enforcing its provisions, and were duly reported to Congress and relied upon by Congress. Although since the making of these declarations, and before the questions here involved were asked Mr. Kahn, there was a thorough reconsideration of the act to regulate commerce and radical amendments to it were adopted in order to insure the enforcement of the provisions of the act, there was no enlargement of, or change in, the Commission's investigating powers.

In New York, New Haven, etc. Railroad Co. vs. Interstate Commerce Commission, 200 U. S., 361, 401, the court conceded that a practical construction of the act to regulate commerce by the Commission, to the effect that railroad companies transporting coal produced by themselves were not within certain provisions of the Act designed to prevent unjust discrimination, "must be applied to all strictly identical cases in the future, at least until Congress has legislated on the subject", and in that connection said:

"We make this concession, because we think we are constrained to so do, *in consequence of the familiar rule that a construction made by the body charged with the enforcement of a statute, which construction has long obtained in practical execution, and has been impliedly sanctioned by the re-enactment of the statute without alteration in the particulars construed, when not plainly erroneous, must be treated as read into the statute. Especially do we think this rule applicable to the case in hand, because of the nature and extent of the authority conferred on the Commission* from the beginning concerning the prohibitions of the act as to rebates, favoritism and discrimination of all kinds, and particularly in view of the repeated declarations of the court that an exertion of power by the Commission concerning such matters was entitled to great weight and was not lightly to be interfered with" (pp. 401, 402).

3. THE RESULTS JUST STATED ARE NOT ALTERED BY THE NORTHERN SECURITIES COMPANY INVESTIGATION, THE ENTERPRISE TRANSPORTATION COMPANY INVESTIGATION, OR ANY OTHER INVESTIGATION THE COMMISSION HAS EVER MADE.

But it is insisted that in the Northern Securities matter, and in the Enterprise Transportation matter, the Commission adopted views of its investigating powers similar to the position taken by it in the present case. The Commission did not with respect to either of those matters, or in any other connection, report to Congress any modification of its frequent former declarations as to the extent of the statutory powers and duties as to investigations. Moreover, the Commission did not have any occasion in either of those investigations to take any positive position as to the precise extent of its investigating powers, because all questions were voluntarily answered. Frequently it happens that an administrative board makes inquiries which it has no statutory power to enforce, and by making the inquiries the board does not intend to assert that it has any such power.

However, we wish especially to point out that neither the Northern Securities investigation, nor the Enterprise Transportation investigation, related to any such inquiries as are involved in the questions to Mr. Kahn. The Commission's resolution in the Northern Securities matter, adopted December 20, 1901, is as follows:

"WHEREAS, the twelfth section of the act to regulate commerce provides that the Commission shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted and requires the Commission to execute and enforce the provisions of this act;

"AND WHEREAS, it appears to the Commission that certain consolidations and combinations of carriers subject to the act, including the method of association known as the 'community of interest' plan, should be made the subject of investigation, to the end that the Commission may be informed as to their formation, purposes and modes of operation, together with their effects upon the movement of interstate commerce and the rates received therefor, and to the further end that it may be ascertained whether such consolidations, combinations and methods of association are unlawful under the act, or have the effect of violating any of its provisions:

"ORDERED That a proceeding of investigation and inquiry into and concerning the matters above recited, be and the same is hereby, instituted, and that such proceeding be set for hearing at the United States court rooms, Monadnock Block, in the City of Chicago, Ill., on the 8th day of January, 1902, at 10 o'clock a. m., the further hearing to be continued at such times and places as may appear to be required."

The object and character of the Northern Securities investigation may be said to have been two-fold.

FIRST. It was an inquiry into the management of the business of carriers subject to the act to ascertain whether through the agency of a holding company, or otherwise, they were engaged in a plan which would or could suppress competition in interstate rates or service. Such investigation was applied to the affairs of the carriers, and not to the affairs of private persons dealing with the carriers. The investigation related to the subject matter of interstate rates and service. With an investigation, so limited and so conducted, we have no occasion to take issue in the present case.

SECOND. The investigation was an inquiry to ascertain whether certain practices are "unlawful under the act, or have the effect of violating any of its provisions." Of course, the

Commission has power to inquire whether the act has been violated.

The investigation in which Mr. Kahn was asked the questions involved here *went as far as the Northern Securities investigation without encountering any objection whatever*, and it was only where the investigation went far beyond the scope of the Northern Securities investigations that the objections on behalf Mr. Kahn and Kuhn, Loeb & Co. were made.

The inquiry into the management of the business of the Union Pacific to ascertain whether it had acquired interests in any other carriers, and whether such acquisitions would or could suppress competition in interstate rates or service was conducted without objection. The Commission then went beyond the Union Pacific's business and sought information as to the private affairs and papers of Kuhn, Loeb & Co., and the information so sought had no relation to the suppression of competition in interstate rates or service or to any other subject having any relation to the subject matter of the act to regulate commerce. Thus, a situation was presented wholly different from the situation presented by the Northern Securities investigation.

No objection was offered to any inquiry seeking to ascertain whether there had been a violation of the act to regulate commerce in any particular.

The Commission's resolution under which the investigation now under consideration was conducted radically differed from the resolution instituting the Northern Securities investigation in declaring the purpose of the investigation to be not only the ascertainment of "whether such consolidations, combinations, community of interests, process or methods *result in the violations of said act*," but also whether such consolidations, etc., *tend to defeat the purposes of the act.*

This last phase of the inquiry, to wit: into a mere tendency to defeat the purposes of the act is the only part of the resolution which the lower court finds to cover the inquiries propounded to Mr. Kahn, and it is a feature entirely lacking in the resolution under which the Northern Securities investigation was conducted.

Another investigation relied upon by the Commission as establishing a precedent for the investigation here involved is the matter of the Enterprise Steamship Co., 11 Int. Com., Rep. 587.

In that case the Commission pointed out that the complaint of the Enterprise Transportation Co., a steamboat company, was that certain railroad companies declined to enter into through traffic arrangements with it, while doing so with its competitor, and that complainant was advised that the Commission could make no order in the premises because the act did not require the rail carriers to form through routes with water lines, and added :

> " but inasmuch as the subject is one of great practical importance, and since the amendment of the Act to regulate commerce was now under discussion, it seemed suitable to investigate the circumstances surrounding this complaint with a view to making some report for the general information of the public. A proceeding of inquiry was, therefore, instituted and the various parties were heard " (p. 588).

The Commission also said :

> " This investigation was begun upon the understanding that the Commission had no power to grant any relief in the premises. The railroads have not been heard further than they were inquired of, to some extent, by the Commission itself. We do not think that under these circumstances we ought to express an opinion as to whether those rail lines should accord the Enterprise Company the through arrangements asked for, since it is evident that many things which might influence a final judgment were not developed in the hearing before us " (p. 597).

It is apparent the investigation referred to was a purely voluntary proceeding as to all parties. The Commission evidently did not regard that it was required by the statute to make the investigation, or it would not have left the inquiry admittedly incomplete and failing to cover many things which the Commission pointed out it would be important to consider. The Commission said that it was conducting the hearing with a " view to making some report for the general information of the public." Even now the Commission does not claim that it is endowed with the function of making investigations merely for the general information of the public. Apparently the inquiries were addressed solely to the carriers. The investi-

gation, though admittedly extra-official in character, related to the general subject matter of interstate rates and routes. The proceeding involved no attempt to inquire into anybody's private affairs. The proceeding is valueless as an illustration of the Commission's view of its authority.

On page 33 of their brief counsel for the Commission enumerate several investigations conducted by the Commission, and refer to them as illustrations of investigation similar to the present one. Each of those investigations, except the one relating to power brakes, related directly to some violation of the act to regulate commerce and the hearing respecting power brakes was conducted by virtue of the provisions of the Safety Appliance Acts of March 2d, 1893, as amended April 1st, 1896, and March 2d, 1903. All of these investigations, therefore, were in strict accordance with the Commission's settled construction of its powers, upon which construction we rely in this case.

IX.

Some general considerations bearing upon the various contentions as to the proper construction of the statutory provisions creating the Commission's investigating powers.

Some general considerations which have an important bearing upon the proper construction of the statutory provisions creating the Commission's investigating powers will be stated here, because applicable, in a greater or less degree, to all the foregoing discussion as to statutory construction.

1. No Court has held that the Commission has any power to make inquiries of private persons when not relating to any violation of the act.

In the *Brimson* case, *supra*, 154 U. S., 447, the court considered exclusively the right of the Commission to have the court's aid in compelling answers to questions which clearly related to a violation of the act to regulate commerce.

In the cases of Interstate Commerce Commission vs. Railway Company, 167 U. S., 479, and Texas & Pacific Railway Co. vs. Abilene Cotton Oil Co., 204 U. S., 426, this court has made incidental references to the Commission's investigating powers.

In the former case the court said that the Commission has "the right to compel complete and full information as to the manner in which such carriers are transacting their business" (167 U. S., 506). This case involved the question whether the Commission had the power to prescribe maximum rates. The court held that the Commission had no such power, but pointed out that it had numerous powers with respect to rates, the exercise of which powers would tend to insure the reasonableness of rates, and in that connection referred to the Commission's powers of obtaining "complete and full information." The question of the extent of the Commission's investigating power was not before the court and was not considered. The case has no bearing in this connection, except to emphasize the proposition that the Commission's powers of investigation are designed to enable the Commission to secure compliance with the rules prescribed by the act to regulate commerce.

In the latter case the court said that "The Commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts and their methods of dealing, and generally to enforce the provisions of the act" (204 U. S., 438). In this case the court held that a shipper could not in the first instance complain in court of an unreasonable interstate rate, and could not do this because the enforcement of reasonable interstate rates rests primarily with the Commission, and in support of this view pointed out the plenary powers vested in the Commission "to enforce the provisions of the act," and among those powers referred to the Commission's power of investigation. The question of the extent of the Commission's investigating power was not before the court and was not considered. This case also illustrates the connection existing between the Commission's power of investigation and the enforcement of the rules prescribed by the act.

In Interstate Commerce Commission vs. Baird, 194 U. S., 25, it appeared that the Commission was investigating a

formal complaint that certain carriers had violated specified sections of the act to regulate commerce. The question before the court was whether papers called for by the Commission should be produced, and the court held that those papers should be produced, because relevant to the issues then pending before the Commission as to whether or not the act had been violated in the respects charged. The inquiry was sustained solely because it related to the enforcement of the act.

In Interstate Commerce Commission vs. Reichmann, 145 Fed. Rep., 235, the Circuit Court for the Northern District of Illinois required Reichmann, an officer of a private car line company, to testify whether he had given to shippers any part of the mileage which his company had collected from the railroad companies for the use of its cars. The court considered whether the action inquired about would violate the act to regulate commerce, and, deciding that proposition in the affirmative, held that the question should be answered. Among other things the court said:

> "The purpose of the enactment of the statutes relating to interstate commerce was to give to all shippers of property uniform treatment in the matter of transportation, *and the Interstate Commerce Commission was created to secure the enforcement of those statutes.* In the discharge of this duty, *the Commission is authorized to procure information from any person whatsoever tending to show whether those laws are being obeyed*" (page 237).
>
> "I am of the opinion that the law prohibits the car company from giving to any shipper of property a favor or advantage not publicly offered to all shippers by the published tariffs issued by the carrier, and *therefore* that a reply to the question, which the witness refused to answer, would give the Commission information respecting a matter as to which it is charged with the performance of a duty" (page 242).

2. THE COMPULSORY DISCLOSURE OF PRIVATE AFFAIRS, ALTHOUGH ALLOWABLE FOR THE ENFORCEMENT OF RIGHTS ALREADY ESTABLISHED BY LAW, IS NOT ALLOWABLE FOR MERE GENERAL PURPOSES OF ADMINISTRATION OR LEGISLATION.

That a citizen has a right to some measure of privacy in his domestic and business affairs, and that this right is sub-

stantial and protected to an important extent by the Constitution against governmental encroachment, are propositions which have been fully recognized by this Court.

In the Brimson case, *supra*, the court said:

> "We said in Boyd v. United States, 116 U. S., 616, 630,—and it cannot be too often repeated,—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employes of the sanctity of a man's home, and the privacies of his life. As said by Mr. Justice FIELD in *In re* Pacific Railway Commission, 32 Fed. Rep., 241, 250, 'of all the rights of the citizen few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value'" (154 U. S., 479).

Mr. Justice FIELD in the case from which his language was thus quoted with approval by this court further elaborated this idea by quoting from Boyd v. United States, 116 U. S., 616, as follows:

> "Any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purpose of despotic power; but it cannot abide the pure atmosphere of political liberty and personal freedom" (32 Fed. Rep., 251).

Mr. Justice FIELD then said:

> "The language thus used had reference, it is true, to the compulsory production of papers as a foundation for criminal proceedings, but it is applicable to any such production of the private books and papers of a party otherwise than in the course of judicial proceedings, or a direct suit for that purpose. It is the forcible intrusion into, and compulsory exposure of, one's private affairs and papers, without judicial process, or in

the course of judicial proceedings, which is contrary to the principles of a free government, and is abhorrent to the instincts of Englishmen and Americans" (32 Fed. Rep., 251).

Judge SAWYER, in his opinion in the same case, said:

> "A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizen, and an intolerable tyranny. Let the power once be established, and there is no knowing, where the practice under it would end" (32 Fed. Rep., 263).

It is true that by due procedure the citizen's private affairs, books and papers may be subjected to the inspection and scrutiny of others, when such a course is necessary in the enforcement of some right already established by law. The important question remains whether such disclosures of private matters may be compelled, when merely desired by the legislative or executive department of the government for purposes of general information in aid of the discharge of executive or legislative functions, and when not necessary for the enforcement of any established right.

That a corporation, which is a creature of law, may be required to disclose its affairs for such general purposes in aid of executive or legislative functions is well established. The same thing is true respecting the affairs of a public office and may be true, to a greater or less extent, with respect to any business of a quasi-public character or which is peculiarly subject to police regulation; but if the affairs of a strictly private business are subject to compulsory disclosure at the instance of an executive officer or a legislative body for mere general purposes, in no way connected with the enforcement of any established right, there would seem to be nothing which could be called a *right* of privacy.

If the power exists in the legislative department, or may be conferred upon an executive officer, to inquire into strictly

private affairs of a strictly private business in general aid of the discharge of executive or legislative functions, such power must exist respecting all forms of executive and legislative action and would not be confined, for example, to the administration of laws respecting common carriers or to proposed legislation on that subject. In other words, the power would be one to inquire into the private affairs of the citizen for the purpose of aiding generally in the correction of abuses not at present prohibited by law. Such a power would be just as broad with respect to every citizen and every private business as the visitorial power is asserted to be with respect to corporations; yet the visitorial power respecting corporations has always been treated as embracing an exceptional power of inquiry and has been justified because the corporation is a creature of the state. The emphasis laid upon the existence of this visitorial power respecting corporations shows that it has never been understood that a corresponding power of inquiry existed respecting strictly private affairs of individuals to aid in the discharge of either executive or legislative functions.

In *Kilbourn vs Thompson*, 103 U. S., 168, the court held that Congress had no general power of investigating the affairs of individuals and no power whatever of investigation in the particular matter then under consideration. The court indicated that Congress did have the power of investigation for the purpose of deciding upon the election and qualification of its members; and that each House of Congress had the power of investigation in connection with impeachment proceedings. In connection with the question whether Congress had the power to compel production of evidence in aid of its legislative function, the court said:

> "Nor, taking what has fallen from the English judges, and especially the later cases on which we have just commented, is much aid given to the doctrine that this power exists as one necessary to enable either House of Congress to exercise successfully their function of legislation. *This latter proposition is one which we do not propose to decide in the present case, because we are able to decide it without passing upon the existence or non-existence of such a power in aid of the legislative function*" (p. 189).

In the Brimson case, *supra*, the court said :

> " We do not overlook these constitutional limitations which, for the protection of personal rights, must necessarily attend all investigations conducted under the authority of Congress. Neither branch of the legislative department, *still less any merely administrative body, established by Congress*, possesses, or can be invested with, a general power of making inquiry into the private affairs of the citizen. Kilbourn v. Thompson, 103 U. S., 168, 190." (154 U. S., 478.)

Yet, if the power exists in the Legislature, or can be conferred by it upon an executive officer, to inquire into the private affairs of an individual merely because such inquiry will aid in the exercise of some executive or legislative function wholly aside from any connection with the enforcement of an established right, such power would be the most general power imaginable "of making inquiry into private affairs of the citizen." If the commission can compel Kuhn, Loeb & Company to disclose the private affairs of their business because the commission believes such inquiry, although having no relation to the enforcement of any right created by the act to regulate commerce, would aid in a general way in the discharge of the executive functions of the commission or of the legislative functions of Congress, such power is one respecting which restriction is impossible. The most private affairs of every banker or broker and of every manufacturer of, or dealer in, railroad supplies might be subjected equally to such disclosure.

The power to inquire into private affairs merely in aid of the discharge of executive or legislative functions is infinitely more general in character than any power of inquiry which can be exercised by the courts. An inquiry by a court is limited to the enforcement of some established right and must be specific in character. On the other hand, the executive officer or legislative body undertaking to investigate for the general purposes now under discussion is not confined to any specific transaction or controversy, but has as much right to proceed in one direction as in another. If such general power of investigation exists it affords the widest opportunities for arbitrary discrimination by the executive and legislative departments,

neither of which is safeguarded, to the same extent as is the judicial department, against arbitrary and prejudiced action.

In *In re Chapman Petitioner*, 166 U. S., 661, the court held that a statute requiring the attendance and testimony of witnesses summoned by the authority of either House of Congress must be so construed as to limit such requirement to inquiries relating " to matters within the jurisdiction of the two Houses of Congress, before them for consideration and proper for their action ; to questions pertinent thereto ; and to facts or papers bearing thereon." The court held that in the particular matter before it the Senate had the authority to make an investigation with respect to the acts of its members, because the integrity of the Senate was involved, and it had the right to vindicate itself from aspersion, and to deal with such of its members as might have been guilty of misbehavior or brought reproach upon it.

In the case just cited the inquiry was for the purpose of vindicating an existing right and not for the purpose of aiding in some general way in the discharge of an executive or legislative function.

This court has never held that Congress has any power to compel individuals to testify as to the details of their past transactions merely for the purpose of assisting Congress to consider legislation for the future, or that Congress may confer upon an executive officer or board the power to compel such testimony merely to aid in a general way in the discharge of executive functions.

While state courts have considered occasionally the powers of state legislatures to conduct investigations, the cases have related, not to inquiries into strictly private affairs, but to investigations of public officers. This will be illustrated by a reference to some of these cases.

In *Burnham vs. Morrissey*, 14 Gray (Mass.), 226, the question was whether a legislative committee could compel the commissioner of the State Liquor Agency to produce before the committee all the books and papers containing entries of matters relating to the business of the commissioner's office.

In *Lowe vs. Summers*, 69 Mo. App., 637, the question was whether a legislative committee had the power to compel a county prosecuting attorney to testify as to alleged corrupt negotiations between him and the Kansas City Chief of Police.

People vs. Keeler, 99 N. Y., 463, was a legislative investigation of charges of fraud and irregularity which had been made against the Commissioner of Public Works of the City of New York.

People vs. Sharp, 107 N. Y., 427, was a legislative investigation of charges of corruption against the Common Council of the City of New York.

Ex parte Parker, 74 S. C., 466; 55 S. E., 122, was a legislative investigation of the affairs of the State Dispensary.

Falvey and Kilbourn vs. Massing, 7 Wis., 630, was a legislative investigation of charges of bribery brought against members of the Legislature.

At this point it is well to consider the fundamental reason which justifies the courts in compelling a citizen to disclose his private affairs, books and papers in proceedings seeking to enforce existing rights.

In *Amey vs. Long*, 9 East, 473, 484, Lord ELLENBOROUGH, C. J., delivering the opinion of the Court said:

> "The right to resort to means competent to compel the production of written, as well as oral, testimony seems essential to the very existence and constitution of a court of common law, which receives and acts upon both descriptions of evidence, and could not possibly proceed with due effect without them."

Bayley, B., in *Summers vs. Moseley*, 2 C. & M., 477, 488, said:

> "The origin of the *subpœna duces tecum* does not distinctly appear. It has been said on the part of the defendant that it was not introduced or known in practice till the reign of Charles the Second, and it may be that in its present form the *subpœna duces tecum* was not known or made use of until that period; but no doubt can be entertained that there must have been some process similar to the *subpœna duces tecum* to compel the production of documents, not only before that time, but even before the statute of the 5th Elizabeth. Prior to that statute, there must have been a power in the crown (for it would have been utterly impossible to carry on the administration of justice without such power) to require the attendance in Courts of justice of persons capable of giving evidence, and the production of documents material to the cause, though in the possession of a stranger."

In *Hale vs. Henkel*, 201 U. S., 43, 73, it is said:

> " We think it quite clear that the search and seizure clause of the Fourth Amendment was not intended to interfere with the power of courts to compel, through a *subpœna duces tecum*, the production, upon a trial in court, of documentary evidence. As remarked in Summers v. Moseley, 2 Cr. & M., 477, it would be 'utterly impossible to carry on the administration of justice' without this writ."

In 3 *Wigmore on Evidence*, section 2192, it is said:

> " When the course of justice requires the investigation of the truth, no man has any knowledge that is rightfully private. All that society can fairly be expected to concede is that it will not exact this knowledge when necessity does not demand it, or when the benefit gained by exacting it would in general be less valuable than the disadvantage caused; and the various privileges are merely attempts to define the situations in which, by experience, the exaction would be unnecessary or disadvantageous."

Thus the power to compel the disclosure of purely private affairs for the enforcement of established rights rests upon absolute necessity, whereas such disclosures are not an absolute necessity, but, at most, only a convenience, with respect to the performance of mere executive or legislative functions.

On the one hand, we find it essential to the ends of justice that witnesses should be compelled to disclose their private affairs in proceedings seeking to enforce existing rights, and that in such proceedings the limitations are such as to insure the least opportunity for the operation of arbitrary power. On the other hand, we find that compulsory disclosure of private affairs is not necessary to aid the executive and legislative departments in the general performance of their duties; that such duties are performed habitually without resorting to any such disclosures; and that such disclosures, if permitted, would be subject to no substantial safeguards against arbitrary action; that such power, if it exists, absolutely nullifies any *right* of privacy, and forces the citizen to rely entirely upon the conservatism and good sense of the legislature and of executive officers, unrestrained by any constitutional provision on the subject.

Under these circumstances we submit that this court is not justified in creating by implication any power in the Commission to compel a citizen to disclose his private affairs which have no relation to the enforcement of any rule prescribed by the act to regulate commerce, but which, at most, would constitute a mere convenience in the discharge of executive or legislative functions.

Commission's counsel refer to the statute of Congress providing for the attendance of witnesses before Congressional committees. The extent to which this statute is valid and the extent to which it is limited by the Constitution have never been considered by the courts, probably because in most cases Congressional committees have been careful not to inquire into strictly private affairs, and perhaps in some cases because persons have preferred to answer rather than to incur the inconvenience and expense of obtaining a judicial determination of the extent to which the provisions of the statute are valid. The mere existence of the statute, however, affords no reason why this court by mere implication should enlarge the Commission's power to compel the production of evidence so as to extend to all possible inquiries under the commerce clause which Congressional committees acting under the direction of Congress might assume to make by virtue of the statute in question.

3. UNLESS THE COMMISSION'S POWERS OF INVESTIGATION ARE CONFINED TO THE ENFORCEMENT OF THE ACT, THERE IS NO STANDARD BY WHICH THE EXERCISE OF THOSE POWERS CAN BE GUIDED AND THERE IS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWER.

By the act to regulate commerce Congress has itself made a law and has entrusted the Commission with the enforcement of that law, and has imposed upon all persons the duty of answering questions propounded by the Commission in the discharge of its duty for the enforcement of that law. To this extent there is, of course, no delegation of legislative power, because Congress itself has fixed the character and extent of the duties of the citizen, and those duties are brought into operation by a usual and proper exercise of administrative power.

If, however, in addition, Congress has attempted to confer upon the Commission a more general inquisitorial power, there is an entire absence of any legislation by Congress defining the duty of the citizen or when that duty shall arise, except that Congress delegates the whole matter to the discretion of the Commission. If the Commission has the power to require of private persons information having a relation to any subject upon which Congress may legislate under the commerce clause, or information bearing upon all subjects which may relate to the prosperity or solvency of corporations engaged in interstate transportation, or which, in other ways, may have an indirect relation to the ability or disposition of those corporations to carry out the principles of the act to regulate commerce, the result is that there is no standard to guide the Commission in these inquiries.

It is certainly not the duty of the Commission to investigate every possible subject which Congress under the commerce clause might consider, or everything which might tend to impair the financial or other ability of a carrier to carry out the principles of the act, because no such duty is imposed by the act, and it would be absurd to construe any statute as conferring any such impossible task upon any tribunal. The Commission's activity, therefore, outside of the body of the rules covered by the act itself, depends wholly upon the Commission's discretion and in no sense upon any statutory duty. If such delegation of authority be constitutional, then it follows that Congress permits the Commission upon its own initiative to originate policies as to subjects concerning which investigation shall be made and past transactions shall be made public. The Commission is given no standard whatever by which to guide it in the exercise of this purely discretionary power and would be in the attitude of exercising legislative power and determining legislative policy as completely as Congress itself could do. It is universally recognized that only a limited discretion can be conferred upon any administrative body, and that the legislative department must itself create the primary standards of action by which the discretion of the administrative body may be determined and regulated.

In Field vs. Clark, 143 U. S., 649, the court upheld a tariff act which provided for the imposition of certain duties in a

named contingency to be determined by the President, upon the ground that Congress itself had declared the legislative policy, had made the law, and had delegated to the President merely the function of ascertaining the question of fact whether any other country had imposed reciprocally unequal and unreasonable duties, in which event the duties prescribed by the statute were to take effect.

In Buttfield vs. Stranahan, 192 U. S., 470, the court upheld the delegation to the Secretary of the Treasury of the power to fix uniform standards for imported teas, and did this upon the ground that Congress itself had prescribed the primary standard, which was that low grade teas, demonstrably of inferior purity and unfit for consumption, or presumably so because of their inferior quality, should be excluded.

In Union Bridge Company vs. United States, 204 U. S., 364, the court upheld a statute imposing upon the Secretary of War the duty of ascertaining whether bridges constituted obstructions of navigable rivers, and did this upon the ground that the statute itself had established the primary rule that navigation should be free from unreasonable obstructions arising from bridges of insufficient height.

In the present case, if we go beyond the definite body of rules prescribed by the act to regulate commerce, we have no standard whatever for the Commission's guidance or for the determination of what duty, if any, rests upon the Commission. The Commission alone would determine all questions of policy and of expediency, not by virtue of any definite obligation or of any line of conduct prescribed by Congress, but purely by virtue of a discretion wholly unguided by any statutory provision whatever.

Commission's counsel attempt to meet this difficulty of absence of statutory standard for the Commission's conduct by claiming that sections 12 and 20 of the act supply the standards in prescribing inquiries into the management of the business of common carriers subject to the act, and in prescribing reports from the carriers containing specified details. This contention abandons the position that the Commission has a separate power of investigating for legislative purposes by virtue of section 21, and leaves only the position that the Commission had the power under sections 12 and 20 to ask the questions.

4. THE PROVISION OF SECTION 12 REQUIRING THE COURTS TO AID THE COMMISSION IN OBTAINING TESTIMONY IS CONSTITUTIONAL ONLY UPON THE THEORY THAT THE STATUTE ITSELF CREATES AND DEFINES THE DUTY OF THE WITNESS WHICH THE COURT IS CALLED UPON TO ENFORCE; HENCE, THE STATUTE MUST BE SO CONSTRUED AS TO DEFINE A DUTY UPON THE PART OF THE WITNESS.

Section 12 of the act requires the courts, at the instance of the Commission, to compel witnesses to testify before the Commission. The aid of the courts under this provision was first invoked in the Brimson case. The circuit court on the authority of Hayburn's Case, 2 Dall. (U. S.), 409; U. S. vs. Ferreira, 13 How. (U. S.), 40; and *In re* McLean, 37 Fed. Rep., 648, held that the provision had the effect of putting the judicial department in the attitude of a mere ancillary agency to an administrative tribunal, and hence, of putting upon the judicial department a non-judicial and unconstitutional function (53 Fed. Rep., 476).

This court (only five justices concurring in the decision of the court) held that the function imposed upon the court was a judicial function, because the court was merely called upon in a case presented in ordinary judicial form to compel the witnesses to perform a duty imposed upon him, not by the Commission, but by statute (154 U. S., 447).

The reasoning of the court was that, by the act to regulate commerce, Congress had prescribed rules for the government of interstate transportation, and for the purpose of enforcing that statute, had conferred upon the Commission its power of investigation, and that thereby it became the duty of witnesses to answer inquiries made by the Commission *within the scope of its statutory power;* that when such duty was ascertained by the Commission and denied by the witness, the matter could be presented to the court in such form as to constitute a "case" within the meaning of the constitution, and that questions thus presented for decision would be judicial questions.

The following quotation from the court's opinion shows the judicial questions to be decided in such a proceeding.

"As every citizen is bound to obey the law and to yield obedience to the constituted authorities *acting within the law*, this power conferred upon the Commission imposes upon any-

one, summoned by that body to appear and testify, the duty of appearing and testifying, and upon anyone required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, if the testimony sought, and the books, papers, etc., called for, relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal ground, from doing what the Commission requires at his hands" (154 U. S., 476).

Thus, the Brimson case furnishes the key to the construction of the statutory grant of investigating power to the Commission. That power is capable of judicial support exclusively on the theory that *the statute* creates and defines the duty of the witness. The witness's duty is tested by the act of Congress and not by the views of the Commission. The act must be so construed as to define the duty, or there will be no basis for judicial action. The court should not give by implication such a wide construction to the Commission's powers of inquiry as to leave the duty of the witness dependent upon the will of the Commission unmeasured by any statutory standard, for then the court, in aiding in the enforcement of the statute, will be simply in the non-judicial attitude of an ancillary agency of the administrative board.

In his dissenting opinion in the Brimson case (155 U. S., 3, 6), Mr. Justice BREWER urged that it would be unconstitutional to require evidence to be produced before the Commission without defining the scope of the evidence, for to give the Commission unlimited power to determine the scope of the investigation would be to delegate to the Commission the right to create a crime. Evidently, the majority of the court differed from Mr. Justice BREWER, not as to this principle, but merely as to its application and regarded the statute as susceptible of a construction sufficiently defining the scope of the investigation. But, if the Commission be held as having a power of investigation beyond what is proper for the enforcement of the statute, either for the purpose of obtaining information to serve as the basis of future legislation, or information as to tendencies to defeat the purpose of the statute the substantial effect would be that the Commission itself would be creating at its discretion the duty to testify, and, therefore, bringing into existence a new criminal offense.

According to the theory of Commission's counsel it may become necessary in any inquiry before the Commission, and has become necessary in the present inquiry, to consider the constitutionality of a great many possible legislative acts which have never been passed nor even considered by Congress. The Commission's counsel urge thirteen different sorts of legislation which they claim would be constitutional, and to each of which they say the questions asked Mr. Kahn would be relevant. Certainly a statute fails to define a duty when the existence or non-existence of the duty depends not upon legislation adopted by Congress, but upon the constitutionality of suggested legislation which has never been enacted or even proposed. It is difficult enough for the courts to consider to their own satisfaction constitutional questions when presented in the concrete form of legislative enactments. It could not be assumed that Congress intended to impose upon the courts in connection with their duty to aid the Commission in obtaining evidence, the task of announcing in advance of legislation the constitutional power of Congress to legislate upon any subject to which the Commission may direct its investigating energies.

5. STATUTES CONFERRING DISCRETIONARY POWER UPON ADMINISTRATIVE BODIES SHOULD NOT BE EXTENDED BY UNNECESSARY IMPLICATION SO AS TO ENLARGE THE ADMINISTRATIVE BODY'S OPPORTUNITIES FOR ARBITRARY ACTION.

In the case of *Yick Wo vs. Hopkins*, 118 U. S., 356, 369, this Court said:

> "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there

> must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

The importance of this principle has been repeatedly recognized, and the courts, by unnecessary implication, should not enlarge any statutory power so as to increase the opportunities for arbitrary action.

A practicable and effective protection against any extreme of arbitrary power is for a statute conferring a power upon an officer to make reasonably clear the duty of the officer with respect to the exercise of that power. If the power is great and the duty is vague, the consequence is a large opportunity for arbitrary action, because then the officer's activities or nonactivities will depend largely upon his own personal inclinations rather than on the exercise of a definite statutory duty.

It is, therefore, of the highest importance that the Commission's power to make investigations should not be construed to extend beyond the clear duty of the Commission. The Commission was created to execute and enforce the act to regulate commerce, and its duty is to enforce that act. No other duty rests upon it. Its duty to obtain from private persons, if necessary, in an appropriate proceeding, information as to supposed violations of the act is clear. Its duty to obtain from quasi-public corporations which are subject to the act the information designated by the statute is clear. Up to this point there is not much room for ar-

bitrary action; certainly no more than the necessities of the case demand. But there is no duty upon the Commission to obtain from private persons information having no bearing upon any violation of the act, but merely relating to phases of the carrier's business or to supposed tendencies "to defeat the purposes of the Act," or to inquiries which the Commission may think would be helpful in considering additional legislation. If the Commission omits to investigate private affairs for any of these purposes, its omission cannot be regarded as a breach of duty; and, if the Commission does investigate private affairs for any of these purposes, it does so not because it is required to do so, but because it wishes to do so. It is a matter of personal choice with the Commission to do these things, and it may refrain from doing these things without being subject to criticism. Such conditions produce an opportunity and a temptation for the exercise of arbitrary power.

We fully appreciate that in a government so vast and complex as the Federal Government, it is frequently essential to intrust to administrative officers and tribunals a large measure of discretionary power. A statute is not open to objection merely because it *calls for* the exercise of discretionary powers by the administrative board. But we do say that when the statute does not *call for* the exercise of a discretionary power of a kind particularly liable to abuse, and does not define the circumstances under which the power may be exercised, the courts should not by implication extend the *authority* of the administrative board so as to permit it to exercise such power. When the duty is vague and the power is great, there is a close approach to the conditions which permit and produce arbitrary action. The courts should not by implication so construe a statute as to make any unnecessary progress on this dangerous path.

6. IF THE STATUTE COULD BE CONSTRUED AS CONFERRING SUCH GENERAL INQUISITORIAL POWER ON THE COMMISSION, THE COURT SHOULD REJECT SUCH CONSTRUCTION TO AVOID THE GRAVE CONSTITUTIONAL DOUBTS POINTED OUT.

Even if, consistently with all other rules of statutory construction, the court would be justified in holding that the act

admitted of the construction that Congress intended to authorize the Commission to require of private persons information not appropriate to the enforcement of the act but desirable for more general purposes, still it would be the duty of the court to refrain from adopting such a construction unless it was the only reasonable construction which could be attributed to the language; because as between two constructions the court should adopt that which is clearly constitutional rather than that which is subject to any of the constitutional doubts above pointed out.

This is illustrated by the case of *Knights Templars' Indemnity Co. vs. Jarman*, 187 U. S., 197, 204, in which the court, having under consideration a state statute relating to insurance policies, said:

> "But we do not find it necessary to express an opinion whether, if the act of 1887 were plainly applicable upon its face to antecedent policies, it would be objectionable as impairing the obligation of contracts, entered into between the insurance company and insured, inasmuch as we are clearly of opinion that it should not be held to apply to such unless its language imperatively demand it. *City Railway Co. vs. Citizens' R. R. Co.*, 166 U. S., 557, 565.
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> "Were the act of 1887 more ambiguous than it is as to its application to past transactions, we should still be disposed to apply the cardinal rule of construction, that where the language of an act will bear two interpretations, equally obvious, that one which is clearly in accordance with the provisions of the constitution is to be preferred. Endlich on Statutes, Sec. 178. This rule was applied by this court in *Granada County Supervisors v. Brogden*, 112 U. S., 261; *Presser v. Illinois*, 116 U. S., 252, 269, and *Hooper v. California*, 155 U. S., 648, 657.
>
> "We do not wish to be understood, however, as expressing an opinion upon the constitutionalty of the act of 1887, if it were applied to prior policies, but simply as holding that, in view of the language of the act, *and the doubtfulness of its constitutionality* as applied to prior policies, it should only be given effect in cases of policies thereafter issued."

X.

The citizen cannot be interrogated by the Commission about private affairs except in a proceeding under Section 13 of the act.

A discussion of this point involves an analysis of sections 12 and 13 of the Act to regulate commerce.

Section 12 consists of three parts. The first part authorizes and requires the Commission to investigate the management of the business of carriers. The second part requires the Commission generally to execute and enforce the act and authorizes it to call on the Department of Justice for assistance. The third part provides the machinery for the Commission to obtain evidence "for the purposes of the act", but does not of itself define the occasions when the Commission has authority to obtain evidence, the definition of such authority being left to other provisions of the act. Each of these three parts will be separately discussed.

1. The first part of section 12 reads as follows:

> "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain *from such common carriers* full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created;"

This part embraces three clauses, (1) the grant of authority to inquire into the management of the business of carriers; (2) the imposition of a duty to keep informed as to the manner and method in which such business is conducted; and (3) the grant of the right to obtain *from such common carriers* "full and complete information," etc.

Neither clause (1) granting authority to inquire into the management of the business of carriers, nor clause (2) imposing a duty to keep informed on that subject expresses or implies any authority to go beyond the business affairs, docu-

ments and papers of the carriers and into the entirely distinct field of private business affairs, documents and papers; but, on the contrary, the language used and the nature of the subject matter both indicate that the carriers themselves are the natural sources and limits of the investigating powers conferred. These two clauses, if they stood alone, should not be construed as authorizing the Commission, to delve into the strictly private affairs, documents and papers of a strictly private business, such as that of private banking, for the purpose of obtaining items of information alleged to have a bearing upon the business of common carriers.

But clauses (1) and (2) are accompanied, illustrated and limited by clause (3), which indicates that the Commission's right in the premises is to obtain *from such common carriers* the full and complete information necessary to enable the Commission to perform its duties. If clauses (1) and (2) in themselves grant general authority to the Commission to obtain from every source information bearing upon the business of a common carrier, they are broad enough to cover the carrier itself, and clause (3) would have been useless. The insertion of clause (3) shows that Congress regarded the grant of authority, contained in this portion of section 12, as designed to authorize the Commission to require information pertaining to the business of the carriers from the carriers themselves, but not from persons not connected with the carriers and engaged in private business.

The only grant of investigating power contained in the first part of section 12 is power to obtain information from the carriers themselves.

2. The next part of section 12 reads as follows:

> " and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; "

This part of the section deals only with ordinary incidents of the administrative duties of the Commission and does not enlarge the Commission's powers of investigation.

3. The rest of section 12 consists first of a clause reading as follows :

> " and for the purposes of this Act, the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation."

This is followed by two paragraphs of section 12 which deal with the duty of the courts to aid the Commission to compel any " carrier or other person " to give evidence in accordance with the Commission's subpœnas and requirement, and these in turn are followed by several paragraphs relating to the taking of depositions at the instance of a party or the Commission " in any proceeding or investigation depending before the Commission."

Thus, the third part of section 12 deals with the machinery whereby the Commission may effectuate its authority to investigate, and does not enlarge the scope of that authority, but is expressly limited by the clause, " for the purposes of this Act." This part of section 12 provides the machinery for investigations which may be made by virtue of section 13, as well as for those which may be made by virtue of section 12.

Thus it appears that the only definition which section 12 contains of investigating authority granted to the Commission is that contained in the first part, and is authority to obtain information *from the carriers.*

For convenience, we again quote in full section 13 of the act as follows :

> " That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts ; whereupon a statement of the charges thus

made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

"No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

This section contemplates a formal proceeding in which there shall be, first, an inquiry of the carrier (the carrier being called upon to answer in writing the charges brought against it), and next, a further investigation, if the Commission believes there is any ground therefor, (it being made the duty of the Commission in that event "to investigate the matters complained of in such manner and by such means as it shall deem proper)." This further investigation evidently contemplates an inquiry which may extend to others than the carrier itself, and as far as may be necessary to obtain full information upon the question whether the act has been violated in the specified particulars. Thus section 13 necessarily involves a grant of authority to obtain evidence from private persons, when relevant to the issues presented by the proceeding. We submit that this is the only grant of authority in the act to compel the production of evidence by persons who have no connection with the carriers.

By section 13 it is further provided that the Commission itself "may institute any inquiry on its own motion, and in the same manner and with the same effect as though complaint had been made." If section 12 granted authority to

obtain information from all sources, it would be unnecessary and inappropriate for section 13 thus to grant the Commission authority to institute a particular sort of inquiry which could not explore any sources not already embraced in the authority granted by section 12, so that again we have evidence that section 13 contemplates a character of *inquiry* differing in scope from that provided in section 12.

The act to regulate commerce creates two distinct functions for the Commission—one, the purely administrative function of supervising the activities of carriers subject to the act, and the other, the quasi-judicial function of investigating alleged or supposed violations of the act, and making with respect thereto findings of fact and recommendations or orders to serve as basis of proceedings in the courts, and to have in the courts *prima facie* force. In discharging this quasi judicial function the Commission, as pointed out by Judge JACKSON in K. & I. Bridge Co. vs. Louisville and N. R. Co., 37 Fed. Rep., 567, 613, acts in the capacity of referee for the courts. As this court has frequently indicated, the Commission's findings in such quasi-judicial proceedings are entitled to great respect (See the cases of Louisville and Nashville Railroad Company vs. Behlmer, 175 U. S., 648, 675; East Tenn., etc., Ry. Co. vs. Interstate Commerce Commission, 181 U. S., 1, 27; Illinois Central Railroad Company vs. Interstate Commerce Commission, 206 U. S., 441, 454).

The Commission's investigating powers should be construed in the light of these two different functions. It was natural to give the Commission wide administrative or supervisory powers with respect to the carriers, which are quasi-public institutions and are usually subject to governmental inspection. In this there would be no invasion of private affairs, because the carriers' affairs are not private. The duties and powers conferred upon the Commission by section 12 are clearly administrative in character and in no sense quasi judicial, and it is natural, therefore, for section 12 to indicate that in the discharge of this administrative function the Commission "shall have the right to obtain *from such carriers* full and complete information" etc.

The scope and effect of the Commission's powers of investigation remain as they were when the act was passed in 1887. It is not surprising that Congress, especially as a part of its

first and experimental step in the federal supervision of interstate transportation, was not disposed to confer upon the Commission, acting in its administrative capacity and without formal proceeding of any kind, power to investigate and make public details of a strictly private business, in no sense subject to federal investigation or control.

If, at the outset, it was natural to restrict the Commission's purely administrative inquiries to the carriers themselves, it is still more important to do so now, for we find that by the Hepburn Act of June 29, 1906, the following provision was placed in the Act (in Section 20) :

> " And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence."

It may be proper for such special agents or examiners to investigate the affairs of the quasi-public carriers in the purely administrative manner contemplated by section 12, but surely it would be grossly improper to permit such investigations by employes of the Commission into the affairs of strictly private concerns.

If the Commission's power under section 12 be power to require information from the carriers themselves, then the power is coextensive with the expressed duty to investigate every carrier subject to the act. This is a duty which the Commission can, and does, perform, and the failure to perform it is subject to detection and eventual correction. But it is not the duty of the Commission to investigate every private business having relations with the railroad company in order to disclose all private affairs believed to have a bearing on the railroad business. This is a duty which the Commission has never undertaken to perform, and which, in the nature of the case it never could perform adequately. If it has the power to do this, it is a power which cannot be controlled by any well-defined duty. The Commission, without any statutory standard by which to govern it, or by which its conduct can be viewed, may select one private business for investigation respecting one railway company with which such private business may have transactions, or respecting all railroad com-

panies with which such private business may have transactions, and may omit to make any corresponding investigation into any other private business, although equal occasion, or lack of occasion, may exist for the investigation in the case selected and in those ignored. Such conditions involve the very essence of arbitrary power. There can be no adequate check against the exercise of a power of this sort. Certainly the courts ought not by unnecessary construction to bring about such a situation.

With respect, however, to the Commission's quasi-judicial function, the case is different in every aspect. The Commission's concern there is to ascertain whether there has been a violation of the statute in a specified particular and to, accomplish that, it is not only proper and natural, but it may be essential that the Commission or its examiner should have a power of investigation into private affairs as far-reaching as would be exercised by the courts themselves for whose ultimate benefit the quasi-judicial investigation of the Commission is conducted. But it is equally proper and essential that this power of the Commission and its examiners to investigate into private affairs should be subject to limitations similar to those imposed upon the courts themselves, and should be exercised only when relevant to some inquiry as to whether some legal duty has been violated.

The construction of the investigating powers of the Commission granted by sections 12 and 13, for which we contend, is the only one that gives any effect to the clause of section 12 authorizing the Commission to obtain " from such common carriers " the information in that section referred to ; is the most natural construction, having reference to the two different functions of the Commission ; is a construction which fully meets the practical requirements of the act ; is the only construction which fairly protects private affairs and obviates wide opportunities for arbitrary action ; and is the only construction which subjects the Commission and its employes, when dealing with private persons not connected with the carriers subject to its administrative supervision, to limitations analogous to those which rest on the courts themselves.

This proposition is an open question in this court. In both the Brimson case (154 U. S., 447) and the Baird case

(194 U. S., 25) the inquiries were made in formal proceedings under sec. 13, and in the Baird case the court expressly declined to consider whether the Commission had the power under its administrative authority granted by section 12, to require answers to the questions (194 U. S., 40, 41).

The questions involved in this appeal seek to compel a disclosure of the private business of Kuhn, Loeb & Co., private bankers, in a purely administrative inquiry under section 12 into the management of the business of common carriers subject to the act. We submit the statute does not authorize such inquiries of a private person in such a proceeding. The proposition here asserted does not deny the Commission the fullest power of initiative, for section 13 expressly authorizes the Commission on its own motion to initiate and conduct the form of inquiry therein provided for.

XI.

The Commission's resolution does not cover the questions asked Mr. Kahn, and is too vague to bring into operation any duty to testify.

For convenience we quote again the order which the Commission claims established the subject matter of the investigation, in the course of which Mr. Kahn was asked the questions involved here:

> "Whereas the act to regulate commerce provides that the Commission 'shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted,' and also requires the Commission 'to execute and enforce the provisions' of this act;
>
> "And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practices and methods of such carriers

affecting the movement of interstate commerce, the rates received and facilites furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practices or methods result in violations of said act or tend to defeat its purposes;

"It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby instituted, and that the same be set for hearing at United States Court rooms in the city of New York, N. Y., on the 28th day of December, 1906, at 11 o'clock A. M., the further hearing to be continued at such times and places as may be required." (Transcript, pp. 2, 46.)

Considering the context of the order it is apparent that the primary subject which the Commission proposed to investigate was "consolidations and combinations of carriers subject to the act." All other portions of the order would naturally be construed as relating to this primary purpose of the order and, hence, as pertaining to the relations between such carriers as had consolidated or combined, the influence of such relations upon rates and facilities, and the practices and methods of such carriers growing out of such relations.

The Commission itself has placed this construction on the order.

In its Twentieth Annual Report for 1906 the Commission said respecting its action under this order with regard to the Union Pacific and Southern Pacific:

> "One of these proceedings has been instituted *with a view of disclosing the relations* between the Union Pacific and the Southern Pacific Railway systems *growing out of their combined management and control*" (p. 15).

None of the questions asked Mr. Kahn had any bearing upon the relations between the Union Pacific and the Southern Pacific, or to the rates, facilities, practices or methods growing out of such combined management and control.

All the facts on all the matters embraced by the proper construction of the order had been disclosed already, and the questions asked Mr. Kahn related to entirely different matters.

But the Commission's theory now seems to be that the order related to any and every practice or method of any corporation happening to be a carrier, and not merely to those practices and methods growing out of the relations between the Union Pacific and the Southern Pacific and other carriers.

So construed, we submit that the order is so vague and general as to fail to define any "matter under investigation" in any reasonable or practical sense.

Under that order every railroad company in the United States subject to the act to regulate commerce was as much subject to the investigation as was the Union Pacific. And every practice and method of every such company was embraced, whether pertaining to relations with stockholders, labor, vendors of material, investors of capital or pertaining to transportation matters affecting the shipping public.

If under that order the Commission could compel Mr. Kahn to answer the questions which he declined to answer, the Commission could compel Kuhn, Loeb & Co. or any other banker or broker or business man in the United States who had ever been instrumental in selling any stock or other property to any railroad company to disclose all the facts relating directly or indirectly to such transaction.

The provision in section 12 of the Act which provides for the Commission's requiring the testimony of witnesses is as follows:

> "and for the purposes of this Act the Commission shall have power to require by subpœna the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents *relating to any matter under investigation.*"

The law does not require a witness to answer unless the questions asked relate to the "matter under investigation."

A citizen is entitled to know what the law requires of him. When called upon by the Commission to answer a question, the citizen is entitled to know whether the situation is such as to create any duty upon his part. The citizen cannot know what his duty is, unless he knows, or can ascertain, whether the Commission is proceeding within the scope of its authority, and whether the question asked relates to the matter which the Commission is seeking to investigate.

Clearly it was not the intention of Congress that the Commission might adopt and proceed under a general order covering the whole range of its authority. That would be convenient for the Commission, but would not be due process of law for the witness.

The act of February 11, 1893, entitled an "An Act in relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto" provides in part as follows:

> "Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment" (27 Stat. at L., p. 443).

Certainly something more is needed than the vague order with which we are dealing now in order to enable the criminal courts to know whether a witness' refusal to answer, for which he is indicted, was to a question relating to a matter under investigation and, therefore, a question which constituted a lawful inquiry.

The Brimson case, *supra* (154 U. S., 447), has established that the intervention of the courts to aid the Commission in obtaining evidence is a judicial function only upon the theory that the duty of the witness to answer is created by statute, and that the contentions as to whether the facts bring the case within the statutory duty can be so presented as that distinct issues can be formed in the ordinary judicial method. But if the by Commission by one vague, sweeping order may constitute everything within its power one "matter under investigation" there seems no opportunity for the formation of any issue as to whether the questions asked relate to the "matter under investigation," and there seems no escape from the conclusion that the Court becomes a mere ancillary agency to the Commission to enforce its rulings.

In the case at bar the court must be impressed with the remarkable vagueness of the Commission's position. Upon the hearing before the Commission, when objections to answering questions were made, a great many different reasons for asking the questions were suggested, and in the petition filed here by the Commission still other reasons for asking the questions are suggested. The fact is that nobody knows or can tell from the Commission's order, or from the course of the investigation, what purpose prompts the asking of the questions.

In the nature of things the citizen's duty must be tested by the matter which is properly before the Commission at the time. A person may be asked a question irrelevant to the issues pending at the time before the Commission, and if so, he would have the right to decline to answer that question, although it might be relevant in some other investigation which the Commission might conduct. This is illustrated by the case of *Kilbourn vs. Thompson*, 103 U. S., 168, where the court pointed out that if the House of Representatives had been proceeding for the purpose of impeaching the officer of the government, who seemed to be involved in the transactions inquired about, the case would have been very different.

Manifestly, there can be no due process of law and no formulation of distinct issues which can serve as a basis for judicial assistance unless the "matter under investigation" is defined in some way by proper action of the Commission.

In *In re* Chapman, 166 U. S., 161, 167, this court held that the statute providing for the punishment of witnesses for refusal to testify at the instance of a legislative body must be construed as relating to *matters before the legislative body for consideration and proper for its action*, and held that the Senate resolutions adequately indicated the matter before the Senate for consideration, and further held that that was a proper matter for the Senate's action and that the questions were relevant thereto.

The theory of a constitutional government is to reduce to a minimum the possibility for the play of arbitrary action, but if an order like the one now under consideration can be regarded as establishing a "matter under investigation" within the meaning of the act to regulate commerce, then it follows that the administrative body enforcing that order has an

utterly unlimited discretion beyond all power of regulation or control to choose arbitrarily the persons into whose affairs it will inquire.

If such an order, construed as broadly as it seems to be by the Commission, can be sustained, then the Commission can save itself all future trouble and embarrassment by adopting a resolution that all matters, over which the Commission assumes Congress has power under the commerce clause of the constitution, shall be investigated from time to time as the Commission sees fit.

It is of the highest importance that individuals be protected against undue interference with their private affairs. Such protection cannot be had in the absence of orderly and definite procedure.

The argument of Commission's counsel that, if the Commission is empowered to ask questions, it cannot oust itself of jurisdiction by the form of the order begs the entire question. In the absence of such definition of the subject under investigation as will satisfy the provisions of the act and the requirements of due process of law, the Commission has no power to invoke the aid of the courts. It is not a question of the Commission's ousting itself of jurisdiction, but a question of the Commission's creating such conditions of due and statutory process as to bring its jurisdiction into operation.

There is no basis for the suggestion that the objection as to the form of the order comes too late. It is difficult to see how it could have come any earlier. It was not incumbent upon Mr. Kahn in order to preserve his rights for him to refuse absolutely to give the Commission any aid in the general inquiry which it was conducting.

To sustain the proposition that the order under which the Commission acts is immaterial, provided the question is within the general stalutory power of the Commission, counsel for the Commission make a quotation from *In re* Chapman, 166 U. S., 661. They omit from their quotation, however, one sentence which we think important in this connection, and we repeat the quotation, showing in italics the sentence omitted:

> "Nor will it do to hold that the Senate had no jurisdiction to pursue the particular inquiry because the preamble and resolutions did not specify that the pro-

ceedings were taken for the purpose of censure or expulsion, if certain facts were disclosed by the investigation. The matter was within the range of the constitutional powers of the Senate. *The resolutions adequately indicated that the transactions referred to were deemed by the Senate reprehensible and deserving of condemnation and punishment.* * * *

"We cannot assume on this record that the action of the Senate was without a legitimate object, and so encroach upon the province of that body. Indeed, we think it affirmatively appears that the Senate was acting within its right, and it certainly was not necessary that the resolutions should declare in advance what the Senate meditated doing when the investigation was concluded" (p. 669).

Thus the Chapman case shows that the Senate was conducting the inquiry under resolutions referring to the transactions to which the questions related.

XII.

Some comments upon the opinion of the lower court.

The opinion of the lower court proceeds upon the theory that it cannot aid the Commission in compelling Mr. Kahn to answer the questions involved on this appeal, unless the questions are pertinent to an inquiry defined by the Commission's resolution under which it was claiming to act. We have already pointed out that the lower court's theory was that the resolution defined the inquiry to which the questions related, because the resolution provided for an inquiry into matters "tending to defeating the purposes of the act," and because the questions asked Mr. Kahn might disclose information bearing upon a tendency to ruin the Union Pacific financially, and, therefore, might result in inadequate service, which would or could involve a violation of the act. We have also pointed out that giving such effect to the resolution results in making the resolution wholly indefinite.

The lower court proceeded upon the theory that our contention that private persons could be required to answer only in a formal proceeding instituted under section 13, would result in depriving the Commission of any power to originate inquiries. Such result, however, would not follow, because section 13 expressly authorizes the Commission to "institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made."

In answer to our contention that the statute conferred upon the Commission no power to compel private persons to answer questions not relating to the enforcement of the act, the lower court held that such contention was "clearly opposed to the practice of many years", and to support this statement cited only the Enterprise Transportation investigation and the Northern Securities investigation, to which we have already referred. The court also stated that our contention was "clearly opposed * * * to the necessary result of some decisions by the highest tribunal", and to support that statement quoted from the *Brimson* case, 154 U. S., 447 (which related only to questions directly connected with the enforcement of the act), and also quoted the language of the court in *Texas and Pacific Railway Company vs. Abilene Cotton Oil Company*, 204 U. S. 426, 438, which we have discussed on page 62. Without further discussion the lower court arrived at the conclusion: "There is therefore a congressional grant of power as ample as the subject in all its ramifications demands, and especially extending to the accumulation of information on matters, knowledge of which is material to the full enforcement of the statute."

We submit that there is nothing in the statute which confers upon the Commission a power of investigation "as ample as the subject in all its ramifications demands," and that if there was such a provision it would be so indefinite as to create no standard for the Commission and define no duty for the citizen. No such proposition was presented to, or considered by, this court in either of the two cases referred to by the lower court, or in any other case. We have already pointed out that the questions asked Mr. Kahn were not material to the enforcement of any provision of the statute.

The lower court devoted the principal part of its opinion to a consideration of the inquiry whether Congress could

legislate upon the subjects to which the questions related, and stated that this was an inquiry "of surpassing interest and deserving the prompt attention of the highest court." The lower court, therefore, seemed to concede that the questions did not relate to any legislation which Congress had already enacted.

The lower court in the course of its consideration of this branch of the case suggested that even if Congress had not the power to legislate upon the subjects to which the questions asked Mr. Kahn related, still those subjects might be inquired into in order to arrive at "a full comprehension of the conditions under which wholly interstate operations were taking place." In this connection the court cited the example of an intrastate cab service appurtenant to an interstate railway, and suggested that as such cab service played a most important part in the acquisition and enjoyment of interstate passenger traffic, a federal investigation of the cab service might be appropriate in connection with inquiry into larger matters. Upon this point the court seemed to overlook the distinction between investigation appropriate for segregating intrastate matters from interstate matters and investigation going beyond any such purpose of segregation and into details having no effect one way or another upon the interstate situation. As we have already pointed out, the Commission, in the investigation involved on this appeal, had all information necessary to enable it to segregate entirely from the interstate situation with which it had to deal all features pertaining to the Chicago and Alton and Illinois Central stocks, and that the questions asked Mr. Kahn had no possible bearing upon any such purpose of segregation, but constituted exclusively an inquiry into details which were not the subject of any federal legislation.

The lower court next considered whether relations between a banker and his customer came within the rule concerning privileged communications, so that the banker might decline to testify in regard thereto. The lower court was mistaken in assuming that any such point had been urged on behalf of Mr. Kahn. We did not contend in the lower court, and do not contend here, that any principle of law exists which, while compelling Kuhn, Loeb & Company to disclose their own transactions, would relieve them from disclosing

the transactions of their clients. What we do claim is that the Commission has no authority in this proceeding to compel Kuhn, Loeb & Company to disclose their own private affairs, and that the questions necessarily contemplated a material disclosure of affairs which are as much the private affairs of Kuhn, Loeb & Company as any other facts within their knowledge pertaining to their private business.

We respectfully submit that the order of the circuit court directing this appellant to answer the questions therein mentioned should be reversed and that the petition should be dismissed.

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APPENDIX I.

Secs. 12, 13, 14, 15, 16, 20 and 21 of the Act to Regulate Commerce as Originally Enacted February 4, 1887.

Sec. 12. "That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding" (24 U. S. Stat. at L., p. 383).

Sec. 13. "That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time speci-

fied, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant (24 U. S. Stat. at L., pp. 383, 384).

SEC. 14. "That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of" (24 U. S. Stat. at L., p. 384).

SEC. 15. "That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made repara-

tion for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law" (24 U. S. Stat. at L., p. 384).

SEC. 16. "That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States, sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoying obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directions, officers, or agents of the same, or against any owner, lessee,

trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session" (24 U. S. Stat. at L., pp. 384, 325).

SEC. 20. "That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises and equipment; the number of employees and the salaries paid each class; the amounts expended for improve-

ments each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balance of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be a uniform system of accounts, and the manner in which such accounts shall be kept" (24 U. S. Stat. at L., p. 386).

SEC. 21. "That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary" (24 U. S. Stat. at L., p. 387).

THE facts are stated in the opinion.

Mr. John C. Spooner and *Mr. John G. Milburn*, with whom *Mr. Robert S. Lovett* was on the brief, for Edward H. Harriman:

Congress has conferred upon the Interstate Commerce Commission authority to investigate, and in connection therewith compel the testimony of witnesses, only in aid of its duty to execute and enforce the provisions of the act to regulate commerce.

The commission is a body of limited powers derived exclusively from the act to regulate commerce. It is a purely administrative body charged with specific administrative duties and invested with specific powers. *Kentucky Bridge Co.* v. *L. & N. R. R. Co.*, 37 Fed. Rep. 567. The restricted operation of the act limits the powers of the commission. Neither the province of the act or the commission is coextensive with interstate commerce or interstate transportation. *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290.

An analysis of the act shows that the commission is merely an administrative agency for the enforcement of the provisions of the act to regulate commerce.[1]

The act is primarily an enumeration of particular duties imposed upon common carriers; of particular acts on their part which are prohibited; and of particular duties and powers relating thereto conferred upon the commission. The duties it imposes and the acts it prohibits are the only duties and acts of common carriers with which the act is concerned. It is an act of details and not of generalities. Every duty it imposes is definitely specified, and a carrier which observes them complies with the act in full. The primary function of the commission is to enforce the performance of those duties and prevent the doing of the prohibited acts, and to that end the necessary machinery of investigation, hearings on complaints,

[1] The brief contains an elaborate analysis of the act, section by section.

and judicial proceedings is provided. With respect to other duties or acts of carriers not regulated by the act, the commission has no function to perform and it is invested with none. Congress simply has not seen fit to regulate those acts and duties or to extend to them the functions of the commission. Having defined certain duties and prohibited certain acts the commission is created as an administrative body, not with a general supervisory power over common carriers subject to the act in all their operations, transactions and relations, but generally speaking, with a power of supervision limited to the specific requirements of the act, and with power to enforce those requirements and determine complaints made of violations of the act after notice, answer and hearing.

The business of a common carrier covered by the act is the business of transportation;—the movement of traffic; reasonable, equal and public rates; equal facilities; and the functions of the commission are limited to those aspects of its business. The language of the act is entirely inappropriate to the creation of a power of investigation with the aid of compulsory testimony coextensive with a visitatorial power over all the acts, transactions and relations of a corporation, although a corporation engaged in part in interstate transportation.

There is nothing in § 20 or § 21 enlarging the power of the commission to investigate or warranting the contention that Congress has conferred upon the commission all the "inquisitorial powers of Congress" with respect to interstate commerce.

The cases cited in support of the claim of an inquisitorial power beyond the enforcement of the provisions of the act do not sustain it. *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447; *Interstate Commerce Commission* v. *Baird*, 194 U. S. 25; *Interstate Commerce Commission* v. *C. N. O. & T. P. Ry. Co.*, 167 U. S. 479; *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, discussed and said not to sustain the power contended for by counsel for the Interstate Commerce Commission.

Mr. Walker D. Hines, with whom *Mr. Paul D. Cravath* was on the brief, for appellant, Kahn:

The commission has no power to ask questions of persons not connected with carriers, except to ascertain whether or not the act has been obeyed. *Interstate Commerce Commission* v. *Reichmann*, 145 U. S. 237, 242.

The general power of the commission to inquire into the management of the business of common carriers does not authorize these questions.

The questions related to the private business of Kuhn, Loeb & Co., and not to the business of the Union Pacific.

The theory that under § 12 the commission has authority to go into the private side of transactions with a railroad company on the idea that both sides of the transaction—the railroad company's side and the opposite or private side—are both the railroad company's business, is opposed not only to the letter, but to the spirit, of the statute, and to the policy of our government. It is natural to permit an administrative board, created to supervise *quasi*-public corporations, to inquire in a purely administrative way into the affairs and papers of such corporations; but it is preposterous to permit such mere administrative inquiry to be extended into the affairs and papers of those private institutions with which the railroad company may do business.

The commission's authority to inquire into the management of the business of carriers is an authority to obtain information from carriers themselves, but not from private persons.

The commission's authority to require information from the carriers themselves does not extend to matters having no connection with the general subject-matter of the act to regulate commerce, and the questions asked Mr. Kahn have no such connection.

The commission has no power to make inquiries of private persons merely for the purpose of considering the propriety of recommending additional legislation when such questions have no relation to any inquiry as to violations of the act.

To create such a power in the commission is to give it, by unwarrantable implication, an inquisitorial power into private affairs over which it was never intended that the commission should have any supervision. The commission's investigating power is given "for the purposes" of the act. "The purposes" of the act are to be found alone in the requirements expressed in the act. Those requirements can be construed and understood and applied. To go beyond that is to go into a realm of endless speculation and uncertainty.

The commission's duty and authority are sufficiently broad and sufficiently difficult of effective and impartial discharge when confined to the things which Congress has required, and should not be extended to those things which Congress did not require, but which the commission may assume that Congress hoped to accomplish.

Mr. Frank B. Kellogg and *Mr. Cordenio A. Severance*, with whom *Mr. Henry L. Stimson* was on the brief, for Interstate Commerce Commission:

The Interstate Commerce Commission, in making this investigation, had all the power of a congressional committee of inquiry, so far as interstate carriers are concerned, and could inquire into the management of such interstate carriers and all the financial operations and business thereof, not only for the purpose of regulating rates, fares and charges as provided by the Interstate Commerce Act, but for the purpose of recommending additional legislation. See §§ 12, 20, 21 of the Interstate Commerce Act; *Interstate Com. Com.* v. *Brimson*, 154 U. S. 447, 474; *Interstate Com. Com.* v. *Railway Co.*, 167 U. S. 479, 506; *Texas & Pacific Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426, 438.

The end which Congress is seeking to obtain by the Interstate Commerce Act, namely, the proper regulation of interstate commerce, being indisputably within its constitutional powers, and Congress, by the sections of the act hereinbefore quoted, having emphatically declared its opinion that an inquiry into

the financial operations of the carrier is a necessary and proper means toward achieving such an end, the courts will effectuate and not hinder the purpose of Congress.

The situation is even more serious than when a court is called upon to pass upon the constitutionality of a statute. In such a case the court will not set aside the statute unless the unconstitutionality exists beyond a reasonable doubt. *Legal Tender Cases*, 12 Wall. 531; *Trade-mark Cases*, 100 U. S. 96; *Nicol* v. *Ames*, 173 U. S. 514.

But the case now before the court goes even further. To uphold these appellants in their contumacy is to prejudge Congress and to hold that by no rational possibility could it legislate upon the subject-matter at issue; and this without permitting Congress, through the Interstate Commerce Commission, to obtain the facts upon which such legislation could properly be constitutionally based; and without permitting Congress itself after it shall have acquired such facts, within its constitutional powers of debate, to consider them. As to the power which entitles legislative committees to elicit information of the character here sought, see *In re Chapman*, 166 U. S. 668; *People* v. *Keeler*, 99 N. Y. 463; *People* v. *Sharp*, 107 N. Y. 427, and *Falvey & Kilbourn* v. *Massing*, 7 Wisconsin, 630, which lay down very clearly the rule.

This inquisitorial power of the Interstate Commerce Commission has been fruitfully used. An examination of the debates of Congress and decisions of the courts will show that it was upon information developed by the commission and reported to Congress, that the Elkins Law, the Safety Appliance Law, the Employers' Liability Act, and the Hepburn Act, were successively based; in other words, the inquisitorial work of the commission has been the basis of all congressional legislation affecting interstate carriers during the past twenty years.

The contention that the inquiry involved the private business of the appellants is no answer to the right of the commission to have the inquiry answered.

Of course, sales of property by directors to their railroad

company are not their private affairs; and any inquiry tending to show that the price of the property so sold was inadequate or fraudulent is not an inquiry into the private affairs of the directors. Nor is an inquiry into the reasons of the directors for withholding publication of a dividend, while they were engaged in private speculation in the stock on which the dividend was declared, an inquiry into the private affairs of those directors. Such transactions are no more private than the business of the railroad company is private.

But even if the transactions under inquiry had not concerned men who hold official positions in the company, but were transactions of purely private individuals, being, as they were, relevant to the subject-matter under inquiry by the commission, their privacy was no shield against the commission's probe. Wigmore on Evidence, § 2192; *Interstate Commerce Commission* v. *Baird*, 194 U. S. 46; *Burnham* v. *Morrissey*, 14 Gray, 226.

Within the sphere of inquiry entrusted to the Interstate Commerce Commission the power to investigate the truth has been deemed of such paramount importance to the public that even those privileges which usually maintain in a court of justice have been abolished by statute. No man can assert before the Interstate Commerce Commission or before a court, on an inquiry into matters within the purview of the Interstate Commerce Act, that his answer would tend to incriminate or degrade him; and his refusal to answer inquiries before that commission not only subjects him to proceedings for contempt, but is expressly made a crime (act of February 11, 1893; 27 Stat. L. 443).

MR. JUSTICE HOLMES delivered the opinion of the court.

These are appeals; on the one side, from an order of the Circuit Court directing the appellants, Harriman and Kahn, to answer certain questions put during an investigation by the Interstate Commerce Commission, and, on the other, from

a denial of a like order as to two other questions, answers to which the commission had required.

In November, 1906, the Interstate Commerce Commission, of its own motion, and not upon complaint, made an order reciting the authority and requirements of the act to regulate commerce (Feb. 4, 1887, c. 104, 24 Stat. 379), and proceeding as follows: "And whereas it appears to the Commission that consolidations and combinations of carriers subject to the act, and the relations now and heretofore existing between such carriers, including community of interests therein, and the practises and methods of such carriers affecting the movement of interstate commerce, the rates received and facilities furnished therefor should be made the subject of investigation by the Commission to the end that it may be fully informed in respect thereof, and to the further end that it may be ascertained whether such consolidations, combinations, relations, community of interests, practises, or methods result in violations of said act or tend to defeat its purposes; It is ordered that a proceeding of investigation and inquiry into and concerning the matters above stated be, and the same is hereby instituted." A time and place was set for the first hearing, and the inquiry thus begun was continued for about two months, resulting in the report of July, 1907, entitled "Consolidations and Combinations of Carriers," etc. 12 I. C. C. R. 277.

In the course of the inquiry the appellant Harriman was called by the commission and testified as a witness. At the time of the transactions referred to he was a director and also the president and the chairman of the Executive Committee of the Union Pacific Railroad Company. The relations between the Union Pacific and other connecting roads, parallel or not, were under investigation and are set forth in the commission's report. It is enough to say that the Union Pacific Railroad Company is incorporated under the laws of Utah, and, as has been asserted and assumed, has power under the state law to purchase the stock of other railroads, a power that it has

exercised on a large scale. Among other things, it bought 103,401 shares of the preferred stock of the Chicago and Alton Railway Company. These shares had been deposited with bankers, Kuhn, Loeb & Company, by their owners, under an agreement authorizing the bankers to sell them to any purchaser at such price and upon such terms as should be approved by Messrs. Stewart, Mitchell and the witness, Harriman. He was asked whether he owned any of the stock so deposited, and how much, if any. These questions, under the advice of counsel, he declined to answer.

Next he was asked with regard to stock of the Atchison, Topeka & Santa Fé Railroad Company, bought by the Oregon Short Line Railroad Company, another Utah corporation, the stock of which was owned by the Union Pacific, whether it was part of the stock that had been acquired previously by him and two others, and whether it or any part of it was owned by any of the three. After answering the first question, "I think not," he was stopped by his counsel and refused to answer further. Again, it appearing that the Union Pacific, in July, 1906, purchased 90,000 shares of Illinois Central Railroad stock from Messrs. Rogers, Stillman and the witness, he was asked whether that stock was acquired by a pool of the three, whether it was acquired with a view of selling it to the Union Pacific, and whether it or any part of it was bought at a much lower price than $175 a share with the intent just mentioned. These questions the witness declined to answer. It appearing further that Kuhn, Loeb & Company, who were the fiscal agents of the Union Pacific, had sold to it 105,000 shares of the Illinois Central stock on the same date, he was asked if he had any interest in these shares, and whether they were acquired by a pool for the purpose of selling them to the Union Pacific. These questions the witness declined to answer. Again, it appearing that the Union Pacific had purchased stock of the St. Joseph and Grand Island Railroad Company from the witness since the last-mentioned date, he was asked when he acquired the stock and what he paid for it, and again de-

clined to answer. Finally, after it had been shown that since July, 1906, the Union Pacific had bought a large amount of New York Central Railroad stock, the witness was asked whether any of the directors of the Union Pacific were interested directly or indirectly in this stock at the time when it was sold. An answer to this question also was declined. All these refusals to answer were persisted in after a direction to answer from the commission. The Circuit Court ordered them to be answered and Harriman appealed.

The petition of the Interstate Commerce Commission set forth two other questions which the witness refused to answer, and on which it asked the order of the Circuit Court. One was a general one, whether he was interested in any stocks bought between the nineteenth of July and the seventeenth of August that appreciated, and another, more specific, was whether he or any director bought any Union and [or] Southern Pacific in anticipation of a certain dividend, the suggestion being that announcement of the dividend was delayed for the directors to profit by their secret knowledge and that they did so. With regard to these the petition was denied, and the Interstate Commerce Commission appealed.

The appellant Kahn was a member of the firm of Kuhn, Loeb & Company. He also was asked whether any of the directors of the Union Pacific were the real owners of any of the shares of the Chicago and Alton Railroad deposited, as has been stated, with Kuhn, Loeb & Company, and sold to the Union Pacific. He was asked further in various forms whether the before mentioned 105,000 shares of Illinois Central stock, or any part of them, really belonged to or were held for any of the directors of the Union Pacific. And again, whether at the same time that he bought these shares he bought for Messrs. Harriman, Rogers and Stillman the stocks they sold at the same time that he sold his. Finally he was asked whether the 105,000 shares, and the 90,000 shares turned in by Stillman, Rogers and Harriman, were all bought through his instrumentality for a pool of which they and he were members, that

was operating in Illinois Central stocks for some months before July, 1906. All these questions he was directed by the commission to answer, but refused. The Circuit Court ordered him to answer, and he appealed.

Many broad questions were discussed in the argument before us, but we shall confine ourselves to comparatively narrow ground. The contention of the commission is that it may make any investigation that it deems proper, not merely to discover any facts tending to defeat the purposes of the act of February 4, 1887, but to aid it in recommending any additional legislation relating to the regulation of commerce that it may conceive to be within the power of Congress to enact; and that in such an investigation it has power, with the aid of the courts, to require any witness to answer any question that may have a bearing upon any part of what it has in mind. The contention necessarily takes this extreme form, because this was a general inquiry started by the commission of its own motion, not an investigation upon complaint, or of some specific matter that might be made the object of a complaint. To answer this claim it will be sufficient to construe the act creating the commission, upon which its powers depend.

Before taking up the words of the statute the enormous scope of the power asserted for the commission should be emphasized and dwelt upon. The legislation that the commission may recommend embraces, according to the arguments before us, anything and everything that may be conceived to be within the power of Congress to regulate, if it relates to commerce with foreign nations or among the several States. And the result of the arguments is that whatever might influence the mind of the commission in its recommendations is a subject upon which it may summon witnesses before it and require them to disclose any facts, no matter how private, no matter what their tendency to disgrace the person whose attendance has been compelled. If we qualify the statement and say only, legitimately influence the mind of the commission in the opinion of the court called in aid, still it will be seen

that the power, if it exists, is unparalleled in its vague extent. Its territorial sweep also should be noticed. By § 12 of the act of 1887, the commission has authority to require the attendance of witnesses "from any place in the United States, at any designated place of hearing." No such unlimited command over the liberty of all citizens ever was given, so far as we know, in constitutional times, to any commission or court.

How far Congress could legislate on the subject-matter of the questions put to the witnesses was one of the subjects of discussion, but we pass it by. Whether Congress itself has the unlimited power claimed by the commission, we also leave on one side. It was intimated that there was a limit in *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 478, 479. Whether it could delegate the power, if it possesses it, we also leave untouched, beyond remarking that so unqualified a delegation would present the constitutional difficulty in most acute form. It is enough for us to say that we find no attempt to make such a delegation anywhere in the act.

Whatever may be the power of Congress, it did not attempt, in the act of February 4, 1887, c. 104, 24 Stat. 379, to do more than to regulate the interstate business of common carriers, and the primary purpose for which the commission was established was to enforce the regulations which Congress had imposed. The earlier sections of the statute require that charges shall be reasonable, prohibit discrimination and pooling of freights, require the publication of rates, and so forth, in well-known provisions. Then, by § 11, the Interstate Commerce Commission is created, and by § 12, as amended by later acts, the commission has "authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created; and the commission is hereby authorized and required

to execute and enforce the provisions of this act." District attorneys to whom the commission may apply are to institute and prosecute all necessary proceedings for the enforcement of the act and for the punishment of violations of it; and "for the purposes of this act the commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation." Then comes the provision to which we already have called attention, by which a witness could be summoned from Maine to Texas, and then follow clauses for enforcing obedience to the subpœna by an order of court and for taking depositions, which do not need statement.

The commission it will be seen is given power to require the testimony of witnesses "for the purposes of this Act." The argument for the commission is that the purposes of the act embrace all the duties that the act imposes and the powers that it gives the commission; that one of the purposes is that the commission shall keep itself informed as to the manner and method in which the business of the carriers is conducted, as required by § 12; that another is that it shall recommend additional legislation under § 21, to which we shall refer again, and that for either of these general objects it may call on the courts to require any one whom it may point out to attend and testify if he would avoid the penalties for contempt.

We are of opinion on the contrary that the purposes of the act for which the commission may exact evidence embrace only complaints for violation of the act, and investigations by the commission upon matters that might have been made the object of complaint. As we already have implied the main purpose of the act was to regulate the interstate business of carriers, and the secondary purpose, that for which the commission was established, was to enforce the regulations enacted. These in our opinion are the purposes referred to; in other words the power to require testimony is limited, as it usually is in English-speaking countries at least, to the only cases where the sacrifice

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KAHN *v.* INTERSTATE COMMERCE COMMISSION.
INTERSTATE COMMERCE COMMISSION *v.* HARRIMAN.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Nos. 315, 316, 317. Argued November 3, 4, 1908.—Decided December 14, 1908.

The primary purpose of the Interstate Commerce Act is to regulate interstate business of carriers, and the secondary purpose, that for which the commission was established, to enforce the regulations enacted by it, and the power to require testimony is limited, as is usual in English-speaking countries, to investigations concerning a specific breach of the existing law; this power is not extended to mere investigations by provisions in any of the amendatory acts in regard to annual reports of interstate carriers, or of the commission, or for the purpose of recommending legislation.

Quære whether Congress has unlimited power to compel testimony in regard to subjects which do not concern direct breaches of law, and whether, and to what extent, it can delegate such power.

of privacy is necessary—those where the investigations concern a specific breach of the law.

That this is the true view appears, we think, sufficiently from the original form of § 14. That section made it the duty of the commission, "whenever an investigation shall be made," to make a report in writing, which was to "include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and the findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found." As this applied, in terms, to all investigations, it is plain that at that time there was no thought of allowing witnesses to be summoned except in connection with a complaint for contraventions of the act, such as the commission was directed to "investigate" by § 13, or in connection with an inquiry instituted by the commission, authorized by the same section, "in the same manner and to the same effect as though complaint had been made." Obviously such an inquiry is limited to matters that might have been the object of a complaint.

The plain limit to the authority to institute an inquiry given by § 13, and the duty to make a report with findings of facts, etc., in the section next following, with hardly a word between, hang together, and show the purposes for which it was intended that witnesses should be summoned. They quite exclude the inference of broader power from the general words in § 12, as to inquiring into the management of the business of common carriers, subject to the provisions of the act, the commission keeping itself informed, etc. They equally exclude such an inference from § 21, the other section on which most reliance is placed. That, as it now stands, requires an annual report, containing "such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation

relating thereto as the Commission may deem necessary." Act of March 2, 1889, c. 382, § 8, 25 Stat. 855, 862.

It is true that in the latest amendment of § 14, findings of fact are required only in case damages are awarded. Act of June 29, 1906, c. 3591, § 3, 34 Stat. 584, 589. But there is no change sufficient to affect the meaning of the words in § 12, as already fixed. If by virtue of § 21 the power exists to summon witnesses for the purpose of recommending legislation, we hardly see why, under the same section, it should not extend to summoning them for the still vaguer reason that their testimony might furnish data considered by the commission of value in the determination of questions connected with the regulation of commerce. If we did not think, as we do, that the act clearly showed that the power to compel the attendance of witnesses was to be exercised only in connection with the *quasi*-judicial duties of the commission, we still should be unable to suppose that such an unprecedented grant was to be drawn from the counsels of perfection that have been quoted from §§ 12 and 21. We could not believe on the strength of other than explicit and unmistakable words that such autocratic power was given for any less specific object of inquiry than a breach of existing law, in which, and in which alone, as we have said, there is any need that personal matters should be revealed.

In §§ 15 and 16 are further provisions for the enforcement of the act, not otherwise material than as showing the main purpose that Congress had in mind. The only other section that is thought to sustain the argument for the commission is § 20, amended by act of June 29, 1906, c. 3591, § 7, 34 Stat. 584, 593. This authorizes the commission to require annual reports from all the carriers concerned, with details of what is to be shown, to which the commission may add in certain particulars, and further "to require from such carriers specific answers to all questions upon which the Commission may need information." The commission may require certain other reports, and is to have access to all accounts, records and memoranda. The section now deals at length with this matter and how ac-

counts shall be kept and the like. It seems to us plain that it is directed solely to accounts and returns, and is imposing a duty on the common carrier only from whom the returns come.

All that we are considering is the power under the act to regulate commerce and its amendments to extort evidence from a witness by compulsion. What reports or investigations the commission may make without that aid but with the help of such returns or special reports as it may require from the carrier, we need not decide. Upon the point before us we should infer from the later action of Congress with regard to its resolution of March 7, 1906, 34 Stat. 823, directing the commission to investigate and report as to railroad discrimination and monopolies in coal and oil, that it took the same view that we do. For it thought it advisable to amend that resolution on March 21 by adding a section giving the commission the same power it then had to compel the attendance of witnesses in the investigation ordered. 34 Stat. 824. The mention of the power then possessed obviously is intended simply to define the nature and extent of the power by reference to § 12 of the original act. The passage of the amendment indicates that without it the power would be wanting. The case is not affected by the provision of § 9 of the act of June 29, 1906, c. 3591, § 9, 34 Stat. 595, extending the former acts relating to the attendance of witnesses and the compelling of testimony to "all proceedings and hearings under this Act." If we felt more hesitation than we do, we still should feel bound to construe the statute not merely so as to sustain its constitutionality but so as to avoid a succession of constitutional doubts, so far as candor permits. *Knights Templar & Indemnity Co.* v. *Jarman*, 187 U. S. 197, 205.

Order in 315 *and* 316 *reversed.*
Order in 317 *affirmed.*
Petition denied.

MR. JUSTICE MOODY, not having been present at the argument, took no part in the decision.

MR. JUSTICE DAY, dissenting.

I am constrained to dissent from the opinion of the court in this case. It seems to me that too narrow a construction has been given to the act of Congress conferring power upon the Interstate Commerce Commission to conduct investigations into the affairs of corporations engaged in interstate commerce.

The court in the prevailing opinion has not placed its decision upon the want of power in Congress to legislate concerning the subject-matter of investigation in this case. The decision is based wholly upon the construction of the act of Congress, and as I am unable to concur in the view taken in the opinion, I will state the grounds upon which my dissent rests.

The reports of committees which accompanied the enactment of the Interstate Commerce Law, in its original form, show that importance was attached to the power conferred upon the commission to make investigations as well as to make orders relating to specific complaints as to practices affecting the conduct of interstate commerce and the instrumentalities by which the same is carried on. It was to have a power of investigation, such as had been conferred upon similar bodies in the States and in the English acts regulating the subject, with a view to eliciting information important to be had, in order to lay the basis for intelligent and efficient action in the legislative branch of the Government to which the Constitution has delegated power to regulate commerce among the States and with foreign nations.

In speaking of this power, Judge Cooley, the eminent chairman of the commission, in its first annual report, said:

"This is a very important provision and the commission will no doubt have frequent occasion to take action under it. It will not hesitate to do so in any case in which a mischief of public importance is thought to exist, and which is not likely to be brought to its attention on complaint of a private prosecutor."

In numerous instances investigations have been conducted by the commission having in view the exercise of its authority to afford information as to the manner and methods in which corporations engaged in interstate commerce are conducting their business. These investigations have been undertaken upon the initiative of the commission; witnesses have been subpœnaed; and testimony has been taken without objection from those interested that the power of the commission conferred by the acts of Congress had been exceeded. While these considerations are not determinative of the extent of the powers conferred in the act, they are suggestive of the practical construction which those interested have put upon it.

The act itself makes provision for two kinds of investigation, the one under § 12 upon the initiative of the commission without written complaint; the other under § 13, where investigation and orders are made upon complaint.

We are concerned in this case with an investigation undertaken upon the initiative of the commission under § 12 of the act. That section, so far as pertinent, provides:

"That the commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the commission to perform the duties and carry out the objects for which it was created; and the commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the commission, it shall be the duty of any district attorney of the United States to whom the commission may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses

of the courts of the United States; and for the purposes of this act the commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the commission, or any party to a proceeding before the commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section."

The plain reading of this section is that for the purposes of the act the commission shall have power to require, by subpœna, the attendance and testimony of witnesses, and the production of books, papers, contracts, tariffs, agreements, and documents relating to any matter under investigation. Notwithstanding the broad language used by Congress, it is now held that the power of the commission to require testimony embraces only subjects stated in complaints for the violation of the act, or investigations by the commission upon matters which might have been the subject of complaint. I am unable to follow the reasoning which thus cuts down the expressed words of the act, which enables the commission to require testimony for all purposes of the act. The complaints under the act may relate to unreasonable rates, to discriminating practices, to the management of the affairs of the carrier as involved in or connected with the conduct of interstate commerce, to the relations of interstate carriers with each other, and the like matters, directly affecting corporations and individuals engaged in interstate commerce. These things are within the purposes of the act, but no more so, in my judgment, than the declared purpose of the act to endow the commission with investigating powers, having in view the ascertainment of the manner in which interstate commerce business is con-

ducted and managed, with a view to intelligent action upon these important subjects.

For the purposes of the act this power to require the attendance of witnesses and the production of books, papers, tariffs, contracts, etc., relating to any matter under investigation, is specifically conferred by Congress. To make the act read that the power shall be conferred only for the purposes of laying the ground for redress of specific complaints, or things which might be the subject-matter of complaints, narrows its provisions from the broad power conferred in the language used by Congress to powers limited to the execution of only a part of the act. It seems to me that the restricted construction given in the opinion has the effect to entirely reform the act of Congress, substituting for it, by judicial construction, a much narrower act than Congress intended to pass, and did, in fact, pass.

In § 12, which requires the district attorneys under the direction of the Attorney General to take all necessary proceedings for the enforcement of the act, and empowers the commission for the purposes of the act to issue subpœnas and require the production of books, papers, etc., there is in terms conferred, as the basis of this judicial action and this power to summon witnesses, authority to inquire into the management of the business of corporations subject to the provisions of the act, in order that the commission may keep itself informed as to the manner and methods in which the same is conducted, and to obtain from common carriers thus engaged full and complete information to enable the commission to prevent bad practices and to perform the duties and carry out the objects for which it was created.

Nor are the purposes of the act for which the power to subpœna witnesses, require the production of books, papers, etc., alone defined in § 12. In § 20 of the act, in order to enable the commission to make its reports, it is authorized to require from common carriers specific answers upon all questions upon which the commission may need information, such reports to

contain a showing of the amount of the capital stock, the amount paid therefor, the manner of payment for the same, etc., and § 21 of the act requires the commission to make an annual report which shall contain such information and data collected by the commission as may be considered of value in the determination of questions concerning the regulation of commerce, together with such recommendation as to additional legislation relating thereto as the commission may deem necessary. These things are "purposes of the act" no less than the hearing of complaints and making orders touching the same. For all these purposes § 12 conferred the power which was sought to be exercised in this case. That inquiries might take a wide range is shown in the acts of Congress giving immunity to persons required to testify, and providing that no person shall be excused from attendance and testifying, or from producing books, papers, etc., before the Interstate Commerce Commission for the reason that his answers or the production of such testimony may tend to criminate him, and granting immunity from prosecution because of such compulsory testimony.

The function of investigation which Congress has conferred upon the Interstate Commerce Commission is one of great importance, and while of course it can only be exercised within the constitutional limitations which protect the individual from unreasonable searches and seizures and unconstitutional invasions of liberty, the act should not be construed so narrowly as to defeat its purposes.

In the case of *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 474, this court had under consideration the provisions of § 12, authorizing the Interstate Commerce Commission to conduct an investigation upon its own motion, and in that case this court said:

"An adjudication that Congress could not establish an administrative body with authority to investigate the subject of interstate commerce, and with power to call witnesses before it, and to require the production of books, documents and

papers relating to that subject, would go far towards defeating the object for which the people of the United States placed commerce among the States under national control. All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced otherwise than through the instrumentality of an administrative body representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules."

And in *Interstate Commerce Commission* v. *Railway*, 167 U. S. 506, this court said:

"It [the commission] is charged with the general duty of inquiring as to the management of the business of railroad companies, and to keep itself informed as to the manner in which the same is conducted, and has the right to compel complete and full information as to the manner in which such carriers are transacting their business."

In the case of *Texas & Pacific Ry. Co.* v. *Abilene Cotton Oil Co.*, 204 U. S. 438, this court said:

"The commission was endowed with plenary administrative power to supervise the conduct of carriers, to investigate their affairs, their accounts, and their methods of dealing, and generally to enforce the provisions of the act."

In the case last cited it was held that a rate filed with the Interstate Commerce Commission could only be attacked for unreasonableness by a proceeding before the commission, with a direct view to a change in the rate. The power thus invested in the commission, no less than the power conferred in this case, affected shippers from Maine to Texas, and required a shipper making complaint against a common carrier for carriage in a remote part of the country to obtain redress for unreasonable rates only by a proceeding before the Interstate Commerce Commission, which ordinarily sits in the capital at

Washington. Legislative power vested in Congress over interstate commerce embraces the whole country, and while it may be extremely inconvenient to compel the attendance of witnesses and the production of the papers, etc., throughout a domain so large as ours, that consideration does not detract from the power of Congress over the subject-matter.

Assuming, for the purposes of this case and the construction of the statute, that the relations of directors in a corporation engaged in interstate commerce to the sales of stock to such corporation may be the subject of inquiry when Congress confers such power upon the commission, I think that in this act Congress has conferred such power. If such is the proper construction of the act, it follows that the commission had a right to propound the questions which the Circuit Court directed to be answered. In my view the judgment of the Circuit Court should be affirmed.

MR. JUSTICE HARLAN and MR. JUSTICE MCKENNA concur in this dissent.

MR. JUSTICE HARLAN also dissents in No. 317.